



Reshaping treatment
approaches towards
victims of sexual violence
within criminal proceedings.

Italian National Report



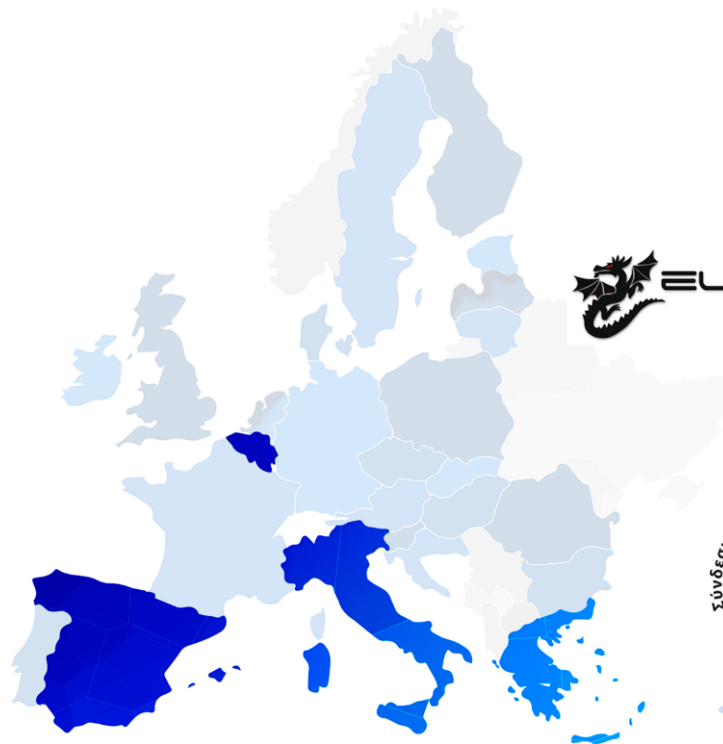
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* The content of this Nation

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ITALIAN NATIONAL REPORT

1. Introduction

1.1. European and international protection standards for victims of sexual crimes

According to different institutions, the prevalence of sexual violence is very high in the world; it is estimated that between 45% and 55% of women in the European Union have been sexually harassed since the age of 15¹, that approximately 15 million adolescent women (between the ages of 15 and 19) around the world have suffered forced sex at some point in their lives², and that 4 out of 5 trafficked women are used for sexual exploitation³.

The protection of victims of sexual violence is an objective that has reached the international and European agendas in the 21st century. The strategies of the United Nations, the European Union and the Council of Europe therefore include a necessary gender, child, minority and functional diversity perspective to identify the real situation and problems.

In 2015, the United Nations (UN), in its so-called Agenda 2030 for Sustainable Development included as objective 5 the achievement of gender equality and the empowerment of girls and women⁴. In 2016, a Special Coordinator for Improving the United Nations Response to Sexual Exploitation and Abuse was appointed, as well as the first defender of victims' rights. The UN has developed numerous works and recommendations in this field, and in particular in the scope of violence against women, including sexual violence, the CEDAW Committee adopted Recommendation n.35 on violence against women, declaring the responsibility of the State in compliance with the obligation of "*due diligence for the acts or omissions of non-State actors*", urging the adoption of preventive and repressive measures, and obligations of protection and reparation for the women affected.

At the regional level, the Council of Europe has a Gender Equality Strategy 2018-2025⁵, and at a regulatory level, the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is particularly relevant, describing sexual violence as gender violence and establishing the obligation of the States Parties to adopt measures of prevention, awareness, education, training of professionals, create or support preventive intervention programmes for the prevention of these crimes (defined, among others, in legislative measures - Art. 18.1), duty of information or protective measures⁶.

In the EU, the protection of victims and the fight against sexual crimes has been implemented in its strategic, organisational and legislative agenda in the Area of Freedom, Security and Justice⁷. In

¹ Fundamental Rights Agency, *Violence against women: an EU-wide survey. Main results report*, 2014.

² UNICEF, *A Familiar Face: Violence in the lives of children and adolescents*, 2017.

³ UNODC, *Global Report on Trafficking in Persons*, 2018.

⁴ See https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

⁵ See Gender Equality Strategy 2018-2023: <https://www.coe.int/en/web/genderequality/gender-equality-strategy>
Highlights its Pilot Project to conduct an inventory of assistance and services available to victims of sexual exploitation and abuse in 13 countries and its advocacy work (See Victim Assistance Protocol 2019).

⁶ Spain has not only ratified this international treaty, but also the offences regulated by the Istanbul Convention will fall under Spanish jurisdiction, even if they occur outside our borders if any of the circumstances of Article 24.3.I of the LOPJ apply. The GREVIO report about Spain remarks the poor activity of the State concerning sexual violence.

⁷ Following the European Council's Stockholm Programme entitled "An open and secure Europe serving and protecting citizens" (heading 2.3.4).

addition to the relevant harmonising instruments which affect the matter⁸, including the so-called Victims Directive of 2012, three strategies of the utmost relevance have been communicated for the five-year period: the EU strategy on victims' rights, the strategy for gender equality and the strategy for the effective fight against child sexual abuse.

The main objective of the EU strategy for victims is to empower victims, and it has five priorities: effective communication and the establishment of a safe environment for reporting the crime, improving protection and support for the most vulnerable victims, facilitating access to compensation, strengthening cooperation and coordination between relevant actors and reinforcing the international dimension of victims' rights. In this strategy, sexual victimization plays a leading role, and reference is made to the significant unreported figure in these crimes, probably around 200%. This strategy converges with that of gender equality and the more effective fight against child sexual abuse.

1.2. Methodology based on the victim's perspective

1.2.1. The interests of victims

Directive 2012/29/EU refers to rights of the victims, needs and interests, that have to be assessed in an individual manner, being the situation of the victims of sexual violence one of a special interest and protection (art.22).

The service provided to victims by the criminal justice systems implies the establishment of common criteria for action. These criteria make it possible to give certainty and security to what victims can expect from the actions and actors of the justice system involved in their case. At the same time, however, personalized treatment should take into account different contexts of victimization and personal interpretation. This flexibility and the focus on the victim's perspective in the Directive assumes that victims may have a variety of interests depending on their own characteristics, circumstances and victimisation, which must be assessed on an individual basis. Thus, for example, in cases of human trafficking, the victim is likely to prioritise security measures while a young rape victim might identify privacy as a priority.

The Directive refers directly and indirectly to the interests of the victim. Some of these interests, have the status of a right, others are under the protection of a right, and others can be diffusely protected by rights or good practices. The Directive refers sometimes to “needs”, suggesting sometimes “adequacy” (art. 27.7, interpretation), sometimes to “necessity”, which we are interpreting here as very important interests of the person (art. 9.3.a, need of a safe place, art. 22 and 23, protection needs), and sometimes to the group of general and specific interests of the victim (art. 4, information

⁸ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, Council Directive 2004/80/EC relating to compensation to crime victims, Directive 2011/09/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order and Directive 2014/41/EC of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

depending on the specific needs, art. 25, training of practitioners to increase their awareness of the needs of the victims).

In the context of a victim's relationship with the justice system, it is preferable to avoid referring explicitly to needs. This is because this terminology has been progressively abandoned as it evokes a disadvantageous and welfare-oriented position. Instead, a focus on the victim's interest as part of the evaluation of the criminal justice systems has been developed.

As we analyse our justice systems regarding the situation of sexual crime victims, our focus is not so much as an evaluation of the victim's justice experience, not so much an evaluation of her justice interests, but an evaluation of the situation of the victim's various personal interests, related to the justice system.

The possibility of victims' participation in the justice system in an appropriate way, while guaranteeing the protection of their interests, would be an objective of the justice system, that would allow in the future prospective victims to report and to maintain their positions in the investigative stage as well as during the trial, and overcome, as a society, the important problem of under reporting, no prosecution and impunity concerning sex crimes, enabling the system to develop better prevention tools and for better protection of victims.

The interests that serve as a reference for the evaluation of the activity in the different procedural phases in this report are those expressly or abstractly included in Directive 29/2012/EU, in addition to the specific interests relating to justice described by the specialised doctrine⁹.

| INTERESTS OF VICTIMS OF SEXUAL CRIME AND THE JUSTICE SYSTEM | |
|--|--|
| 1. Privacy (art. 21) | a. <i>Shame and informative self-determination</i> b. <i>Anonymity</i> (art. 23) |
| 2. Information (art. 6, art. 7) | |
| 3. Participation | a. <i>To be heard</i> (art. 10- Voice in Daly model) b. <i>To ask, to demand, to agree, to get answers</i> (art. 11, when no prosecution, art. 12 restorative justice, art. 13 legal aid-Participation in Daly model) |
| 4. Compensation (art. 14, reimbursement of expenses, art. 16, compensation from the offender) | |

⁹ Daly, Kathleen. "Conventional and Innovative. Justice Responses to Sexual Violence". Australian Centre for the Study of Sexual Assault 12, n.2, (2011):1-35, has constructed a Victimization and Justice Model which allows the evaluation of different justice mechanisms from the victim's perspective. Thus, she argues that in order to evaluate criminal justice systems, consideration must be given to: (i) contexts of victimization, (ii) justice mechanisms available and (iii) victims' interests of justice.

The third element – interests of justice – basically refers to the political relationship between victims – as citizens – and the judicial system, in the sense that by resorting to the judicial system after suffering a crime, victims have the expectation of achieving a certain result (justice). Moreover, if that result is positive, it is to be expected that it may have an effect on their well-being (physical, psychological, etc.).

Daly identifies the following 5 elements:

- Participation: being informed of the options and the development of the case, including the types of mechanisms available; ability to ask questions and receive information about the crime.
- Voice: telling the story of what happened and its impact in a meaningful setting where the victim can receive public recognition.
- Validation: to claim that the victim is believed – about the occurrence of the crime and that was harmed – and that is not blamed for what happened. It reflects the desire to be believed.
- Vindication: public condemnation and censorship of what happened. It can be expressed through symbolic and materials forms of reparation and standards forms of state punishment. It implies censorship of the act as wrong and of the offender, both from a legal and victims' perspectives.
- Accountability of the offender: requiring that the offender be called to account for his actions (why that person did it), in the expectation that the offender will take active responsibility for his wrongful behaviour.

| |
|---|
| 5. Security (art. 18 protection) |
| 6. Dignity (art. 18 explicitly; in abstract: art. 23.2.a, interviews in special premises, art. 23.2.b. carried by through professionals trained for that purpose, art. 23.2.c, by the same person, 23.2.d, of the same sex, art. 23.3.c, avoid unnecessary questioning concerning the victim's private life not related to the criminal offence) |
| 7. Support (art. 8, victim support services, 24.1.b, special representative for the child victim in conflict of interest) |
| 8. Minimization of stress-mental health (art. 19, avoid contact between victim and offender, art. 23.3.a avoid visual contact with accused, art. 23.3.b testimony without being present, art. 24.1.a recorded interview with child, art. 3 and art. 20, to be accompanied) |
| 9. Accountability of the offender (art. 12 Restorative Justice, Daly model) |
| 10. Validation y vindication (Daly model) |

Table 1. Interests of Sex Crim Victims and the Justice System

The greatest challenge of the analysis lies in understanding in this evaluation the socio-cultural contexts (religious, cultural, political and social factors in general, among others) that influence the victim's assessment of the situation and their decision to report and prosecute (or the decision of his/her inner circle), and the treatment by justice operators (from the police in the first contact to the magistrates in the last resolution). Thus, for example, despite the existence of a clear regulation against sexual crimes, prejudices and beliefs that transcend the social group produce less social support for the victims and more concealment of the criminal act, less interest in the persecution by the investigators or a light punishment, if any.

1.3. Methodology

In this report the Italian situation regarding the crime of sexual violence will be discussed. Through an accurate analysis of the jurisprudence on sexual crimes, we will define the legal background that redefine the crime of sexual violence from a *crime against public morality* to a *crime against the person*.

In order to have a detailed presentation on the current situation in Italy, the most recent statistical data provided by the National Institute of Statistics (ISTAT) will be explored, concerning crimes occurred from 2015 to 2018 within the Italian territory.

In order to better understand the treatment that victims receive during criminal proceedings, interviews conducted with professionals from the legal system (Police, Public Prosecutors, Lawyers and Judges) and victim support services will be analysed. In order to obtain a view of the position of the Supreme Court on this topic, an analysis of the decisions of the Italian Supreme Court issued during the last five years was carried out.

The Italian report of the RE-TREAT project is the result of a research work carried out by the two Italian teams, University of Sassari (UNISS) and EuroCrime, which conducted an analysis of the scientific literature, professional practices, procedures and Supreme Court judgments concerning the treatment of victims of sexual offences within the criminal justice process in Italy.

The University Carlos III of Madrid, the coordinating partner of the project, identified two main tasks on which to focus the national report: Task 1. Research on treatment of victims of sexual violence in 3 Mediterranean states and Task 2. Interviews with victims and criminal justice professionals. The research on the treatment of victims in Italy included, before the COVID-19 health emergency, the following actions:

- Task 1.2. National analysis of police and/or prosecutor files;
- Task 1.3. Analysis of judicial records;
- Task 1.4. Case-law analysis.

The second part of the research included these actions:

- the implementation of an interview for experts working with victims of sexual crimes in public or private services;
- the analysis of these interviews.

The health emergency that globally exploded at the end of 2019 due to the Covid-19 virus resulted in the adoption of special measures in 2020 in Italy, culminating in a national lockdown. This reduced the activities of public and private services, companies, the mobility of the population and many other aspects of social life.

Courts and prosecutors' offices suspended their regular activity, limiting it to cases of urgency and not allowing access to their offices and archives; police offices, drastically reduced access to cases of necessity. It was therefore impossible to access public files and documentation of sexual violence cases in these institutions.

The Covid-19 resurgence in the last part of 2020 brought new restrictions and new locks, effectively preventing access again to the documentation originally planned for compilation of this Report. For this reason, developing qualitative rather than quantitative research was an inevitable choice. UNISS chose to produce 5 to 10 interviews per category of professionals: in particular, police officers, carabinieri and public prosecutors were interviewed instead of the analysis of the files initially planned (*Task 1.2 - National Analysis of Police and Prosecution Files*) and lawyers and judges in lieu of legal complaint analysis (*Task 1.3 Analysis of legal complaints*).

