

# VICTIMS AND CORPORATIONS

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

Implementazione della Direttiva 2012/29/UE  
per le vittime di *corporate crime* e *corporate violence*

*Training package*  
per gli operatori  
di polizia giudiziaria

Settembre 2017



UNIVERSITÀ CATTOLICA del Sacro Cuore  
**CSGP**  
Centro Studi "Federico Stella"  
sulla Giustizia penale e la Politica criminale

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VOOR CRIMINOLOGIE



Max-Planck-Institut  
für ausländisches und  
internationales Strafrecht



I materiali raccolti in questo CD-rom sono frutto del progetto *Victims and Corporations. Implementation of Directive 2012/29/EU for Victims of Corporate Crimes and Corporate Violence*, finanziato dal programma "Giustizia" dell'Unione Europea (Agreement n. - JUST/2014/JACC/AG/VICT/7417)

**Coordinamento:**

Gabrio Forti (direttore del progetto) e (in ordine alfabetico) Stefania Giavazzi, Claudia Mazzucato, Arianna Visconti  
Università Cattolica del Sacro Cuore, Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale

**Partners del progetto:**

Leuven Institute of Criminology, Catholic University of Leuven  
Max-Planck-Institut für ausländisches und internationales Strafrecht

**Gruppo di ricerca:**

Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Carolin Hillemanns, Katrien Lauwaert, Stefano Manacorda, Enrico Maria Mancuso

**Sito web:**

[www.victimsandcorporations.eu](http://www.victimsandcorporations.eu)

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Università Cattolica del Sacro Cuore, Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale,  
Milano, 2017

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Questo progetto è cofinanziato  
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della Commissione Europea



## IL PROGETTO 'VICTIMS & CORPORATIONS'

*Victims and Corporations* è un progetto coordinato dal **Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale dell'Università Cattolica del Sacro Cuore (CSGP)** e finanziato nell'ambito del programma congiunto "Rights, Equality and Citizenship" e "Justice" 2014 della **Commissione Europea** (Directorate General Justice and Consumers).

Le attività del progetto si svolgono in tre Paesi: Italia, Germania e Belgio.

Il progetto ha avuto inizio nel gennaio 2016 e si concluderà a dicembre 2017: si compone di una fase di studio e ricerca e di una fase operativa volta alla formazione degli operatori della giustizia e di altri soggetti rilevanti, nonché alla elaborazione di linee guida e buone pratiche.

La **Direttiva 2012/29/UE** istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato.

Uno dei principali obiettivi del progetto è quello di conoscere e comprendere le esperienze e i bisogni delle **vittime di reati commessi da imprese nel corso della loro attività commerciale**, che hanno prodotto **danni alla salute, all'integrità fisica o alla vita delle persone**. Il progetto si concentra in modo particolare sugli illeciti derivanti dalle violazioni delle leggi in materia ambientale e sulla sicurezza di prodotti alimentari, medicinali o farmaceutici.

Comprendere le esigenze delle vittime contribuisce a una **migliore applicazione della Direttiva europea**, anche grazie all'**elaborazione di linee guida** specifiche e all'**attività di formazione** che il progetto rivolge a diversi operatori della giustizia e professionisti.

## GLI OBIETTIVI DEL PROGETTO

La Direttiva 2012/29/UE tutela le vittime di reato e assicura loro un più effettivo accesso alla giustizia. La Direttiva sottolinea, in particolare, la necessità di proteggere in modo personalizzato e individualizzato le

vittime 'vulnerabili'. Tanto negli ordinamenti nazionali quanto nell'operato delle istituzioni si riscontra, però, un'ancora insufficiente attenzione verso una nutrita categoria di vittime: le vittime di *corporate crimes* e, più in generale, le vittime di quella che la letteratura internazionale definisce ***corporate violence***.

Costituiscono "corporate crimes" i reati connessi in ambito imprenditoriale e nell'interesse o a vantaggio di un'impresa. Con la locuzione "corporate violence" si identificano le condotte penalmente rilevanti, pur riconducibili all'ordinaria attività aziendale, lesive della salute, dell'integrità fisica o della vita delle persone. Integrano ipotesi di questo genere gli illeciti ambientali che determinano danni alla vita o alla salute, la commercializzazione di prodotti difettosi o pericolosi che cagionano pregiudizio alla vita o alla salute dei consumatori, gli infortuni sul lavoro dovuti a violazione della disciplina sulla sicurezza sul lavoro.