The interviews elaborated by the Italian Teams are based on the overall questions provided by the UC3M and aimed at an in-depth analysis of the topic addressed by the RE-TREAT project. The difficulty of asking all of the questions provided by UC3M to the professionals involved in the survey led us to produce broad categories of analysis from which a series of open-ended questions were derived for each category.

Since July 2020, UNISS researchers have contacted police officers and carabinieri, public prosecutors, magistrates, lawyers and professionals working at victim support services via email.

Each professional received two attachments via email:

- Information document with all the information about the RE-TREAT Project, the international partners involved and the informed consent form;
- A specific interview created for each category of invited experts.

Each professional had the choice of participating in an online interview or answering it via email.

Once professionals have accepted the invitation and submitted the informed consent form with their signatures, an appointment has been scheduled to conduct the interview online through Zoom and Microsoft Teams platforms or by phone: each meeting (lasting about 30 minutes) was audio-recorded and then transcribed.

The interviews were analysed by UNISS researchers in order to identify the common themes in the experiences reported by each professional category in the different moments of their work in contact with the victims. EuroCrime researchers analysed the relevant rulings of the Supreme Court of Cassation issued over the past five years. The work was done entirely remotely through access provided to the Court's database.

2. General situation and Data

2.1. Legal background

In the Italian legal system, the penal code is the primary source of regulations regarding crimes of sexual violence (and sex crimes in general). The penal code, issued by Royal Decree 19 October 1930, n. 1398, has been modified and revised many times, in particular concerning the section on sex crimes (Section II- Crimes against personal liberty). In fact, it is interesting to note that until as recently as February 1996, sexual violence was considered a *crime against public morality*, and not a crime against the person. Only with L. 15 February 1996, n. 66, that completely redefined the law regarding to sex crimes, did sexual violence fully qualify as a *crime against the person*.

This change was extremely significant for the Italian system. It was reached only after long debate that was not only political, but also social, cultural, and even partly religious. In fact, the crime currently defined as *sexual violence* consisted originally of two very distinct types of crimes in the penal code:

- Carnal violence;
- Violent acts of lust.

Both were included in Book II, Title IX, Chapter I of the code, under “Crimes against sexual autonomy”, in the category “*Crimes against public decency and morality*”. They were therefore considered crimes against societal values, and against society itself by extension, but not crimes against persons. Public morality and decency were therefore the victims of the crime, instead of the person who suffered the carnal violence or act of violent lust. Therefore this person was of little significance in the lawsuit, and had a limited role. This was clearly a socially and culturally archaic view, considerably outdated by the 1990’s, tied to a strongly conservative and traditional understanding of this type of crime. However, this view of the crime, and of the female figure (implicitly assumed to be the obvious victim, along with minors) were, and unfortunately to some degree still are, strongly rooted in certain strata of Italian society. For a long time they opposed changing the public decency and morality designation of the crime. The effects of this view are still evident today in the denigration and blame often aimed at crime victims by the media, public opinion and members of the court—even defense attorneys.

The old law pertaining to the conduct in question was in Article 519 of the penal code:

Art. 519 c.p. Carnal violence – Any person who, through violence or threat, forces a person into carnal intercourse will be punished with imprisonment for a term between 3 and 10 years.

The same punishment applies to any person that has carnal intercourse with a person who at the time of the event:

- 1) *is under 14 years old;*
- 2) *is under 16 years old, when the perpetrator is an ancestor or guardian, or another person to whom the minor is entrusted for reasons of care, education, instruction, security or safekeeping;*
- 3) *is mentally ill, or unable to resist due to mental or physical inferiority, even if this is not connected to the event;*
- 4) *is deceived, by the perpetrator pretending to be someone else.*

Violent Acts of Lust, established by Art. 521 c.p. (and repealed by L. 66/1996, like the aforementioned Art. 519 c.p.), were different from carnal violence in that punishable acts consisted of “*acts of lust different from sexual intercourse*”. They were subject to the same punishment as carnal violence, reduced by one third. Therefore they fell into a leftover category that included all acts that were considered sexually reproachable (defined only as acts of lust) but didn’t qualify as carnal intercourse, another concept subject to extremely different and often opposing viewpoints. The vagueness of the crimes’ descriptions and definitions in the two articles clearly reflected the difficulty, let alone lack of willingness, to tackle in a technical, scientific and detailed manner what was an evidently uncomfortable, bothersome and almost embarrassing matter.

The abovementioned L. 16 February 1996, n. 66, which completely repealed Chapter I of the Italian penal code, introduced the new crime of sexual violence (encompassing both carnal violence and violent acts of lust), under the category of crimes against persons (more precisely, crimes against personal liberty). In doing so, it underlined that such crimes threaten the legal right to *sexual liberty*, not public decency and morality any longer. The matter is now regulated by art. 609 bis and sequent c.p., which also take into account various aggravating circumstances, sex acts with minors and group sexual violence.

Currently, Italian law defines sexual violence as a crime committed when anyone forces a person to perform or endure sexual acts through force, threat, abuse of authority, taking advantage of the victim’s mental or physical inferiority at the time, or deceit by changing places with someone else (art. 609 bis c.p.). It includes rape and sexual abuse. The punishment¹⁰ is imprisonment for a term of between 6 and 12 years, reduced by maximum two-thirds in the case of “*minore gravità*”, or lesser gravity¹¹. Introduced in the last clause of art. 609 bis c.p., the concept of *minore gravità* has been a subject of great debate, due to the difficulty in defining its characteristics, specific circumstances and consequences using unambiguous criteria. Though art. 63 c.p. establishes how sentence increases and reductions must be calculated technically according to the various articles of the penal code, it is the judge who defines the gravity of the offense in each specific case, as often happens under Italian law. The judge decides on the basis of the evidence, after hearing witness testimony and both parties of the trial. This isn’t an arbitrary decision, but rather it is up to the judge’s discretion. It is a way to fit the punishment to each individual case, keeping in mind all facets of the otherwise inflexible penal system. Of course, this has often led to decisions not being accepted by the parties involved (especially at first instance), and has become one of the leading grounds for appeal by the accused, especially in order to apply extenuating circumstances and therefore obtain a reduced sentence.

Art. 609 bis and the ensuing articles of the penal code don’t only punish rape and sexual violence—understood to be non-consensual sexual intercourse—but more broadly include any coercion to

¹⁰ The punishment decreed by art. 609 bis has recently been revised in art. 13, comma 1 of L. 19 July 2019, n. 69 (known as “Code Red”). Previously the punishment was between 5 and 10 years of imprisonment.

¹¹ This refers to an extenuating circumstance of special effect according to art. 63, applied when the victim’s personal or sexual liberty has been violated to a lesser degree, in regards to the means, manner and circumstances of the crime.

perform or endure sex acts. The jurisprudence, including that of the Supreme Court, has interpreted the concept more and more broadly, to include various types of conduct.¹²

Art. 609 septies c.p. establishes that crimes of sexual violence can not normally be prosecuted automatically, but rather only after the victim has filed a formal complaint, or *querela di parte*. The victim has 12 months from the date of the crime to do so: after 12 months the crime can no longer be prosecuted. Once the *querela* has been filed, however, it cannot be revoked. This is to prevent the defendant or the social context from pressuring the victim or influencing the development of the trial.

A *querela di parte* is not necessary for a case to proceed automatically if:

- 1) the crime was committed against a person under 18 years old;
- 2) the crime was committed by an ancestor, parent (or adoptive parent), member of the household, guardian, or other person to whom the minor is entrusted for reasons of care, education, instruction, security or safekeeping;
- 3) the crime was committed by a public official or public service worker while carrying out their duties;
- 4) the crime is connected to another one which must proceed automatically.

In recent years, the Italian public has become very interested in the topics of gender-based violence and domestic violence, following numerous, particularly striking cases in the news, especially femicides. These cases caused a great sensation because of their particularly grisly nature, and for the attention they received from the mass media. The most immediate result was new legislation that affected crimes of sexual violence, even though it did so incidentally.

The new legislation, law n. 69/2019, is commonly known as “Code Red” in reference to the color customarily used in femicide and gender-based violence prevention and information campaigns. The law was published in the Official Journal n. 173/2019 and went into effect on 9 August 2019¹³. It is essentially intended to protect victims of domestic and gender-based violence, by toughening up on these crimes with changes to the penal code as well as the penal procedure code.

The law consists of 21 articles identifying domestic violence and gender-based crimes. There are changes to the penal procedure code intended to accelerate the initiation of criminal proceedings, and therefore speed up the potential adoption of measures that protect victims. The provision also affects the penal code by increasing punishments for some crimes, adjusting some aggravating circumstances and introducing new types of offences.

New types of crimes include:

- Art. 612 ter c.p.—unlawful distribution of sexually explicit images or videos (known as “Revenge Porn”);
- Art. 558 bis c.p.—forced marriage;
- Art. 583 quinquies c.p.—permanent deformation or disfigurement of a person’s face (known as “*sfregio*”, or slashing).

¹² Acts considered sexual violence include: touching another passenger’s thigh on the bus (Supreme Court— Second Criminal Division— Sentence of 19.03.2008 n. 12157) and touching the breast (Supreme Court – Third Criminal Division— Sentence 5 April – 22 May 2007, n. 19718).

¹³ <https://www.gazzettaufficiale.it/eli/id/2019/07/25/19G00076/sg>

In addition, the law increases the severity of punishments for the mistreatment of a family member or cohabiting person (art. 572 c.p.), and stalking (art. 612 bis c.p.). In an important new change, a minor is always considered an injured party if they witness acts of family or household violence, even if they are not directly involved (known as *witnessed violence*).

For crimes of sexual violence, the severity of penalties is increased (art. 609-bis to art. 609-octies c.p.). In particular, the provision modifies art. 609-bis c.p. (sexual violence), increasing the term of imprisonment from between 5 and 10 years, to between 6 and 12 years. The punishment for committing sex acts with minors (art. 609-quater c.p.) is increased by one-third when the crime is perpetrated against a child under 14 years old in exchange for money or any other benefit, even if only promised. Such a crime is also automatically prosecutable.

Regarding procedure, when the Criminal Investigation Police receives a report of domestic or gender-based violence, it must immediately report it to the Pubblico Ministero, or Public Prosecutor. It can be an oral report, but a written report must follow without delay. In turn, within three days of when the crime report is filed, the Public Prosecutor must gather information from the injured party, or from the person who reported the crime. The deadline can only be extended if an unavoidable need arises to protect minors or the confidentiality of the investigation, even if it is in the injured party's interest. Then, without delay the Criminal Investigation Police must carry out the investigation, and promptly make their report available to the Public Prosecutor.

Considering the new legislation went into effect little more than a year ago, it is still too soon to evaluate its effects. However, the changes to procedure appear promising, especially regarding the potential to protect injured parties.

2.2 Sex Crimes in Italy – Data and Statistics

In Italy, various authorities (including the Ministry of the Interior and the Ministry of Justice) collect data concerning the judicial sector and gender-based crime, and ISTAT (the National Institute of Statistics) analyzes and publishes them. As of October 2020 when this report was published, ISTAT had only made data available from 2015-2018, as the data from 2019 and 2020 had not yet been analyzed and published.¹⁴

Following is a detailed presentation of the data, starting with the number of sexual violence victims in Italy, subdivided by gender and age.

| VICTIMS OF SEXUAL VIOLENCE | | | | | | | | | | | | | | | | |
|----------------------------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| YE AR | MEN | | | | | | | | WOMEN | | | | | | | |
| | Up to | 14- 17 | 18- 24 | 25- 34 | 35- 44 | 45- 54 | 55- 64 | 65 yea | Up to | 14- 17 | 18- 24 | 25- 34 | 35- 44 | 45- 54 | 55- 64 | 65 yea |

¹⁴ All data reported in this section were obtained from the ISTAT website (<https://www.istat.it/it/>), starting with the query page <https://www.istat.it/it/giustizia-e-sicurezza?dati>

| AGE | 13 years old | years old | years old | years old | years old | years old | years old | years old and over | 13 years old | years old | years old | years old | years old | years old | years old | years old and over |
|------|--------------|-----------|-----------|-----------|-----------|-----------|-----------|--------------------|--------------|-----------|-----------|-----------|-----------|-----------|-----------|--------------------|
| 2015 | 85 | 63 | 34 | 60 | 25 | 18 | 8 | 6 | 293 | 520 | 761 | 727 | 517 | 333 | 86 | 31 |
| 2016 | 85 | 90 | 69 | 56 | 59 | 26 | 10 | 15 | 320 | 533 | 772 | 673 | 540 | 300 | 72 | 31 |
| 2017 | 92 | 98 | 82 | 62 | 42 | 30 | 10 | 7 | 380 | 594 | 887 | 784 | 585 | 386 | 105 | 41 |
| 2018 | 69 | 77 | 55 | 57 | 44 | 26 | 11 | 13 | 329 | 658 | 981 | 827 | 665 | 387 | 125 | 53 |

Table n. 1 – Victims of sexual violence subdivided by age and gender, 2015-2018

| VICTIMS OF SEXUAL VIOLENCE – TOTAL | | |
|------------------------------------|-----|-------|
| YEAR | MEN | WOMEN |
| 2015 | 299 | 3.268 |
| 2016 | 410 | 3.241 |
| 2017 | 423 | 3.762 |
| 2018 | 352 | 4.025 |

Table n. 2 – Victims of sexual violence subdivided by age and gender, 2015-2018, totals

As we know, sexual violence has one of the highest dark figures of crime, so analysis of available data must take into account that the statistics only partially reflect the phenomenon. Strong social and cultural factors generally cause under-representation. For example, there is much doubt about the real numbers of male victims. There is still strong stigmatization in many societies towards this type of crime, and Italy is no exception. This is especially true when the victims are men, making it very difficult for them to report sexual violence.

If we consider the data in the preceding tables, we see that sexual violence in Italy strikes mainly, but not only, young women; and it has risen over the entire period in question (at least concerning the reported cases), while for men the trend is less clear.

The next table shows the perpetrators of sexual violence for the same period, subdivided by gender.

| PERPETRATORS OF SEXUAL VIOLENCE | | |
|---------------------------------|-----|-------|
| YEAR | MEN | WOMEN |

| AGE | Up to 13 years old | 14-17 years old | 18-24 years old | 25-34 years old | 35-44 years old | 45-54 years old | 55-64 years old | 65 years old and over | Up to 13 years old | 14-17 years old | 18-24 years old | 25-34 years old | 35-44 years old | 45-54 years old | 55-64 years old | 65 years old and over |
|------|--------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------------|--------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------------|
| 2015 | 26 | 190 | 544 | 901 | 916 | 685 | 362 | 254 | 1 | 5 | 14 | 22 | 33 | 18 | 10 | 2 |
| 2016 | 38 | 247 | 535 | 880 | 879 | 641 | 344 | 268 | 3 | 6 | 13 | 25 | 30 | 15 | 5 | 1 |
| 2017 | 29 | 256 | 649 | 1 000 | 944 | 738 | 376 | 342 | 6 | 5 | 10 | 23 | 20 | 24 | 8 | 3 |
| 2018 | 26 | 252 | 696 | 1 057 | 1 087 | 822 | 426 | 355 | 0 | 0 | 12 | 12 | 26 | 15 | 11 | 5 |

Table n. 3 – Perpetrators of sexual violence subdivided by age and gender, 2015- 2018

| PERPETRATORS OF SEXUAL VIOLENCE – TOTAL | | |
|---|-------|-------|
| YEAR | MEN | WOMEN |
| 2015 | 3 878 | 105 |
| 2016 | 3 832 | 98 |
| 2017 | 4 334 | 99 |
| 2018 | 4 721 | 81 |

Table n. 4 – Perpetrators of sexual violence subdivided by gender, 2015- 2018, totals

The preceding data refer to perpetrators who have been reported and/or arrested by law enforcement between 2015 and 2018, and include perpetrators of group violence: each perpetrator can correspond to one or more victims (and vice versa).

While the previously mentioned dark figure must be kept in mind, the data show absolutely that perpetrators of sexual violence in Italy are predominantly male, with a clear upward trend from 2015 to 2018. The number of female perpetrators is not only fewer, but decreases over the same period.

The following table represents the number of reports filed in Italy with law enforcement (for example the police forces, or directly with the Criminal Investigation Police at the Public Prosecutor's office). The data refer to the person whom the report was filed against, and are subdivided by gender, age and nationality.

| YEAR | TOTAL | TOTAL WOMEN | TOTAL MEN | ITALIAN | | | | FOREIGN | | | |
|------|-------|-------------|-----------|----------|--------------|----------|--------------|----------|--------------|----------|--------------|
| | | | | WOMEN | | MEN | | WOMEN | | MEN | |
| | | | | Up to 17 | 18 years old | Up to 17 | 18 years old | Up to 17 | 18 years old | Up to 17 | 18 years old |

| | | | | years old | and over | years old | and over | years old | and over | years old | and over |
|------|-------|-----|-------|-----------|----------|-----------|----------|-----------|----------|-----------|----------|
| 2015 | 8 026 | 187 | 7 839 | 118 | 4 | 4 306 | 269 | 57 | 8 | 3 078 | 186 |
| 2016 | 7 633 | 190 | 7 443 | 94 | 10 | 4 249 | 352 | 78 | 8 | 2 661 | 181 |
| 2017 | 4 429 | 99 | 4 330 | 58 | 9 | 2 457 | 156 | 30 | 2 | 1 589 | 128 |
| 2018 | 4 860 | 78 | 4 782 | 47 | 0 | 2 652 | 158 | 31 | 0 | 1 850 | 122 |

Table n. 5 – Reports filed for sexual violence divided by gender, age and nationality (Italian/foreign), crime of sexual violence, 2015-2018

The preceding table reveals a general decrease in the number of reports filed, with an adjustment in the second two years. Contrary to public opinion and the picture painted by the media, there are fewer reports filed against foreigners (male as well as female) than against Italian citizens, while their numbers follow the same general trend.

In the following tables, only the data for 2015-2017 are included because the data for 2018 were not made available by ISTAT.

| TYPE OF DECISION | | | | | | | | | | | | |
|------------------|------------|--|-------------------------|----------------------|-----------------------------|-------------------------------|-------------------------------|-----------------|-----------------|----------------------------------|-----------------------|--------------------|
| YEAR | DISMISSALS | DISMISSAL | | | | START OF CRIMINAL PROSECUTION | START OF CRIMINAL PROSECUTION | | | | | TOTAL KNOWN CRIMES |
| | | Request for dismissal (criminal irrelevance, tenuity of the event, event not applicable, groundlessness of the report) | Insufficient conditions | Period of limitation | Other reasons for dismissal | | Court summons | Immediate trial | Criminal decree | Indictment (preliminary hearing) | Alternative procedure | |
| 2015 | 2 723 | 1 314 | 1 192 | 66 | 151 | 3 116 | 32 | 51 | 0 | 2 286 | 747 | 5 839 |
| 2016 | 2 720 | 1 333 | 1 176 | 50 | 161 | 2 952 | 26 | 39 | 0 | 2 200 | 687 | 5 672 |
| 2017 | 2 762 | 1 465 | 1 060 | 63 | 174 | 3 209 | 19 | 42 | 0 | 2 322 | 826 | 5 971 |

Table n. 6 – Procedures and crimes at the time of the Prosecutor of the Italian Republic's decision, crime of sexual violence (including group sexual violence), 2015-2017

In Italy, after the preliminary investigation that follows the reporting of a crime, the Prosecutor essentially has two options: request dismissal, for example for expired statute of limitations; or proceed by starting criminal proceedings, therefore requesting that the person under investigation be committed to trial. The previous table shows the 2015-2017 sexual violence or group sexual violence cases that the Public Prosecutor's office requested be dismissed or sent to criminal proceedings, with the corresponding reasons. The trend for both options remained constant over the three years. Worth noting is that alternative procedure (for example, shortened proceedings) can be requested or proposed by the accused as well. This opportunity is used especially by the accused when there is particularly solid evidence and conviction is very likely, given that alternative procedure entails a reduction in punishment (for the crime of sexual violence, in shortened proceedings there is a one-third reduction of the final sentence). Benefits of alternative procedure are shorter trial times and lower trial costs.

| YEAR | LENGTH OF TIME FROM THE DATE OF REGISTRATION TO DATE OF CONCLUSION | | | | | | |
|------|--|-------------------------------|--------------------------------|--------------|--------------|-------------------|-------|
| | 0-3 months | 3 months and 1 day - 6 months | 6 months and 1 day - 12 months | 13-18 months | 19-24 months | 25 months or more | Total |
| 2015 | 1 357 | 907 | 1 405 | 757 | 388 | 1 025 | 5 839 |
| 2016 | 1 391 | 900 | 1 265 | 735 | 396 | 985 | 5 672 |
| 2017 | 1 523 | 998 | 1 325 | 734 | 381 | 1 010 | 5 971 |

Table n. 7 – Length of time from the date of registration to the date of conclusion at the time of the Prosecutor of the Italian Public's decision, crime of sexual violence (including group sexual violence), 2015- 2017

The previous table shows the length of time (in months) from the official start of the investigation (when the accused is registered in the roll of suspects) to its conclusion at the time of the Prosecutor's decision to either dismiss, or start criminal proceedings. As we can see, here too there is a stable trend over the three years, with a significant number of cases spanning 25 months or longer.

| YEAR | AVERAGE TIME IN MONTHS | |
|------|--------------------------------------|---------------------|
| | Concluded by court of first instance | Concluded on appeal |
| 2015 | 29 | 64 |
| 2016 | 30 | 67 |
| 2017 | 31 | 67 |

Table n. 8 – Average time in months from the date a crime was committed to the irrevocable sentence date, crime of sexual violence (including group sexual violence), 2015- 2017.

Table n. 8 shows the average length of time in months from the date a crime was committed to the accused's irrevocable sentence date, and whether it was at first instance or on appeal. The data show a slightly increasing trend for both. It is worth noting that in all three years, after a crime was committed it took at least two years to reach an irrevocable sentence in the court of first instance; in 2017 it took two and a half years. For a sentence on appeal it took over five years.

| YEAR | PENALTY | | | | |
|------|-----------|--------------|--------------|-------------------|-------|
| | Fine only | Imprisonment | House arrest | Community service | Total |
| 2015 | 2 | 1 598 | 0 | 0 | 1 600 |
| 2016 | 5 | 1 444 | 0 | 0 | 1 449 |
| 2017 | 53 | 1 640 | 0 | 0 | 1 693 |

Table n. 9 – Irrevocable sentences and corresponding penalties, crime of sexual violence (including group sexual violence), 2015- 2017

The preceding data demonstrate that imprisonment is absolutely the predominant penalty for the crime of sexual violence, while fines alone are given only in a residual number of cases.

| YEAR | LENGTH OF PRISON SENTENCE | | | | | | | | |
|------|---------------------------|--------------------------------|---------------------------------|----------------------------------|------------------------------|--------------------------------|-------------------------------|--------------------------------|-------------------------|
| | Up to 1 month | From 1 month 1 day to 3 months | From 3 months 1 day to 6 months | From 6 months 1 day to 12 months | From 1 year 1 day to 2 years | From 2 months 1 day to 3 years | From 3 years 1 day to 5 years | From 5 years 1 day to 10 years | 10 years 1 day and over |
| 2015 | 0 | 0 | 14 | 118 | 399 | 112 | 179 | 153 | 17 |
| 2016 | 2 | 8 | 80 | 356 | 88 | 155 | 129 | 14 | 833 |
| 2017 | 0 | 0 | 6 | 84 | 408 | 114 | 204 | 148 | 21 |

Table n. 10 – Length of irrevocable prison sentences, crime of sexual violence (including group sexual violence), 2015- 2017

Just as in the other tables, the data in Table n. 10 were provided by ISTAT. However, the total number of cases of imprisonment is different from Table 9. As far we have been able to verify, this inconsistency is because the data (from two different data sets) were selected using different criteria. The accuracy of the data in Table n. 10 appears questionable, especially for 2016; however, in the interest of thoroughness we believed it appropriate to report them, as they are the official data for this specific category.

3. Treatment of victims: drawbacks faced by the victim of sexual crime at each stage of the criminal proceeding

3.1 Analysis of interviews with professionals

A total of 29 professionals were interviewed, of whom 7 preferred to be interviewed by videoconference, 4 people preferred a telephone interview, 1 professional was interviewed in person, and 17 professionals sent their answers by e-mail.

| | Video- Interview | Phone interview | Written answers | In person | TOT. Professionals |
|---------------------------------------|---------------------|--------------------|--------------------|-----------|-----------------------|
| Police and Carabinieri | 0 | 2 | 2 | 1 | 5 |
| Public Prosecutors | 1 | 0 | 3 | 0 | 4 |
| Judges | 3 | 1 | 2 | 0 | 6 |
| Experts from Victims Support Services | 2 | 1 | 4 | 0 | 7 |
| Lawyers | 1 | 0 | 6 | 0 | 7 |
| TOT. | 7 | 4 | 17 | 1 | 29 |

3.1.1 Police and Carabinieri's point of view

Regarding to Police and Carabinieri, 5 interviews were collected: the professionals interviewed were 1 carabinieri and 4 police officers, coming from three different police headquarters and regions. The above-mentioned professionals answered a total of 6 questions divided into two blocks: the first one focused on the moment of the collection of the report, on the possible presence of a protocol to be followed; the second block of questions was focused on the presence of restorative justice programmes (for the full outline of the questions see the annex to paragraph 6.1.1).

Specifically, the first question refers to the existence of a procedure to receive and support the case of a victim of sexual violence and assist her in reporting the crime. The objective is to investigate whether there is a protocol to reduce the risk of secondary victimisation as indicated by the legislation. Concerning this question, 2 out of 5 professionals answered that there is no specific protocol to follow in case of sexual violence, while 3 professionals (2 police officers and 1 carabinieri) answered that there is a specific protocol to follow.

Specifically, two protocols are mentioned: 1) the EVA protocol (Examination of Acted Violence), concerning cases of gender-based violence, maltreatment, persecution; 2) a protocol concerning cases where 'the event is occurred and when a person, in the case of sexual violence a man or a woman, however reports even only verbally'. The EVA protocol is a procedure that codifies the modalities of intervention in cases of family conflict and allows to enter into the police database (SDI) - independently from the report or an action - a series of useful information to reconstruct all episodes of domestic violence involving the family unit. Only an officer refers to its existence, describing it as a procedure *'in which specific questions are asked to the applicant trying to highlight hypothetical criminal behaviour detectable from the victim's account. The woman, maybe, in that moment, does not want to report it because she is with her partner, because she is afraid, she does*

not have an alternative accommodation to leave the house; therefore, the central unit, through the car radio, communicates with the police unit that is on site, which, while intervening, has to implement this protocol in order to ensure that the person is safely contacted after a while and that, in any case, there is a trace that the person has called. There is a form with questions to ask to ensure that this event, and therefore that family nucleus, is subsequently followed up and X-rayed, which for us is preventive'. Although it is an internal protocol within the State Police, other police officers interviewed from different Italian police stations and regions do not use it.

In cases of sexual violence, all professionals agree that the procedure is launched after a report and involves the ER, where there is a standard protocol, the so-called Codice Rosa: *"a woman who has suffered a sexually violent event and declares it to the health professional, also at triage, is immediately recorded in the so called Codice Rosa, which it a privileged path from the time point of view, i.e. we try not to make her wait, it is a code that goes beyond the standard codes, i.e. red if you are sick, to yellow if she has a fever, so there is a fast track and above all there is a standardised path of blood samples, biological samples, consultation with the psychologist and medical examination with a specialised doctor immediately, a gynaecologist if the violence is sexual".* At this stage, police officers are not directly involved, but work *'in full cooperation with health facilities'*.

After the medical examinations, the interviewed professionals agree in saying that the investigation procedure starts: *'if the person is known by the victim, by the reporting person, there is a procedure leading to the identification, which can reach the mugshots, the fingerprints and the genetic sampling of the person suspected and accused of this crime. If the victim does not know the personal data of the suspect because 'I met him at the pub, while I was at the disco, he is a friend of a friend' there is a procedure of registry database, of our police databases. Finally, precautions are always taken in order to avoid the meeting between the victim and the offender: 'it is fundamental that there is no contact also because there is a risk of evidence contamination'.* It is interesting to note that the investigative attention is still focused on the evidence and not on the person who suffered the violence.