Le vittime di questi reati presentano profili di **vulnerabilità** del tutto peculiari. Si pensi, per esempio, al disequilibrio di informazioni e di mezzi rispetto alle imprese alle quali si trovano contrapposte: un disequilibrio che influenza le concrete possibilità di accesso alla giustizia e a forme di risarcimento o indennizzo. Si pensi anche ai sofisticati accertamenti scientifici dei pregiudizi subiti per i quali anche le strutture pubbliche potrebbero non essere in grado di fornire adeguato supporto (così, per esempio, nel caso di patologie lungolatenti).

**Non si tratta di una sparuta minoranza di persone offese.** L'esame incrociato dei dati Eurostat indica che all'interno dell'Unione Europea i danni legati alla corporate violence sono analoghi a quelli causati dai più 'tradizionali' crimini violenti. Le statistiche ufficiali dimostrano ampiamente la vastità e la **proiezione transnazionale** di questa forma di vittimizzazione. Sembra poi inevitabile che in futuro si assista a un aumento significativo delle vittime di *corporate crimes* (illeciti ambientali, danni da prodotto, etc.), anche a causa del periodo di latenza che spesso separa l'insorgenza di patologie legate ad attività lavorative rispetto al momento di esposizione alla sostanza tossica: ciò, evidentemente, costringerà il sistema giudiziario a confrontarsi con questioni sempre più complesse. Per non parlare delle migliaia di vittime di scandali finanziari e di altri reati economici.

La *corporate violence* non integra una forma di violenza interpersonale diretta; ciononostante, essa ha un significativo

impatto sociale, tanto per la sua diffusione quanto per l'ampiezza e la rilevanza dei danni che arreca alla vita, alla salute e all'integrità fisica e psichica delle persone.

Il progetto intende contribuire alla efficace attuazione della Direttiva 2012/29/EU e alla diffusione di una **maggiore sensibilità per i bisogni delle vittime di reato**, sempre nel rispetto delle garanzie del giusto processo, appuntando l'attenzione proprio sulle ipotesi di vittimizzazione da *corporate violence*, così rilevanti eppure trascurate. Il progetto aspira altresì a stimolare la prevenzione della vittimizzazione e lo sviluppo di modelli di **responsabilità sociale dell'impresa**.

Come specifici ambiti di ricerca sui diritti e sulla tutela delle vittime di *corporate crimes* sono stati scelti i settori dei **reati ambientali** e delle **violazioni alle normative in tema di sicurezza alimentare e farmaceutica**.

Nel corso del progetto è stata condotta un'analisi empirica di tipo qualitativo per migliorare strumenti e prassi di **valutazione individuale dei bisogni delle vittime di corporate violence**.

Nel solco delle tutele accordate dalla Direttiva alle vittime, sono stati inoltre analizzati i possibili benefici derivanti dall'attuazione di percorsi di **giustizia riparativa** e di modelli di "responsive regulation".

La varietà di obiettivi perseguiti ha condotto ad applicare un metodo di ricerca **interdisciplinare** e 'multilivello'. In linea con tale approccio, nelle varie fasi del progetto si sono alternati e combinati saperi giuridici, criminologici, vittimologici e delle scienze sociali. La proiezione transnazionale del tema oggetto d'indagine ha condotto a coniugare prospettiva internazionale, Europea e nazionale: si consideri, infatti, che assai spesso le imprese autrici di condotte illecite possono operare su scala multinazionale; ancora, la natura diffusa dei danni connessi all'attività d'impresa ben si presta a produrre pregiudizi che valichino i confini nazionali (si

pensi ad ipotesi di inquinamento che si propaga nei Paesi confinanti, di traffico di rifiuti, di commercio internazionale di prodotti adulterati).

Nell'esecuzione di un più ampio programma di sensibilizzazione sui temi del progetto, ha un peso decisivo la **diffusione di informazioni, metodologie di indagine e didattiche (basate su modelli replicabili) e linee-guida**, in uno con la **formazione degli operatori** del settore.

Tra gli obiettivi del progetto vi è, infatti, la sensibilizzazione degli operatori ai diritti e alle forme di protezione e assistenza delle vittime previsti dalla Direttiva. Il progetto si rivolge in special modo alla magistratura, alla polizia giudiziaria, all'avvocatura, agli uffici legali delle imprese, ai servizi sociali. La formazione dei soggetti che entrano in contatto con vittime di reati rappresenta dunque un obiettivo primario del progetto.