The second question focuses on the moment of the report and in particular on the physical and emotional context in which the victim is interviewed. The aim is to understand the characteristics of the person interviewed (age, gender, specialisation, skills, etc.). The aim of the interview is to analyse the type of questions asked by the police, the duration of the interview, how many times the victim is heard and the perception of the officers concerning the victims' experience of being welcomed, believed and understood. Concerning the specialisation of the operators, all professionals state that *"the operator who takes the report does not have an elective gender for the type of crime and most of the times the report is taken by two heterogeneous operators. Not all operators have specific training and those who have not yet been trained and do not have the necessary expertise are always assisted by an experienced colleague. In addition, the quality of the training activities has been considerably implemented in recent years".* However, there are some particular situations, some police stations have specialised sections for gender-based violence: *"here we are thirty people who deal exclusively with gender-based violence, so it is obvious that our staff is specialised, but in the other thousands of police stations, carabinieri stations that you find in small towns, it is not sure that you can find a specialised staff in gender violence at 7.30 p.m."*. In these cases, the opinion of the professionals concerning the gender of the operator who collects the report is very interesting:

"Concerning the difference between men and women, in our experience, obviously corroborated by scientific communities and, if it can be useful, also my personal experience, I do not see a great difference in gender. The woman, apart from the offended person that maybe for her cultural heritage, her mentality, prefers to talk to a woman, [...] but concerning the skills, we make the difference on the expertise, so concerning the abilities in this sector, specifically the question you asked me about the report, the first contact that a victim has with the State, with the police, the skills of welcoming, listening and support are not a prerogative of the gender, they are a prerogative of the toolbox that each of us has".

Concerning the hearing of the victim, the professionals affirm that *'the questions concern the description of the event and the interview does not have a pre-established time average, it is balanced according to the resilience of the victim and her needs, to continue or to stop'*. Suggestive questions seem to be avoided, by carrying out the listening in neutral spaces and preferring non-inductive and open questions that allow the woman to freely tell the fact, in some cases video-recording is preferred to avoid re-hearing of the woman. These precautions are adopted with the aim of making the woman feel listened to in any way: *'Obviously, the emotional responses of the victims are composed of many elements and depend not only on the technical competence but also on the operators' ability to empathise, as well as on the ability not to be emotionally dragged into the victim's story. Knowing how to comfort the victim while remaining an active, non-judgmental and personal listener is not easy at all'*.

The third question aimed at assessing whether victims were informed about their rights, the possibility of claiming compensation, and about the steps following the report. According to the professionals involved, *"victims are informed about everything that concerns them during the legal process. As already mentioned, the complaint for the crime of sexual violence is irrevocable. The situation is different for all other forms of offences that are included in the domestic violence"*.

Concerning the block of questions on restorative justice, the professionals interviewed declare that they are not aware of the presence of restorative justice programmes and in almost all cases seem to associate it only with criminal mediation.

3.1.2 The Prosecutors' point of view

For the attorneys' category we collected 4 interviews, one is video recorded online and the others are collected by mail. The questions addressed to this category are also divided into two blocks: four open questions regarding the trial and a block with three questions dedicated to the presence of restorative justice projects in their territory.

About the first open-ended question, we asked them to describe the procedural process that a victim has to face if she/he wants to fill a complaint, what is the role of the Public Prosecutor (PM)?, how long an interrogation lasts?, how many times is it necessary to listen the victim?

The prosecutor must supervise the work of the judicial police: she/he *"receives with immediacy (even orally, if necessary) the complaint from the office that received it, he/she proceeds with the registration in the register of crime reports"* within three days of the registration of the crime reports, according to the provisions of the so-called Red Code law enacted in 2019. Professionals agree that *"the main acts of investigation are, depending on the case, the hearing of the victim, the hearing of persons informed on the facts (those who have direct or indirect knowledge of the facts reported), the*

acquisition of documentation (socio-sanitary, photographic, IT, etc.), the inspection of places, things or people, searches, telephone and environmental interceptions, surveys, technical consultations (medical examiner (coroner), computer, biological, forensic genetic, etc.)". In addition, the aforementioned law provides that even adult victims, when they are in conditions of particular vulnerability, are heard in a protected manner. The typology of the questions is entrusted to the professionalism and sensitivity of those who proceed with the act.

With regard to the presence or accompaniment of persons who support the victim, the prosecutors state that *"The victim may ask to be assisted by his or her lawyer or a trusted person, unless the person is a person with information on the facts, a potential witness. In this case it is advisable to avoid that he/she attends the presentation of the complaint in order to avoid possible tempering with evidence and suggestions"*. Moreover, in the case of a person in a particularly vulnerable state or a child, it is possible to have the assistance of a psychologist and, in the latter case, *"if the judge requests and admits it, affective assistance from the persons indicated by the child himself is foreseen"*.

The second question focuses on the training received by the PMs, how specific it is, how it is free or financed by each professional, and the use of a professionals, for example a psychologist, as an expert. All of the professionals interviewed agree that they receive specialized training on sexual offenses at least once a year: training organized centrally by the Scuola Superiore di Magistratura and also by individual judicial districts. They further agree that university training, on the other hand, does not include any specific in-depth training related to sexual assault. *"The aid of the psychological sciences and the possibility of using an expert, remains an opportunity and a resource to implement, for the PM. The training system does not have to train the single magistrate to be self-sufficient in this area of crime, more than self-sufficient, he/she would risk to be self-referential."*

The third open question concerns some aspects related to the process, in particular professionals are asked to describe their experience with cases of dismissal, plea bargaining. All the PMs are unable to provide statistical data in this regard, and often, they answered that the alleged perpetrator is a well-known by the victim, so it is easy she/he to retract his statements. In addition, *"It is not often that a complaint is dismissed for lack of evidence, given that, in order to reach a conviction, in theory, the victim's word is sufficient, provided that it is accompanied by sufficient indications of intrinsic reliability. Finally, it should be pointed out that in the field of sexual offences, the complaint, once proposed, cannot be dismissed"*.

The fourth question investigates the substantial differences between the first degree and the second degree and how much, in the opinion of each professional, this affects the understanding of the facts. Only one prosecutor among those interviewed works on the court of appeal: *"The substantial difference with the criminal trial at first instance is represented by the "securitization" of the trial (and of the related case), which it is studied, both by the judges of the Court of Criminal Appeals and by the judicial police delegated to follow the hearing in which the case of sexual violence will be treated - and decided - on the basis of the content of the procedural acts acquired in the previous trial phases and, in particular, of the evidence that the Judge of first instance has evaluated for his conviction on the guilt (or innocence) of the accused "*.

The PM not working in the court of appeal agreed that the emotional distance to the victim is greater in this type of court: *"this is because the judges are working on files, judges never see the protagonists,*

the subjects. They will perhaps see the defendant, if he shows up, but the victim, unless they decide to renew the trial, will not be resentenced. This is a paradox that could be overcome by videotaping all the debates, so that the judges of second instance can see the protagonists, listen to how they testify, because in this type of crime it is important not only to read the cold written, the transcript, but to see the video of both the hearing in court and of the listening by the police".

In the last block of questions related to restorative justice, professionals are asked whether they are aware of the existence, and if so, how restorative justice programs are implemented, which parties were involved and by whom they were informed. Again, all of the prosecutor's quoted that *"the concept of restorative justice is unknown"*.

3.1.3 The Judges' point of view

The questions asked to the judges were divided into two blocks: the first block focused on the process and the second one focused on restorative justice. Specifically, the first instance judges were asked to describe in more detail the moment in the process when the decision is announced and the verdict read. The objective is to assess how the victim is described in the decision and whether this description can damage the victim's image.

The offended person can choose how to participate in the trial: whether to constitute herself as a civil party, thus bringing her civil claim, or to bring it into the criminal trial. In the first case, the victim takes part in the trial in the same way as the defendant, becoming a part of it: since the Italian trial is oral, the sentence is pronounced orally in the hearing after the parties have discussed it. The motivation must be written and filed at the registry within 90 days.

Concerning the treatment reserved to the victim within the trial, the judges affirm that they try *"to avoid a focus on the individual characteristics of the victim, as well as of the defendant, since our code provides that already in the interrogation of witnesses, no questions that are not necessary for the verification of the facts are asked, that damage, endanger the dignity and confidentiality of the victim. In general, we absolutely refrain from making assessments that are not functional to the evaluation of the victim's credibility"*.

It must be emphasised that the criminal trial is characterised by the presence of opposing versions of the facts, which must be investigated, screened and tested in order to assess which of these versions resists the counter-argument. Therefore, it is necessary that *"every story requires the evaluation of the internal coherence of the person"* and specifically: *'the credibility of the victim is also evaluated, because, before being a victim, she is a **persona offesa** (definition of victim in the Italian criminal code) in the proceedings and if she is a victim we will only know at the end of the trial"*.

Regarding the description of the victim in the sentence, most of the magistrates interviewed declare that it is a description of how the person appears during the trial. However, one judge highlights the problem of drafting motivations: *'It is important that the person writing the motivation has adequate experience and training in order to describe the victim as a person who has his own version and who has rights. It is a person who has been wronged, if the version is considered credible and a conviction is obtained. Other times, perhaps out of haste, habit, lack of attention or experience with these types of crimes, we use rather stereotypical descriptions. However, I have to say that there is a trend towards judges' specialisation in this type of crime and, when there is specialisation, stereotypical*

descriptions are avoided and the conduct and context are described, trying to avoid particular stigmas.

Concerning the management of victims of sexual violence during the trial, one of the interviewed magistrates declared to be extremely careful about the treatment the victim receives, especially when she is called to testify in court. The judge said: *'For example, in Rome we have established a small room, which we have called "Sala Aurora", connected to the courtrooms. Children, but also victims in a vulnerable condition, can access the court from a separate entrance, wait in this room and give their testimony from there, without having the impact of the defendant, her/his relatives, friends, who may be in the courtroom or outside. This, in my opinion, is also very important and underline the attention to the victim's right, to be treated in a way that is appropriate to their needs, personalised and that protects them'*.

The second question focuses on the compensation victims can claim from the offender or from the State: the magistrates are asked to define, in their experience, the amount of compensation they can claim from the offender or from the State. In this regard, four out of five judges interviewed declare that they are not aware of the possibility of compensation by the State: *'To tell the truth, I do not even know if there is compensation from the State for sexual violence. Certainly, it is provided for the children of victims of femicide. I have heard, however, of very few cases: they have to face a very complicated procedure, they have to prove that they have unsuccessfully pursued compensation through the ordinary channels. The State enters the scene only by way of subrogation and, moreover, the competence has been moved from the Public Prosecutor's Office to the General Prosecutor's Office. In Milan, I tried to ask if there was an office, a service to support this procedure, but I don't know'*.

Only one judge mentions that she is aware of the recent Interministerial Decree of 22 November 2019 that grants victims of violent intentional crimes, including sexual violence, the right to obtain compensation from the State ranging from 25,000 to 50,000 euros, which can be increased. Another magistrate says she knows that in our legal system there are compensations for special categories of victims, for example victims of terrorism, usury and extortion: *'Italy is late in implementing the EU rules. With the judgement of 11 July 2020, our country has been sanctioned because it has not implemented the recommendations of Directive 2004/80 regarding the indication to Member States to provide compensation'*.

The magistrates were asked whether there is any possibility of appeal by the victim in case of acquittal. All the professionals involved stated that the civil party can appeal against the acquittal sentences limited to the civil aspects: *"it is clearly admitted the possibility to appeal in order to obtain, in case of acquittal, a general review of the trial, in order to get the compensation: therefore, the assessment of criminal responsibility as a prerequisite for the compensation of damages. In this, the civil party is completely guaranteed. Otherwise, as far as the head of a sentence of criminal responsibility is concerned, the civil party and the offended party will have to refer to the Public Prosecutor's Office, therefore to present a memorandum, a request to the Public Prosecutor, a solicitation to propose the appeal"*.

The possibility of an appeal by the victim in case of a not guilty verdict was investigated: the judges were asked whether appeal sentences generally confirmed or diminished the sentences of crimes in

the first instance. Only one magistrate among the participants stated that appeals generally decrease the sentence. According to most professionals, appeals generally seem to confirm well-reasoned sentences that do not have gross errors, as the first instance is where the evidence is received: *"The Supreme Court usually does not hear witnesses, the renewal of the investigation is exceptional. Now, with recent decisions that have sanctioned Italy's way of dealing with things, the conclusion has been reached that in order to reform an acquittal sentence it is necessary to hear the victim again, so the focus has been placed on a burden on the side of protecting the defendant. In order to review a first instance acquittal, the appeal judge must acquire the evidence directly, he must hear the offended person to convince himself of the defendant's guilt. It is not possible to rely solely on a review of the first instance judgment. On the other hand, with regard to the conviction, confirmation on appeal will be all the more probable the better the first instance sentence is motivated, that is why it is very important for the judge to record everything he perceives"*.

According to the magistrates, the Supreme Court is quite strict with acquittals. Some motivations indicate that the victim is credible in general, but precisely when she talks about the sexual violence, she is not credible, about this the judges interviewed said: *'This, in fact, for the Supreme Court, cannot be done: it is a judicial error, i.e., an error in law that deserves the cassation of the sentence'*.

The last part of the interview is about the training of magistrates in the field of sex crimes and the management of victims during the course of their studies and in post-graduate training. The degree in Law – the essential degree to allow the participation in the competition for the Magistracy - essentially provide legal subjects; specific studies on these issues can be delivered in the Criminology or Legal Medicine courses, which are generally optional for law students. The Scuola Superiore di Magistratura organises yearly free courses on sexual offences and victimisation, which magistrates can choose to attend in order to fill their training credits. However, some critical points emerge, mainly related to the quality of training, which is likely to remain too theoretical: *"From the point of view of our training, we, as specialised judges, complain a lot about both the quantity and the quality of training, because it is obviously not enough to programme a training course on the subject of sexual crimes to engage the magistrate in the contents that need to be spread, to disseminate. Unfortunately, this is a subject in which frontal lessons, in which the problem is explained, do little; it is a topic in which we need to gain experience, we need to share experience, we need to look reality in the face with eyes that are not our own, those of our beautiful homes, of the city centres"*.

In the last block of questions related to restorative justice, the professionals are asked whether they are aware of the existence, and if so, how restorative justice programmes are implemented, which parties are involved and by whom they are informed. Concerning this question, the professionals interviewed all agree that there are no restorative justice programmes: there is no specific regulation within the Italian legal system.

3.1.4 Lawyers

For the category of lawyers, the interview was divided into two main blocks. In the first block, they are asked to show the victim's journey, the treatment of victims throughout the process, the remuneration and the legal aid, while in the second block they are asked to indicate the presence of restorative justice programmes. In particular, the aim was to understand what kind of legal aid was provided to victims of sexual offences, whether they were eligible for legal aid and whether the third instance of the procedure was included.

All the professionals interviewed agreed that victims of sexual violence, stalking and domestic violence, according to Article 76, paragraph 4 ter of Presidential Decree 115/2002, can always access free legal aid, even if they do not belong to the income categories normally provided for, and that *'there is no fixed number of appointments, we mainly try to make the offended person feel comfortable in order to protect her at 360 degrees'*. The free assistance is valid for all types of proceedings up to the appeal in the Supreme Court, *'the fee is advanced by the treasury and, through the sentence that closes the trial, the judge settles the costs'*.

Concerning the compensation that the victim can receive from the State, according to the professionals, the offended person is always informed about the possibility of receiving compensation from the first contact with the judicial authority. Only 2 out of 7 professionals answered the question on how many victims decide to go through the process of obtaining state compensation: *"Unfortunately, most victims of this kind of crime decide not to report what happened, but all those who decide to go through the process ask for compensation for their injuries"*. Specifically, a lawyer argued that she has been dealing with crimes, assistance and support to victims of gender-based violence for 15 years, but that she has not had any victim who have obtained State compensation: *"We did not even ask for it because the criteria and parameters until the very last amendment were unsustainable and it was not worth making such requests for 3000 euro. You also know that the decision of the European Court of Justice intervened, stating that that amount should be fair and it is not"*. A lawyer mentions the recent inter-ministerial decree on state compensation in her answers: *"Compensation for crimes of homicide, sexual violence or very serious personal injury, within the meaning of Article 583, second paragraph, of the Penal Code, is paid in favour of the victim or of those entitled under paragraph 2-bis in the amount determined by the decree referred to in paragraph 3. It shall be established by decree of the Minister of the Interior and the Minister of Justice, in agreement with the Minister of the Economy and Finance, ensuring greater compensation to the victims of the offences of sexual violence and murder and, in particular, to the victim's children in the event of murder committed by the partner, including a separated or divorced partner, or by a person who is or has been linked by emotional relationship to the injured party. If the personal injury is recognised by a decision, compensation shall be paid according to the level of personal injury established by it; otherwise, for personal injuries, the provisions of the special legislation governing the payment of compensation for pain and suffering, as well as for reduction of social role, shall apply proportionally to the calculation of the compensation. Compensation for moral damage in the case of crimes of rape, sexual violence or sexual abuse shall be ten times the minimum wage at the time when the damage was committed and compensation for moral damage in favour of family members shall be calculated as appropriate"*.

Professionals are asked to describe the training received in the field of sexual crimes and the treatment of victims within the course of their studies, all interviewees agree: *"During the university course, these aspects are studied and deepened during the study of criminal law, usually during the lessons of that subject and nothing else"*, the post-graduation training is left to the interest of the professional through the attendance of masters or advanced courses on specific topics: *"Sometimes free training courses are provided by the Bar Association to which one belongs, but only for the purpose of recovering the training credits to be acquired during the year. If you want specialised training in this area, you have to arrange it yourself"*. Regarding the collaboration with experts in the field of sexual crimes, the professionals affirm that although it is allowed, they have little use for

consulting *"In my personal experience very little, indeed I am always looking for psychologists, psychologists or psychiatrists who are trained on the point: they are all trained on the treatment, in the best of cases, and very little on the aspect of forensic psychology, of damage quantification"*.

Another area investigated during the interview concerns the duration of the sex crime proceedings, with more detail about the type of questions asked to the victims during the proceedings. The goal is to understand if questions are asked to investigate the past and future (excluding the moments immediately before and after the facts) of the offended person, her attitude, clothing or any other strictly personal matter. Concerning the duration of the proceedings, all professionals stated that it varies from court to court, but also from the defendant's procedural choices. Moreover, a professional stated: *"In my experience, which is a vast experience, in the sense that I also collect information around Italy, as well as I coordinated, the national report for the Grevio, the timing varies a lot from district to district of the Court of Appeal, but also from court to court, it has accelerated a lot in recent years, but it depends a lot on the individual organizations, here in Trento the trial starts within a year, even earlier in other districts it takes a little longer"*.

The lawyers interviewed indicated that the victim is usually heard in the pre-trial stage, if a confrontation is requested, otherwise during the trial: in the latter case the victim *"has to testify in court, but behind closed doors because of the sensitivity of the issue"*.

Concerning the personal aspects of the victim and whether these are investigated during the trial, the lawyers affirm that no harming and/or suggestive questions are allowed, *"least of all on the moral behaviour of the victim"*, as *"it is not deontologically correct that it is part of it, but someone uses it as an argument, inappropriate according to me"*.

In addition, a lawyer affirmed *"There is a big limitation represented by Article 472 of the Code of Criminal Procedure, which limits the questions concerning the personal and sexual life of the victim. There is only one way to block them i.e., the intervention of the judge: if the judge is not trained, there is nothing to do. My theory is that lawyers should be trained as well as the judge. The judge can stop the application, but at the moment when that question is being asked, it does not matter whether it is admitted or not, because even if the judge stops it is already too late: that victim will already be in the condition of feeling judged negatively. So obviously a good defender, who has a specific preparation on this kind of crimes, knows that these questions nail the victim"*. Emphasis is placed on the need for specific training for lawyers, because a lawyer dealing with criminal law can push any limits because the right of defence is of primary importance. The problem arises when this limitation of defence plays on stereotypes and prejudices, as these are almost always in favour of the accused and against the victim.

Concerning the questions related to restorative justice, the interviewed lawyers (6 out of 7) affirm to have experience of restorative justice programmes, mainly within the Juvenile Court: *"Here in Trento there is a specific project that has been activated with the Giudici di Pace and the region: it is called restorative justice and it is part of the mediation program. It doesn't work much, it works more in the Juvenile Court that have a longer experience, but it doesn't have a real appeal, nor a real incidence"*. The idea that restorative justice is counterproductive and not recommended in case of sexual violence also emerges: *"Dealing with gender-based violence, male violence against women, the*

restorative justice system for this kind of crimes is not indicated. I would oppose tooth and nail this kind of intervention, unmonitored, with a victim who is not sufficiently prepared”.

3.1.5 Victim Services Experts

For the category of Professionals of Services for Victims, specifically Anti-Violence Centers and Non-Governmental Associations (NGOs), the interview was divided into two blocks, one concerning the treatment and the public and private services provided to the victim throughout the process, from the first contact to the end of the process. The second block, a constant element in the interviews of all categories, investigates the presence of restorative justice programs within our national territory.

Specifically, the first question posed to the professionals working with victims concerns public assistance and services for the victim. Each professional is asked if there are specialized public services for victims of sexual violence, if they are regulated, what is the ratio between the number of professionals and inhabitants, how and when the victim is informed of their existence, and what kind of assistance (medical, psychological, legal) is provided.

With regard to this first question, 6 professionals out of 7 interviewed agree on the presence of services aimed at victims within the national territory. It emerged that there are services specialized since Law 66 of 1996 on sexual violence: *"Initially, specialized services were mainly addressed to children victims of sexual violence. We had two types of services, for what has been my professional experience, in my observatory: a first specialized service concerned the so-called **neutral spaces**, where basically two types of interventions were carried out, 1) the collection of statements, the so-called protected hearings in criminal cases, to be carried out in neutral spaces, premises particularly equipped in order to protect victims from the risk of secondary victimization; 2) protected meetings, with evaluative and treatment goal, aimed to ensuring the continuity of the relationship between children and parents".* Only one professional interviewed affirms that there are public services that deal in some way with violence, even within the local health agencies, but they are not public services specialized in sexual violence: *"There are second level services, the access is provided through the public services specialized in abuse and maltreatment, they are small project realities, for example in the metropolitan area of Milan there is a hospital competent and specialized on operating procedures for sexual violence, but there are no specialized public services distributed throughout the territory in a standardized way".*

Regarding the staff working in contact with victims within the public services, all the professionals interviewed state that they are not aware of the percentage of professionals working/informing victims: *"I could not give a number, what I have seen is that there are few staff. I can make a count of the 15 centres we have in Rome, often not open every day, the schedules are not always respected: it would take much more staff than there is and we should respond in a faster manner, instead the waiting list are long, the staff is few, and the funds as well, so, even if I think there are enough people on the territory, it is not enough for the type of demand that there is and for the type of work."*

Legislative Decree n. 212 of 2015, which specifically concerns article 90 bis of the Code of Criminal Procedure "Information to the offended person of crime", introduces the mandatory nature of the information to victims: when a woman comes into contact with the justice system, with the forces of law and order, she is informed of the existence of a state toll-free helpline, of all the centres that are located on the national territory and how to do to access these services. In most cases, the first

contact is made through direct access, through the police, family counseling centres, local social services, lawyers, but it would seem to be not immediate. The assistance provided by these types of services should concern the medical, psychological and legal area: within them it is possible to find a multidisciplinary team that responds to all the needs of the victim. An aspect underlined by the professionals interviewed concerns the fact that it is rare that the operators who assist the victim accompany him/her throughout the whole process, due to the fact that professionals often alternate in terms of work shifts, but above all *"there is data that victims, at a certain point of the process, get lost. So, you can see that something about the process is wrong. The network and the services offered should be such as to really create a parachute for these people, because clearly they are the ones who should be supported, it should be the system that is perfect."*

Professionals were asked to indicate the existence of services within nongovernmental associations that specialize in assisting victims of sexual violence, with a focus on the number of professionals working there relative to the population.

All the professionals interviewed agree that the associations, the anti-violence centres (CAV) and the private services present on the Italian territory are extremely specialized: *"I have been lucky enough to meet excellent professionals who work with great passion despite having project contracts with which they can barely maintain the house they live in"*. The number of specialists that make up the teams depends on the type of project within which the association works, *"but above all the funding is proportional to the size of the population in which the project is carried out, and therefore to the target audience. Contextual investigations are carried out in order to understand what the target audience of the service may be, to a greater or lesser extent, and on the basis of this, the team is formed and it is decided how many people must work"*. Although the catchment area cannot be calculated precisely, the proportion of the latter would seem to be greater than for public services. One of the 7 professionals interviewed stated that *"especially in the period of the recent lockdown due to the Covid-19 virus, remote activities, including both ordinary hours and our evening-night service, required the need to operate on emergency or ordinary requests, coming from all over the Piedmont Region but also from different areas of Italy"*.

Experts were asked to elaborate on when the first contact with associations for victims occurred and through what modalities. According to the interviewees, victims are informed of these support services through other public social services, through law enforcement and the institutional network, third sector entities, through brochures and other communication materials. First contact is made through the landline or cell phone network, email, social networking, and instant messaging. The first contact *"may occur after the complaint but in most cases occurs well before a complaint is decided (the first welcomes are related to women who have not proposed a complaint in 62% of cases - data year 2019)."*

It has been asked what kind of assistance (medical, psychological, legal) NGOs develop for victims, if it is valid for the whole procedure and if the same professional will be in charge of the case for the whole process. According to 6 professionals out of 7 (one person did not answer this question) legal and psychological assistance is guaranteed: *"The services for victims start as information services and social, psychological and legal guidance and last during the whole procedure"*. Regarding medical assistance, however, only 1 professional out of 7 affirms to know realities that also offer assistance with a medical imprint. While another professional affirms that normally there are protocols with

hospitals linked to Pink Codes. Regarding the duration of assistance and the presence of the same professional, the experts interviewed agree with what has been highlighted regarding public services: victims can potentially receive assistance throughout the judicial procedure from the same professional, however this is often not realized, as the victim "gets lost" within the system.

Regarding the existence of quality surveys regarding public or private services aimed at victims, 4 out of 7 professionals state that there are no quality surveys, but it would seem that much progress is being made in this regard.

The second block of questions was related to the implementation of restorative justice programs, all professionals interviewed agreed that they had no information on this.

3.2 Sex Crimes in the jurisprudence of the Italian Supreme Court

In Italy, the Supreme Court has the highest level of jurisdiction. Among its principal functions laid out in the fundamental law on the organization of the judicial system, 30 January 30 1941, n. 12 (art. 65), is that of ensuring "the exact observance and uniform interpretation of the law, unity of national impartial law, respect for the limits of the various jurisdictions." The objective of the Supreme Court is to ensure certainty in the interpretation of the law. In principle, regulations in force do not allow the Supreme Court to know the details of a lawsuit, except when the details have already been acquired in phases prior to the trial, and only to the degree necessary in order to evaluate lawful measures that justify petitioning the Supreme Court.

An appeal to the Supreme Court can be lodged against the provisions filed by ordinary judges on appeal or at sole instance. In civil matters, possible reasons are the violation of substantive or procedural law (*error in iudicando/error in procedendo*), flawed reasoning of the sentence (absence, insufficiency or contradictory nature); or again, motives concerning jurisdiction. There is a similar regime for criminal matters.

When the Supreme Court finds one of the above-mentioned flaws, it has the power and duty not only to annul the decision of the lower court judge, but also to declare the legal principle that the contested provision should follow, and that the reviewing judge must conform to when they reexamine the details of the case. The principles established by the Supreme Court are not binding for judges. They are considered influential but not obligatory "precedents" (as opposed to what happens in Common Law systems). In truth, most often the judges of lower courts conform to decisions of the Supreme Court.