## LE LINEE GUIDA

Allo scopo di dare efficace attuazione alla Direttiva 2012/29/EU, nel corso del progetto sono state elaborate, anche grazie alla partecipazione diretta di tutti gli *stakeholders*, una serie linee-guida destinate ai soggetti più direttamente coinvolti nel sostegno e nella tutela delle vittime, con particolare riferimento a:

- magistrati giudicanti e requirenti e operatori di polizia giudiziaria;
- avvocati;
- operatori dei servizi sociali, dei centri di giustizia riparativa e di organizzazioni che offrono assistenza alle vittime;
- imprese.

A queste si aggiungono le linee guida "trasversali" dedicate alla valutazione individuale dei bisogni delle vittime di *corporate violence*.





## LE ATTIVITÀ DI FORMAZIONE

Nel corso del 2017, il progetto prevede la realizzazione di appositi momenti di **formazione** rivolti separatamente a:

- operatori di polizia giudiziaria;
- assistenti sociali, psicologi e medici, personale dei servizi pubblici o privati di supporto alle vittime, membri di associazioni di vittime, mediatori penali e organizzazioni che offrono percorsi di giustizia riparativa;
- avvocati;
- magistrati;
- imprese.

Le attività formative mirano a consentire il **riconoscimento** delle vittime di *corporate violence*, sviluppare **adeguate modalità di approccio** a queste vittime al fine di una migliore individuazione delle loro esigenze; inquadrare correttamente gli **specifici problemi di accesso alla giustizia** da parte delle vittime di *corporate violence*, **valutarne i bisogni individualizzati di protezione** e le specifiche necessità di assistenza e sostegno, assicurare maggiori possibilità per le vittime di pervenire a forme di **risarcimento e riparazione** anche in via stragiudiziale, promuovere la responsabilità sociale d'impresa e ridurre il carico giudiziario.

Il **calendario** completo delle attività formative è disponibile, insieme con tutti i **materiali e pubblicazioni** del progetto, sul sito [www.victimsandcorporations.eu](http://www.victimsandcorporations.eu).

## CONTATTI

### Segreteria del progetto:

Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale – Università Cattolica del Sacro Cuore

L.go Gemelli, 1  
20123 Milano

e-mail: [centrostudi.fsgp@unicatt.it](mailto:centrostudi.fsgp@unicatt.it)

e-mail dedicata:  
[victimsandcorporations@unicatt.it](mailto:victimsandcorporations@unicatt.it)

Telefono: +39 02 7234 5175



## I MATERIALI DI QUESTO TRAINING PACKAGE:

Materiali per la formazione:

- Direttiva 2012/29/UE che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato;
- *Rights of Victims, Challenges for Corporations. Project's First Findings*, (mid-term report) dicembre 2016;
- *European and International Selected Legal Resources and Case Law*, appendice al mid-term report, aggiornata a luglio 2017;
- *I bisogni delle vittime di corporate violence: risultati della ricerca empirica in Italia*, agosto 2017;
- *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence*, maggio 2017;
- *Linee guida nazionali per la polizia giudiziaria, le Procure della Repubblica e i magistrati giudicanti*, luglio 2017.

Normativa nazionale:

- d.lgs. 15 dicembre 2015, n. 212 (Attuazione della direttiva 2012/29/UE del Parlamento europeo e del Consiglio, del 25 ottobre 2012, che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato);
- l. 23 giugno 2017, n. 103 (Modifiche al codice penale, al codice di procedura penale e all'ordinamento penitenziario);
- estratto del codice di procedura penale (aggiornato).



## PARTNERS



UNIVERSITÀ CATTOLICA del Sacro Cuore

**CSGP**

Centro Studi "Federico Stella"  
sulla Giustizia penale e la Politica criminale

**Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale (CSGP) – Università Cattolica del Sacro Cuore, Milano, Italia.** Il CSGP è l'ente coordinatore del Progetto. Il CSGP nasce nell'Università Cattolica di Milano con lo scopo di promuovere la ricerca teorica e applicata sui problemi della giustizia penale e della politica criminale in una prospettiva interdisciplinare, attenta a metodi e risultati dello studio criminologico e agli apporti delle scienze empirico-sociali, nonché all'attuazione dei principi costituzionali. Il CSGP si avvale di un autorevole comitato scientifico (di cui fanno parte magistrati ed esperti di chiara fama in materie giuridiche, economiche, psicologiche e filosofiche) e di un ampio gruppo di ricerca composto da professori, ricercatori, dottorandi.