The Supreme Court is divided into six Civil Divisions and seven Criminal Divisions, each with five judges. For particularly complex or controversial cases (for example, with previous, contrasting decisions from the Supreme Court itself), the Court decides in Joint Civil or Criminal Divisions, with seven judges. Joint Division decisions are considered especially authoritative, and are *de facto*, if not legal, precedents.

We examined 914 sentences and ordinances from the different civil and criminal divisions of the Supreme Court, as well as from the vacation court and the Joint Divisions, which were directly and immediately connected to the crime of sexual violence. Furthermore, we screened another 26,500 sentences and ordinances that the Supreme Court's computer system flagged as relevant to the topic of sexual violence.

Predictably, many of the documents repeated the same legal principles and so were redundant. Therefore, here we will examine in detail only those that are indeed relevant, that contain decisions/legal principles of particular interest: 11 Civil Division ordinances, 11 Criminal Division sentences, and 3 Joint Division sentences. In reality, we found that in the last 5 years (the sentence consultation period), the Joint Divisions were rarely involved on the topic, with only 8 rulings, of which 5 were strictly procedural (we mustn't forget that the Supreme Court examines for legitimacy, for example the correct calculation of the remaining penalty in appeals by convicts who weren't granted requested alternative measures within the time limit; or very often appeals for insufficient/illogical reasoning of the appeal sentence).

Unexpectedly, it is worth noting the importance of the Civil Division ordinances, which are the final decisions on requests for international protection. In consequence and relevance, these ordinances can be equated with sentences. They demonstrate a rather unwavering jurisprudence, especially pertaining to the denial of protection connected to crimes of sexual violence. We believed it interesting to include and recognize the analysis of this jurisprudence in the report.

Regarding the Supreme Court Criminal Division sentences, the most relevant aspects pertain to victim consent and probative value of victim declarations; the role of any witnesses; and some particular cases. In these cases the Supreme Court not only had the chance to decide whether the law had been applied correctly, but also to confirm some relevant jurisprudential principles limited to documentation and testimony already on file, thus affecting subsequent decisions by first-and second-instance judges.

In the past, one of the most debated subjects was whether forcing a spouse to have sexual intercourse constitutes a crime of sexual violence. Sentence 16608/2017 of the Third Criminal Division of the Supreme Court puts a firm end to both the legal and social discussion. It confirms that forcing a spouse (the wife, in this case) to have sexual intercourse against their will constitutes crime of sexual violence, because it clearly violates the individual sexual autonomy of the person guaranteed by law. Not only, it reiterated that injured party declarations have full probative value, even in the absence of witnesses. Indeed, the Supreme Court correctly repeated that not only in the case in question, but in general the crime of sexual violence is only committed in the presence of perpetrator and victim, therefore possibly without any third parties. The Supreme Court established, with a principle by now firmly reinforced in case law, that "evaluation of victim declarations alone is sufficient to affirm the criminal responsibility of the accused, although the declarations must be carefully inspected by the trial judge regarding the declarant's subjective reliability and objective credibility, even though corroboration is not necessary."

Other sentences confirm that the corroboration of injured party declarations is not necessary, which is of particular interest to our analysis. 11348/2015, the Third Criminal Division of the Supreme Court's preceding sentence, clearly confirms that "more specifically, with regard to the absence of corroboration of injured party declarations, it must be remembered that injured party testimony does not require external corroboration." The jurisprudence of this Division has been consistent over time, acknowledging the difficulty faced by victims of mistreatment and sexual, domestic and gender-based violence in obtaining corroboration from third parties. Furthermore, it sustains that late reporting is normal (as long as it is within the legal limit) considering the trauma and stigmatization associated with this kind of crime and does not indicate a false allegation. At the same time, the

Supreme Court has repeatedly clarified that injured party declarations must be analyzed and verified for consistency, reliability and plausibility. Supreme Court Third Criminal Division sentence n. 3938/2015 is especially clear and relevant. It criticizes the previous trial sentence for being based on mere acceptance of the injured party's declarations without verifying them and cancels it by adjournment. In the case in question, the accused filed to appeal a conviction of sexual violence. The injured party, a young woman, went to the accused's bar intoxicated and continued to consume alcohol there. She followed him to his domicile, and took cocaine that he offered. There, in a confused state, she allegedly did not give valid consent for sex acts, and the accused clearly took advantage of her impaired mental state. Here the Supreme Court noted that "Now, in this case, the contested sentence does not show which elements of proof, or which serious, precise and corresponding evidence prove that complete sexual intercourse really happened; that the girl did not give her consent or (most pertinently) that the consent she gave should be considered invalid; that the girl was in a condition of such mental or physical inferiority to invalidate her consent; that the accused was aware of this impairment and led her to the sex acts by taking advantage of her impaired state." Via censure of law, or rather the lack of valid reasoning for the sentence in question, the Supreme Court establishes here an important judicial principle: injured party declarations have probative value and are fundamental for decisions concerning sexual violence, without need for external corroboration; however they must be evaluated and analyzed.

What follows is an analysis of the ordinances of the Supreme Court Civil Division, which deliver the last-instance ruling on requests for international protection. As previously stated, the ordinances are the equivalent of a sentence in effect and importance. We can divide the relevant ordinances into two general categories: those concerning victims of the crime of sexual violence and those concerning perpetrators accused of sexual violence in their country of origin. Concerning foreigners seeking international protection who have been victims of sexual violence in their countries of origin and who fear being victimized again if they are repatriated, the Civil Supreme Court's ordinances have been consistent. They have granted appeals of removal orders in cases where victims' declarations were not adequately taken into consideration. In particular, Supreme Court First Civil Division ordinance n. 18803/2020 granted an Albanian citizen's appeal of a removal order. The appellant complained that the ruling did not adequately take into account aspects of Albanian society and culture regarding the female condition. Specifically, she reported having been isolated, beaten, maltreated, brutalized and sexually assaulted by her partner. She did not receive help from the police she had turned to because everyone considered the partner's behavior "normal" and acceptable. The trial judge had written off the woman's personal description of the event and the surrounding socio-cultural climate as a "private matter" irrelevant to granting international protection. On the other hand, the Supreme Court maintained "the Bari Tribunal's overall rationale ends up discrediting the event a priori without adequately scrutinizing the facts, instead of examining the concrete terms reported by (omitted) to verify their validity and truthfulness, as it should have." This jurisprudence has been confirmed by numerous other ordinances and sentences even recently, for example in Supreme Court First Civil Division sentences n. 13726/2020 and n. 12204/2020.

However, neither the trial court nor Supreme Court considers relevant sexual violence reported in countries passed through in transit on the way to Italy from the country of origin. In this case, because the citizen is repatriated directly without intermediate stops, the risk of them being victimized again

is considered non-existent (see lastly Supreme Court, Second Civil Division, ordinance n. 17747/2020).

The jurisprudence of the Supreme Court is different regarding appeals by persons accused of being perpetrators of sexual violence in their country of origin (according to them, unjustly), who could potentially face unjust consequences if their request for international protection is not granted and they are repatriated. Ordinance 11566/2020 of the Supreme Court First Civil Division is significant here. Among other reasons for the appeal such as incorrect application of international protection regulations, the appellant, a citizen of The Gambia, maintained that the judge did not adequately take into account his personal situation. He had escaped from his country “unjustly accused of sexual violence by the daughter of his uncle whom with he lived” and feared “he would be arrested again by the police if he returned to his own country.” The trial judge considered the appellant’s story implausible because of many contradictions and inconsistencies. The Supreme Court did not evaluate this aspect, because it was related to the trial. However, the Supreme Court noted that the trial judge’s reasoning and analysis were correct in point of law, and therefore not censurable by the Court. Thus the appeal was rejected. Other Divisions of the Supreme Court also confirmed the legal principle (see for example Supreme Court, Second Civil Division, ordinance n. 1531/2020).

4. Conclusions

According to the most recent data provided by the National Institute of Statistics (ISTAT), from 2015 to 2018, 14296 women have been victims of sexual violence. However, this is probably an underestimated number as statistics only partially represent this phenomenon: social and cultural factors, including the very strong stigma related to male victimisation, make it difficult for victims to report.

Analysing the most recent data on the number of reports of sexual violence, a decrease in the number of reports of sexual violence has been identified. The offenders seem to be generally men and an important fact is the nationality of the authors: the number of reports against Italian citizens is higher than against foreign citizens.

It is possible to complete the statistical information on the treatment that victims receive during the moment of the complaint with what emerged from the interviews with law enforcement. The professionals interviewed pointed out that there are two protocols to be followed in case of sexual violence. If a woman suffers violence and goes to the ER, the Codice Rosa is activated, which foresees a privileged pathway from a time point of view to carry out all medical investigations, including blood and biological samples, consultation with psychologists and visits with gynaecologists: this phase does not directly involve Police officers, but their full cooperation. Next, the report can be collected and the investigative procedure leading to the identification of the presumed offender can be carried out.

If a woman reports, even if only orally, a case of sexual violence, abuse or persecution, the EVA protocol is activated, a procedure that codifies the modalities of intervention in such cases, allowing to enter in a police database all useful information to reconstruct episodes of domestic violence involving a family unit, independently of a report or a complaint.

In both cases, a police officer hears the victim; according to the interviews, the assigned officer is not always a woman and not always has a specialisation in this area. These data can vary because some police headquarters in Italy have sections specialised in gender-based violence, but not all. The

professionals interviewed believe that the skills of welcoming, listening and supporting are not the prerogative of the gender of the operator, but rather of his/her competence.

In order to fully understand the treatment that victims receive during criminal proceedings, interviews with professionals from the legal system, in particular prosecutors, lawyers and judges, and experts from victim support services were analysed.

Regardless of their professional role within the legal system, all professionals interviewed showed a need for better specialised training in the field of sexual crimes, their perpetrators and victims.

University Law degree courses provide only optional courses on the topic of sexual violence. However, lawyers, prosecutors and judges interviewed said that in order to deal efficiently with cases of sexual violence, knowledge of the phenomenon is not needed exclusively from a legal perspective. The Scuola Superiore di Magistratura and the Bar Associations organise free annual training courses on sexual offences and victimisation, but also in this case the training risks to remain only theoretical.

Professionals underline the limits of purely content-based training in this area, they highlight the importance of disseminating practical experience.

In order to ensure a better and adequate treatment of the victims, the professionals point out the need to acquire skills in the field of sexual offences also at the psychological-relational and social level. Specialised training is considered by the interviewees as an opportunity to ensure that personal attitudes, individual and stereotyped beliefs are no longer part of the judges' drafting of the motivation of the sentence, nor of the defence lawyers' formulation of questions during the hearing.

It is important to highlight that not all the professionals interviewed are up-to-date in terms of legislation, so it is essential to have a better knowledge of the legislative instruments that are already in place but have recently been introduced, to ensure that they are effectively applied.

In addition, it is important to highlight that there are still differences with regard to the treatment received by victims linked to the geographical location: in some cities, in some police stations and prosecutors' offices there is a greater attention to the issue of gender-based violence, linked to a greater specialisation of the professionals working there. In this regard, it is sufficient to recall the presence of the Sala Aurora in the court of Rome, which allows victims to give their testimony in a room adjacent to the courtroom where the trial is taking place, thus ensuring greater protection from the psychological point of view of the victim.

A woman should not be penalised either from a legal point of view or in terms of opportunities related to services in the area for these reasons: it is essential to work so that victims, regardless of where they live, have equal opportunities: respect.

In order to have a complete picture of the Italian situation regarding the management of victims within the legal system, it is important to take into account the findings of the Supreme Court rulings.

The professionals interviewed claim that the Supreme Court is rather strict with acquittals: the cases in which in the motivation of the sentence of the first degrees of judgement an acquittal of the defendant is reached because the victim is credible in general, but not exactly when she talks about the event that is the object of the crime, are considered judicial errors. This information would seem to be in agreement with what emerged during the analysis of the sentences: in particular, the

jurisprudence of the Third Penal Section seems to be constantly attentive to the difficulties of the victims of crimes such as sexual violence, domestic and gender-based violence and abuse.

Among the key aspects directly highlighted by the research conducted on the Supreme Court decisions, a first important fact emerges: forcing a partner to have sexual constitutes sexual violence. This 2017 judgment shows that the victim's statements have probative value, even in the absence of any other witnesses. Indeed, the offence of sexual violence is generally committed in the exclusive presence of two persons involved in the facts: the defendant and the victim.

This case law is linked to another judgment of 2015, reiterating that the offended party's statements have probative value and are fundamental to the decision on sexual violence without the need for external corroboration, but they must nevertheless be assessed and analysed.

The position of the Supreme Court regarding the treatment received by victims of sexual violence seems to be extremely victim-friendly. Judgments such as these guarantee greater protection for the victim, who can thus feel more recognised, listened to, understood and believed in, even in the absence of a third party (as in most cases of sexual violence).

5. Annexes

5.1 Questionnaires

5.1.1 Police

- 1) Indichi, per favore, se esiste un protocollo che una persona vittima di violenza sessuale deve seguire per sporgere denuncia.
 - a) In cosa consiste questo protocollo?
 - b) Chi si occupa della procedura relativa agli accertamenti medici/kit post stupro (campioni di DNA) e quanto spesso viene utilizzata?
 - c) Viene messa in atto una procedura di identificazione (anche se l'autore del reato è una persona conosciuta?) e di che tipo?
 - d) Vengono prese delle precauzioni per evitare che la vittima incontri l'autore del reato?
- 2) Vorremmo approfondire il momento della raccolta della denuncia, con particolare attenzione all'ambiente fisico ed emotivo in cui la vittima viene ascoltata.
 - a) L'agente che se ne occupa è un uomo o una donna, ha una formazione specifica sulle vittime di reato sessuale?
 - b) Che tipologie di domande vengono effettuate?
 - c) Quanto dura l'interrogatorio?
 - d) Quali sono le emozioni delle vittime nei confronti di queste domande: si sentono ascoltate/accolte/credute?
 - e) Quante volte vengono interrogate?
- 3) Infine, vorremmo che lei ci indicasse se le vittime vengono informate rispetto ai propri diritti, sulla possibilità di chiedere una compensazione, sulla procedura che segue la denuncia, sulla possibilità di ritirarla/ritrattare. Quante decidono di proseguire?

5.1.2 Public Prosecutors

- 1) Indichi, per favore, qual è l'iter procedimentale che una vittima deve seguire per aprire un fascicolo, in seguito a denuncia di violenza sessuale.
 - a. Che tipo di attività svolge il pubblico ministero?

- b. La vittima deve essere ascoltata dal PM (quante volte, dopo quanti giorni dal momento dei fatti, che tipologie di domande vengono svolte e in quale ambiente fisico/psicologico)?
- c. La vittima può essere accompagnata da altra persona e, se sì, da chi?
- 2) Le chiediamo di approfondire la formazione dei pubblici ministeri nell'ambito dei crimini sessuali e del trattamento delle vittime.
 - a. Durante il corso di studi generalmente quanto vengono approfonditi questi aspetti?
 - b. I PM che vogliono avere una formazione specializzata sui crimini sessuali o sulla vittimizzazione devono finanziarla autonomamente o sono previsti corsi di formazione organizzati dal sistema giudiziario?
 - c. In caso negativo, è prevista una collaborazione con psicologi esperti nell'ambito, nominando un Consulente Tecnico?
 - d. Quanto viene utilizzata?
- 3) Infine, vorremmo che approfondisse gli aspetti legati al processo.
 - a. Quanti casi vengono archiviati perché l'autore è rimasto sconosciuto/mancanza di prove/perché le vittime ritirano la denuncia?
 - b. Quanti continuano solo con la testimonianza della vittima?
 - c. Quanti casi arrivano a un patteggiamento?
 - d. Quali sono i fattori per arrivare al patteggiamento in questi casi?
 - e. Ci sono strumenti per ascoltare le vittime quando c'è un patteggiamento?
 - f. Da chi vengono informate le vittime a questo riguardo?
- Lavora in appello? Se sì, quali differenze sostanziali trova tra primo grado e appello? Il fatto di non avere un contatto diretto con la vittima incide sulla comprensione dei fatti, eventualmente quanto?

5.1.3 Judges

Primo grado

1. Vorremmo che lei approfondisse il momento del processo in cui viene comunicata la *sentenza di primo grado*.
 - a) Qual è il termine entro il quale viene comunicata la sentenza, viene fatto di persona o tramite documentazione?
 - b) Come viene descritta la vittima in essa?
 - c) La sentenza potrebbe ledere la sua immagine: quali strumenti esistono per proteggere l'identità della vittima?
 - d) In caso di non responsabilità penale da parte dell'imputato, come si procede: dichiarando la sua innocenza in ogni caso o per insufficienza o mancanza di prove?
 - e) Qual è l'impatto sulla vittima?
 - f) Quanti casi si risolvono con un verdetto di colpevolezza?
 - g) Quali sono le sanzioni più utilizzate?

- h) In caso di detenzione, qual è generalmente la sua durata?
- 2. Le chiediamo di approfondire l'aspetto relativo alla *compensazione* in favore delle vittime.
 - a) Quanto sono alte le compensazioni da parte dello Stato?
 - b) Quanto invece il risarcimento danni da parte dell'offender?
 - c) Ci sono possibilità di appello da parte della vittima, se l'imputato è dichiarato innocente o non ci sono prove sufficienti?
 - d) Quanto tempo ci vuole per avere una sentenza di appello?
 - e) Gli appelli confermano o diminuiscono le sentenze sui crimini sessuali?
- 3. Infine, vorremmo approfondire la *formazione* dei magistrati nell'ambito dei crimini sessuali e del trattamento delle vittime.
 - a. Durante il corso di studi quanto vengono approfonditi questi aspetti?
 - b. I magistrati che intendano avere una formazione specializzata sui crimini sessuali o sulla vittimizzazione devono finanziarla autonomamente o sono previsti corsi di formazione organizzati dal sistema giudiziario?

Secondo grado - Appello

Lavora in appello?

- a) Se sì, quali differenze sostanziali trova tra primo grado e appello?
- b) Il fatto di non avere un contatto diretto con la vittima incide sulla comprensione dei fatti, eventualmente quanto?

5.1.4 Lawyers

- 1. Indichi, per favore, se le persone vittime di reati sessuali hanno *diritto a disposizioni speciali*, come l'assistenza legale gratuita (gratuito patrocinio), e da chi possono essere informate a riguardo.
 - a. Che tipo di assistenza viene fornita: quanti colloqui vengono effettuati?
 - b. È valida per il processo penale/civile/compensazione?
 - c. Fino a quale grado di giudizio viene assistita la vittima?
 - d. Come avviene la retribuzione?
 - e. La vittima viene informata sulla possibilità di ricevere una compensazione statale/risarcimento da parte dell'autore del reato?
 - f. Quante decidono di intraprendere questo iter e quali sono gli importi ottenuti?
- 2. Vorremmo approfondire la *formazione dei legali* nell'ambito dei crimini sessuali e del trattamento delle vittime.
 - a. Durante il corso di studi generalmente quanto vengono approfonditi questi aspetti?

- b. Gli avvocati che vogliono avere una formazione specializzata sui crimini sessuali o sulla vittimizzazione sessuale devono finanziarla autonomamente o sono previsti corsi di formazione organizzati dall'Ordine degli Avvocati/Tribunale locale?
 - c. In caso negativo, è prevista una collaborazione con psicologi esperti nell'ambito?
 - d. Quanto viene utilizzata?
3. Le chiediamo di indicare quanto tempo dopo la denuncia, nella sua esperienza, inizi *il processo per crimini sessuali* (mesi, anni) e quanto sia generalmente la sua durata.
- a. La vittima deve necessariamente testimoniare in aula (può essere ascoltata liberamente oppure deve rispondere a domande sì/no)?
 - b. Che tipo di domande vengono poste, esistono dei limiti a riguardo (ad esempio, l'ascolto è possibile solo sui fatti e non sul comportamento generale della vittima) e quanto è forte il controllo del giudice a riguardo?
 - c. Il passato o il futuro della vittima (esclusi immediatamente prima e dopo i fatti) fanno parte degli aspetti indagati durante l'ascolto?
 - d. L'atteggiamento o l'abbigliamento o qualsiasi altra questione personale fa parte delle prove o dell'argomentazione della difesa?

5.1.5 Victims Support Services Experts

1) Le chiediamo di approfondire l'attuale situazione italiana in merito ai servizi pubblici rivolti alle vittime.

- 1a) Esistono servizi pubblici specializzati per le vittime di violenza sessuale?
- 1b) I servizi sono regolamentati?
- 1c) Quante persone informano/lavorano con le vittime nei servizi pubblici per 100.000 abitanti (nel paese o regione, città ...)?
- 1d) In che modo viene informata la vittima dell'esistenza di questi servizi?
- 1e) Come avviene il primo contatto?
- 1d) È immediato il primo contatto alla denuncia?
- 1e) Che tipo di assistenza sviluppano questi servizi: assistenza medica, psicologica, legale?
- 1f) Per tutta la procedura o solamente durante la prima fase?
- 1g) La stessa persona lavora con la stessa vittima per tutto l'iter?

2) Le chiediamo di approfondire l'esistenza di ONG che si occupano dell'assistenza delle vittime.

- 2a) Sono specializzate nell'assistenza alle vittime di violenza sessuale?
- 2b) Quante persone informano e lavorano con le vittime all'interno di questi servizi?

2c) Qual è la proporzione con la popolazione?

3) In che modo viene informata la vittima dell'esistenza di questi servizi assistenziali?

3a) Come avviene il primo contatto?

3b) Il primo contatto avviene immediatamente dopo la denuncia?

4) Che tipo di assistenza sviluppano questi servizi per le vittime: assistenza medica, psicologica, legale?

4a) La vittima riceve assistenza per tutta la procedura o solamente durante la prima fase?

4b) La stessa persona lavorerà con la stessa vittima durante tutto l'iter?

5) Ci sono alcuni programmi speciali, come i *circles*¹⁵ di giustizia riparativa, ecc.?

5a) Quando la vittima può avere accesso a questi programmi speciali?

5b) L'accesso ai programmi è immediato alla richiesta di partecipazione o c'è una lista d'attesa?

6) Esistono sondaggi di qualità riguardanti l'assistenza dei servizi alle vittime (pubblici/privati) dal punto di vista delle vittime?

5.1.6 Restorative Justice

1. Le chiediamo di indicarci la *presenza di programmi di giustizia riparativa* all'interno del sistema giuridico italiano.
 - a. In che modo è possibile accedere ai programmi di giustizia riparativa?
 - b. In quale momento del processo questi programmi vengono utilizzati?
 - c. Secondo la sua esperienza, qual è la percentuale di utilizzo della giustizia riparativa?
2. Vorremmo approfondire le *modalità di realizzazione* dei programmi di giustizia riparativa.
 - a. Quali sono le parti (vittima, autore del reato, comunità) che vengono coinvolte nella realizzazione del programma?
 - b. Da chi ognuna di queste parti viene informata sull'esistenza dei programmi di restorative justice?
 - c. L'accesso ai programmi di giustizia riparativa è libero oppure è necessario rispettare una lista d'attesa?
3. Infine, le chiediamo di indicarci chi si occupa della realizzazione dei programmi di giustizia riparativa.
 - a. Quali professionisti si occupano della conduzione dei programmi di giustizia riparativa?
 - b. Questi professionisti hanno una formazione specifica nell'ambito della giustizia riparativa/reati sessuali/vittime di violenza sessuale?

5.3 Consenso informato

Informazioni per il partecipante.

1. Che cosa è il Progetto RE-TREAT?

¹⁵ Si tratta di incontri ai quali possono partecipare tutti i soggetti coinvolti nel reato al fine di riparare la ferita relazionale dal quale è scaturito.

La Direttiva 2012/29/UE¹⁶ stabilisce l'obbligo giuridico di effettuare una valutazione individuale per tutte le vittime di reati commessi in tutti gli Stati membri dell'Unione Europea (UE), tenendo conto delle caratteristiche personali della vittima e della natura e caratteristiche specifiche del crimine, menzionando espressamente la violenza sessuale. Tuttavia, le vittime di crimini sessuali spesso subiscono una sorta di seconda vittimizzazione da parte di sistemi giudiziari che non considerano in modo adeguato i loro diritti e bisogni. Inoltre, in molti casi i professionisti purtroppo non ricevono una formazione specializzata nel trattamento delle vittime di reati sessuali.

RE-TREAT cerca di identificare le barriere procedurali e organizzative nei procedimenti penali nell'ambito dei sistemi giudiziari di Spagna, Italia e Grecia, al fine di migliorare la capacità dei singoli Stati di rispondere alle esigenze specifiche delle vittime di reati sessuali.

L'obiettivo principale di RE-TREAT è quello di promuovere l'applicazione di un approccio più adeguato e sensibile alle vittime nell'ambito di procedimenti penali, adattato alle esigenze specifiche delle vittime di reati sessuali, contribuendo così all'articolo 1, paragrafo 2 della Direttiva che stabilisce che le vittime di reati hanno il diritto di essere trattate in modo rispettoso, sensibile e professionale, tenendo conto delle loro esigenze individuali. In termini pratici, il progetto migliorerà anche l'efficacia del recepimento del paragrafo 52 della Direttiva sulle vittime, che richiede l'adozione delle misure necessarie per proteggere la sicurezza e la dignità delle vittime, nonché il paragrafo 53, che stabilisce che *"il rischio di vittimizzazione, intimidazione o ritorsione secondaria o ripetuta da parte dell'autore del reato o a seguito della partecipazione a un processo penale deve essere limitato svolgendo azioni in modo coordinato e rispettoso, consentendo alle vittime di acquisire fiducia nelle autorità"*.

A tal fine, i partner del progetto RE-TREAT effettueranno ricerche qualitative su larga scala (che si rifletteranno in relazioni nazionali separate) nei tre Stati membri dell'Unione Europea sopra menzionati sulla situazione attuale e il trattamento delle vittime di reati sessuali nel processo penale e civile, tenendo conto, a tal fine, delle decisioni giudiziarie, interviste e testimonianze di vittime di crimini sessuali. Le informazioni ottenute dalle interviste saranno essenziali per completare dei report nazionali che saranno presentati alla Commissione Europea. Gli obiettivi di dettaglio che il progetto RE-TREAT si pone sono:

Identificare le barriere e le pratiche dannose nel trattamento delle vittime di reati sessuali durante i procedimenti giudiziari all'interno del sistema di giustizia in tre Stati membri (Spagna, Grecia e Italia).

Identificare le migliori pratiche esistenti in questo settore.

Preparare raccomandazioni sull'adozione di norme procedurali relative al trattamento specifico delle vittime di reati sessuali durante i processi.

Sviluppare un manuale e un programma formativo per il personale operante all'interno del sistema giudiziario.

Aumentare la consapevolezza degli attori che operano in questo ambito e su questo tipo di reati.

Aumentare la consapevolezza e la conoscenza del pubblico in generale in merito ai diritti delle vittime di reati sessuali per una loro tutela specifica nei tre Stati membri dell'UE.

Rafforzare la cooperazione tra le autorità nazionali competenti, le ONG e le organizzazioni professionali in questo settore.

Il progetto RE-TREAT è una collaborazione europea tra varie organizzazioni partner. L'Università Carlos III di Madrid (UC3M), in Spagna, è il partner principale e leader del consorzio. Gli altri partner sono l'Università degli Studi di Sassari (UNISS, Italia), EuroCrime - Research, Training and Consulting S.R.L. (Italia), l'Università Cattolica di Leuven (KU Leuven, Belgio), Università Autonoma di Madrid (UAM, Spagna) e Unione delle Associazioni femminili della Prefettura di Heraklion (UWAH, Grecia). Il progetto ha una durata di 24 mesi ed è iniziato nel febbraio 2020; il progetto è finanziato dal Programma Giustizia dell'Unione Europea (2014-2020).

2. Perché Le viene chiesto di partecipare?

¹⁶ Unione europea, Direttiva 2012/29/UE del Parlamento Europeo e del Consiglio, del 25 ottobre 2012, che stabilisce norme minime in materia di diritti, assistenza e protezione delle vittime di reati e che sostituisce la decisione quadro del Consiglio 2001/220 /JAI.