**Leuven Institute of Criminology – Università di Lovanio, Lovanio, Belgio.**

L'Università di Lovanio (KU Leuven) è socio fondatore della LERU (League of European Research Universities); figura tra i primi dieci istituti universitarie nelle classifiche europee relative alla ricerca. Il Leuven Institute of Criminology (LINC) si compone di circa settanta professori e ricercatori impegnati nella ricerca criminologica e nell'insegnamento. Il LINC prosegue la tradizione dell'Università di Lovanio di combinare ricerca di qualità con un forte impegno verso la società, obiettivo perseguito attraverso ricerca sia di base che orientata alla politica criminale e sociale. Il LINC persegue otto 'filoni di ricerca' uno dei quali dedicato alla giustizia riparativa e alla vittimologia.



Max-Planck-Institut  
für ausländisches und  
internationales Strafrecht

**Max-Planck-Institut für ausländisches und internationales Strafrecht (MPICC), Friburgo in Br., Germania.**

I progetti di ricerca intrapresi dal MPICC sono di natura comparativa, internazionale e interdisciplinare, e si concentrano sullo studio empirico del diritto penale, della criminalità, della difesa sociale e delle vittime di reato. I campi di ricerca dell'Istituto includono altresì: armonizzazione e uniformazione del diritto penale e del diritto processuale penale negli Stati dell'Unione Europea; riforma del diritto penale alla luce delle migliori conoscenze disponibili sulle possibili soluzioni giuridiche ai problemi sociali e sulle alternative più funzionali all'interno e all'esterno dell'ordinamento penale.

## ASSOCIATE PARTNERS

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This project is co-funded by  
the Justice Programme  
of the European Union





**DIRETTIVA 2012/29/UE DEL PARLAMENTO EUROPEO E DEL CONSIGLIO****del 25 ottobre 2012****che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che  
sostituisce la decisione quadro 2001/220/GAI**

IL PARLAMENTO EUROPEO E IL CONSIGLIO DELL'UNIONE EUROPEA,

visto il trattato sul funzionamento dell'Unione europea, in particolare l'articolo 82, paragrafo 2,

vista la proposta della Commissione europea,

previa trasmissione del progetto di atto legislativo ai parlamenti nazionali,

visto il parere del Comitato economico e sociale europeo <sup>(1)</sup>,

visto il parere del Comitato delle regioni <sup>(2)</sup>,

deliberando secondo la procedura legislativa ordinaria <sup>(3)</sup>,

considerando quanto segue:

(1) L'Unione si è posta l'obiettivo di mantenere e sviluppare uno spazio di libertà, sicurezza e giustizia, la cui pietra angolare è il reciproco riconoscimento delle decisioni giudiziarie in materia civile e penale.

(2) L'Unione si è impegnata nella protezione delle vittime di reato e nell'istituzione di norme minime in tale ambito e il Consiglio ha adottato la decisione quadro 2001/220/GAI, del 15 marzo 2001, relativa alla posizione della vittima nel procedimento penale <sup>(4)</sup>. Nell'ambito del programma di Stoccolma — Un'Europa aperta e sicura al servizio e a tutela dei cittadini <sup>(5)</sup>, adottato dal Consiglio europeo durante la sua riunione del 10 e 11 dicembre 2009, la Commissione e gli Stati membri sono stati invitati a esaminare come migliorare la legislazione e le misure concrete di sostegno per la protezione delle vittime, con particolare attenzione all'assistenza e al riconoscimento di tutte le vittime, incluse, in via prioritaria, le vittime del terrorismo.

(3) A norma dell'articolo 82, paragrafo 2, del trattato sul funzionamento dell'Unione europea (TFUE), è possibile stabilire norme minime applicabili negli Stati membri al fine di facilitare il riconoscimento reciproco delle sentenze e delle decisioni giudiziarie e la cooperazione di polizia e giudiziaria nelle materie penali aventi dimensione transnazionale, in particolare per quanto riguarda i diritti delle vittime della criminalità.

(4) Nella risoluzione del 10 giugno 2011 relativa a una tabella di marcia per il rafforzamento dei diritti e della tutela delle vittime, in particolare nei procedimenti penali <sup>(6)</sup> («la tabella di marcia di Budapest»), il Consiglio ha dichiarato che si dovrebbero intraprendere azioni a livello di Unione per rafforzare i diritti, il sostegno e la tutela delle vittime di reato. A tal fine e in conformità con la citata risoluzione, la presente direttiva mira a rivedere e a integrare i principi enunciati nella decisione quadro 2001/220/GAI e a realizzare significativi progressi nel livello di tutela delle vittime in tutta l'Unione, in particolare nei procedimenti penali.