È stato selezionat* per la sua esperienza professionale come agente delle Forze dell'Ordine/Avvocat*/Procurator*/Magistrat* le cui opinioni sono fondamentali per lo svolgimento del progetto.

3. Quali sono le condizioni per la partecipazione al progetto e come si può interrompere/revocare il proprio consenso?

La partecipazione all'intervista è volontaria, e può essere interrotta o il consenso alla partecipazione revocato in qualsiasi momento durante l'intervista. È sufficiente far presente al ricercatore che sta effettuando l'intervista che si desidera interrompere l'intervista o revocare il proprio consenso, oppure contattare il responsabile della ricerca in una fase successiva qualora si decida di revocare il proprio consenso.

4. Cosa viene richiesto?

Le verrà chiesto di partecipare a un'intervista, organizzata e condotta da UNISS/EuroCrime. L'intervista durerà al massimo 1 ora. Lo scopo di intervistare professionist* expert* nella gestione di reati di violenza sessuale è quello di ottenere la loro prospettiva su come funziona il sistema giudiziario nazionale in tale settore. Lo scopo è quello di ottenere quante più informazioni e/o dati possibili sul trattamento ricevuto dalle vittime di reati sessuali, sugli aspetti procedurali e organizzativi, sui protocolli di azione, e così via.

Verranno presi appunti e l'intervista verrà registrata. Solamente il team di ricerca avrà la possibilità di ascoltare e trascrivere l'audio registrato. Le opinioni e le conoscenze condivise durante le interviste saranno divulgate esclusivamente in forma anonima attraverso i documenti e o le pubblicazioni del progetto, al fine di garantire il raggiungimento degli obiettivi (vedi § 7).

5. Quali sono i rischi associati a questo progetto?

La Sua collaborazione in questa ricerca richiederà l'investimento del suo tempo e la volontà di partecipare al colloquio, rivelando le Sue prospettive e condividendo le Sue opinioni sugli argomenti in esame. I dati e le informazioni forniti saranno rigorosamente conservati e trattati in forma anonima. Non vi sono rischi specifici associati alla partecipazione all'intervista prevista dal progetto RE-TREAT.

6. Quali sono i vantaggi della partecipazione?

Potrà contribuire a un progetto che fornirà una panoramica globale della situazione relativa al trattamento delle vittime di reati sessuali e approfondirà il modo in cui i diritti e le esigenze specifiche di queste vittime vengono considerati e trattati all'interno dei procedimenti. In particolare, le Sue preziose opinioni ed esperienze aiuteranno il Team di RE-TREAT a identificare le principali barriere, risorse e pratiche dannose nel trattamento delle vittime di crimini sessuali durante il processo. Infine, sulla base dei risultati di questa ricerca, il Team di progetto ha l'obiettivo di cambiare l'attuale paradigma sugli abusi subiti dalle vittime di crimini sessuali nel corso di un procedimento.

7. Protezione dei dati, riservatezza, anonimato

Tutte le informazioni fornite verranno archiviate in modo sicuro su un computer protetto da password. Nessuna persona o organizzazione verranno identificate durante la ricerca, a meno che Lei non acconsenta espressamente. I contenuti di qualsiasi colloquio saranno mantenuti sicuri e completamente anonimi attraverso procedure di pseudonimizzazione. Nomi e altri elementi identificativi non verranno utilizzati in nessun rapporto, documento, pubblicazione. Tutte le informazioni demografiche raccolte verranno utilizzate esclusivamente in modo anonimo e generale per dare contesto ai contenuti del rapporto.

Il Titolare del trattamento dei dati tratterà tutti i dati personali in modo confidenziale e rispettando le vigenti leggi in materia di privacy e protezione dei dati, ed in particolare il Regolamento (EU) 2016/679 (GDPR) del Parlamento e del Consiglio Europeo sulla protezione delle persone fisiche con riferimento al trattamento dei dati personali e al libero trasferimento di tali dati, che sostituisce la Direttiva Europea 95/46/EC.

Al fine di garantire un trattamento dei dati sicuro, il Titolare adotterà tutte le misure IT e le altre misure necessarie per la conservazione, il trattamento e la eventuale trasmissione dei dati. Il Titolare adotterà le misure previste per proteggere i dati personali trattati contro ogni uso non autorizzato, modifica, rivelazione, cancellazione, danneggiamento o distruzione, e per garantire le condizioni tecniche che gli sono richieste.

8. Persone autorizzate ad accedere ai dati

I dati che ci ha fornito saranno accessibili solo ai ricercatori i cui incarichi e doveri operativi richiedono la conoscenza di tali dati (ad es. coloro incaricati della trascrizione delle registrazioni audio e video dell'intervista).

9. I suoi diritti come Interessato

Lo scopo di questa informativa è quello di fornire informazioni adeguate sui dettagli riguardanti il trattamento dei dati all'Interessato (da qui in poi indicato appunto come "Interessato"), prima ancora dell'inizio del trattamento stesso.

Ha il diritto di sapere se dati personali che la riguardano sono trattati, e, se lo sono, di accedere ai dati personali stessi ed alle seguenti informazioni:

Lo scopo del trattamento dei dati;

Categorie di dati personali trattati;

Se possibile, il periodo previsto per la conservazione dei dati o, se non è possibile indicarlo esattamente, i criteri che verranno utilizzati per stabilire tale periodo;

L'esistenza del diritto di richiedere al Titolare la correzione o la cancellazione dei dati personali o restrizioni al loro trattamento di opporsi a tale trattamento;

Il diritto di inoltrare un reclamo all'Autorità competente;

Se i dati personali non sono raccolti direttamente presso l'Interessato, ogni informazione relativa alla loro fonte.

Su richiesta, il Titolare deve fornirle una copia dei dati personali che vengono trattati.

Può richiedere in ogni momento la correzione o l'integrazione dei dati personali non corretti; il Titolare effettuerà i cambiamenti richiesti senza ingiustificato ritardo.

Ha il diritto di revocare il consenso al trattamento dei dati in qualsiasi momento.

La revoca del consenso non incide sulla validità e legalità del trattamento effettuato sulla base del suo consenso prima che questo venga revocato.

In caso di revoca del suo consenso, il Titolare cancellerà i tuoi dati personali dal suo database entro 30 giorni.

Su richiesta dell'Interessato, il Titolare cancellerà i dati che lo, o la, riguardano senza ingiustificato ritardo se:

I dati personali non sono più necessari in relazione agli scopi per i quali sono stati raccolti o comunque trattati;

L'interessato revoca il consenso sul quale il trattamento si basa, e non ci sono altri validi fondamenti legali per il trattamento stesso;

I dati personali sono stati trattati illegalmente;

I dati personali devono essere cancellati nel rispetto di un obbligo legale all'interno della UE o di uno Stato Membro al quale il Titolare è soggetto.

Il Titolare deve limitare il trattamento dei dati su richiesta dell'Interessato se:

La correttezza dei dati personali è contestata dall'Interessato, per un periodo di tempo che consenta al Titolare di verificare l'accuratezza di tali dati personali;

Il trattamento dei dati è illegale e l'Interessato si oppone alla cancellazione dei dati personali e richiede invece la limitazione del loro utilizzo;

Il Titolare non ha più bisogno dei dati personali per gli scopi del trattamento, ma sono necessari all'Interessato per la costituzione, l'esercizio o la difesa di rivendicazioni legali;

Se il trattamento dei dati viene svolto per fini di marketing diretto e l'Interessato si è opposto a questo tipo di trattamento; in questo caso la limitazione rimane valida fino a che non si è verificato se il legittimo interesse³ del Titolare prevale su quello dell'Interessato.

Se il trattamento è stato limitato in base ai motivi sopra esposti, i dati personali devono, a parte la conservazione, essere trattati con il consenso dell'Interessato o per la costituzione, l'esercizio o la difesa di rivendicazioni legali o per la protezione di diritti di un'altra persona fisica o giuridica o per rilevanti motivi di interesse pubblico della UE o di uno Stato Membro. Il Titolare deve informare l'Interessato, che ha ottenuto la limitazione del trattamento a causa dei motivi più sopra elencati, prima di togliere la limitazione al trattamento dei dati.

Ogni richiesta deve essere inviata a: EuroCrime SrL – via Niccolò Machiavelli, 52, 50026, San Casciano in Val di Pesa (Firenze), Italia, via posta ordinaria, oppure a info@eurocrime.eu via e-mail.

Per ragioni di identificazione del soggetto richiedente, devono essere forniti dati personali corretti e specifici.

Il Titolare deve notificare all'Interessato le misure adottate in base alla sua richiesta di esercizio dei propri diritti senza ingiustificato ritardo, e in ogni caso entro 30 giorni dal ricevimento della richiesta.

Se l'Interessato invia la sua richiesta in formato elettronico, le informazioni devono essere a loro volta fornite in formato elettronico se possibile, se non diversamente richiesto dall'Interessato.

La correzione, limitazione e cancellazione dei dati deve essere riferita dal Titolare all'Interessato e a coloro ai quali i dati in questione erano stati precedentemente trasferiti per scopi di trattamento dei dati.

L'Interessato ha il diritto di opporsi in qualsiasi momento, in base alla propria situazione particolare, al trattamento dei dati personali che lo riguardano sulla base di un legittimo interesse. In tal caso, il Titolare non può trattare i dati personali fino a quando non dimostra motivi legittimi convincenti per il trattamento che superino gli interessi, i diritti e le libertà dell'Interessato o siano finalizzati alla costituzione, all'esercizio o alla difesa di rivendicazioni legali.

Il Titolare deve sospendere il trattamento dei dati ed esaminare le obiezioni dell'Interessato entro il più breve tempo possibile, e comunque nel termine massimo di 30 giorni, ed informare in forma scritta il richiedente dei risultati di tale esame. Se le obiezioni sono fondate, il Titolare deve concludere il trattamento (inclusa ogni ulteriore raccolta o trasmissione di dati) e deve limitare i dati interessati. Inoltre, il Titolare deve notificare l'obiezione e le misure adottate per farvi fronte a coloro ai quali i dati interessati dall'obiezione sono stati trasmessi in precedenza; questi soggetti riceventi devono a loro volta provvedere a dare seguito all'obiezione avanzata.

Se il Titolare non si attiva in base alla richiesta avanzata dall'Interessato, deve informarlo senza ritardo e comunque nel termine massimo di 30 giorni dal ricevimento della richiesta stessa dei motivi per non attivarsi e sulla possibilità per l'Interessato di inoltrare un reclamo presso l'Autorità competente e cercare una soluzione giudiziale.

In caso di violazione dei sopra descritti diritti, può rivolgersi ad un giudice oppure all'Autorità Nazionale Italiana per la Protezione dei Dati (DPA - Garante per la Protezione dei Dati Personali).

Autorità Nazionale per la Protezione dei Dati – Garante per la Protezione dei Dati Personali:

Indirizzo: Piazza di Monte Citorio, 121 – 00186 Roma, Italy

Telefono: +39-06-6967 71

Fax: +39-06-6967 73785

Sito web: http://www.garanteprivacy.it/home_en

e-mail: garante@gpdp.it

10. Dove può presentare reclami o porre domande?

In caso di domande o dubbi sull'intervista, i suoi contenuti ed il progetto RE-TREAT è possibile rivolgersi direttamente al ricercatore incaricato dell'intervista o al responsabile del progetto i cui contatti sono indicati qui di seguito; in alternativa, può contattare la prof.ssa Helena Soleto dell'Università Carlos III di Madrid (Spagna), che è la coordinatrice principale del progetto (helena.soleto@uc3m.es).

Per questa intervista, il Responsabile del trattamento dati è:

EuroCrime Srl – via Niccolò Machiavelli, 52, 50026, San Casciano in Val di Pesa (Firenze), Italia

e-mail: info@eurocrime.eu – Tel. (+39) 055218667

11. Cosa si farà con i risultati dello studio?

I risultati dello studio verranno comunicati alla Commissione Europea e successivamente pubblicati. Oltre ad un report nazionale e a una relazione finale sul progetto e i suoi risultati, verrà redatto un manuale di formazione per i professionisti del settore sul trattamento specifico che le vittime di reati sessuali dovrebbero ricevere durante i procedimenti giudiziari. Inoltre, i risultati dello studio verranno pubblicati su riviste scientifiche ed informative, e presentati in occasione di conferenze scientifiche e divulgative. Tutti i dati dei partecipanti utilizzati verranno resi anonimi.

12. Dove può ottenere maggiori informazioni?

Coordinatore della ricerca (UC3M): Prof. Helena Soleto

Helena.soleto@uc3m.es

Ricercatore responsabile per l'Italia per questa intervista:

Dr. Silvia Ciotti – EuroCrime Senior Researcher

silvia.ciotti@eurocrime.eu; tel. Ufficio (+39) 055 218667

Modulo di consenso informato - Interviste RE-TREAT

La ringraziamo per aver acconsentito a partecipare a questa intervista organizzata da UNISS ed EuroCrime per conto del progetto RE-TREAT. Il colloquio durerà al massimo 1 ora, verranno presi appunti e il colloquio verrà registrato. Tutti i dati raccolti sono confidenziali e i risultati saranno completamente anonimi. Saranno spiegati gli obiettivi del progetto RE-TREAT e avrà l'opportunità di porre domande sulla ricerca.

1. Confermo di aver letto e compreso la scheda informativa per i partecipanti vista in precedenza e di aver avuto l'opportunità di porre domande.
2. Comprendo che la mia partecipazione è volontaria e che sono liber* di ritirarmi in qualsiasi momento senza fornire una spiegazione.
3. Comprendo che i ricercatori tratteranno tutte le informazioni fornite loro in modo confidenziale. Le informazioni fornite saranno anonime.
6. Accetto che durante l'intervista debbano essere presi appunti dettagliati e che il colloquio debba essere registrato per facilitare l'analisi delle risposte. La registrazione audio e video verrà distrutta una volta effettuata la trascrizione.
7. Comprendo che i risultati del progetto verranno pubblicati, ma il mio anonimato verrà preservato.
8. Accetto di partecipare al progetto di ricerca.

Nome e Cognome del partecipante:

Email: Tel:

Firma del partecipante:Data.....

Nome e Cognome del ricercatore:

Email: Tel:

Firma del ricercatore:Data.....