(5) Nella risoluzione del 26 novembre 2009 sull'eliminazione della violenza contro le donne <sup>(7)</sup>, il Parlamento europeo ha esortato gli Stati membri a migliorare le normative e le politiche nazionali volte a combattere tutte le forme di violenza contro le donne e ad affrontarne le cause, in particolare mediante misure di prevenzione, e ha invitato l'Unione a garantire a tutte le vittime di violenza il diritto all'assistenza e al sostegno.

(6) Nella risoluzione del 5 aprile 2011 sulle priorità e sulla definizione di un nuovo quadro politico dell'UE in materia di lotta alla violenza contro le donne <sup>(8)</sup> il Parlamento europeo ha proposto una strategia di lotta alla violenza contro le donne, alla violenza domestica e alla mutilazione genitale femminile come base per futuri strumenti legislativi di diritto penale contro la violenza di genere, compreso un quadro in materia di lotta alla violenza contro le donne (politica, prevenzione, protezione, procedimento giudiziario, provvedimenti e partenariato), cui dovrà far seguito un piano d'azione dell'Unione. La regolamentazione internazionale in materia include la convenzione delle Nazioni Unite sull'eliminazione di ogni forma di discriminazione nei confronti della donna (CEDAW) adottata il 18 dicembre 1979, le raccomandazioni e decisioni del comitato CEDAW e la convenzione del Consiglio d'Europa sulla prevenzione e la lotta contro la violenza contro le donne e la violenza domestica, adottata il 7 aprile 2011.

<sup>(1)</sup> GU C 43 del 15.2.2012, pag. 39.

<sup>(2)</sup> GU C 113 del 18.4.2012, pag. 56.

<sup>(3)</sup> Posizione del Parlamento europeo del 12 settembre 2012 (non ancora pubblicata nella Gazzetta Ufficiale) e decisione del Consiglio del 4 ottobre 2012.

<sup>(4)</sup> GU L 82 del 22.3.2001, pag. 1.

<sup>(5)</sup> GU C 115 del 4.5.2010, pag. 1.

<sup>(6)</sup> GU C 187 del 28.6.2011, pag. 1.

<sup>(7)</sup> GU C 285 E del 21.10.2010, pag. 53.

<sup>(8)</sup> GU C 296 E del 2.10.2012, pag. 26.

- (7) La direttiva 2011/99/UE del Parlamento europeo e del Consiglio, del 13 dicembre 2011, sull'ordine di protezione europeo <sup>(1)</sup>, stabilisce un meccanismo per il reciproco riconoscimento delle misure di protezione in materia penale tra gli Stati membri. La direttiva 2011/36/UE del Parlamento europeo e del Consiglio, del 5 aprile 2011, concernente la prevenzione e la repressione della tratta di esseri umani e la protezione delle vittime <sup>(2)</sup>, e la direttiva 2011/92/UE del Parlamento europeo e del Consiglio, del 13 dicembre 2011, relativa alla lotta contro l'abuso e lo sfruttamento sessuale dei minori e la pornografia minorile <sup>(3)</sup>, trattano, tra l'altro, le esigenze specifiche delle particolari categorie di vittime della tratta di esseri umani, degli abusi sessuali sui minori, dello sfruttamento sessuale e della pedopornografia.
- (8) La decisione quadro 2002/475/GAI del Consiglio, del 13 giugno 2002, sulla lotta contro il terrorismo <sup>(4)</sup>, riconosce che il terrorismo costituisce una delle più gravi violazioni dei principi sui quali l'Unione si fonda, incluso il principio della democrazia, e ribadisce che esso costituisce tra l'altro una minaccia al libero esercizio dei diritti dell'uomo.
- (9) Un reato è non solo un torto alla società, ma anche una violazione dei diritti individuali delle vittime. Come tali, le vittime di reato dovrebbero essere riconosciute e trattate in maniera rispettosa, sensibile e professionale, senza discriminazioni di sorta fondate su motivi quali razza, colore della pelle, origine etnica o sociale, caratteristiche genetiche, lingua, religione o convinzioni personali, opinioni politiche o di qualsiasi altra natura, appartenenza a una minoranza nazionale, patrimonio, nascita, disabilità, età, genere, espressione di genere, identità di genere, orientamento sessuale, status in materia di soggiorno o salute. In tutti i contatti con un'autorità competente operante nell'ambito di un procedimento penale e con qualsiasi servizio che entri in contatto con le vittime, quali i servizi di assistenza alle vittime o di giustizia riparativa, si dovrebbe tenere conto della situazione personale delle vittime e delle loro necessità immediate, dell'età, del genere, di eventuali disabilità e della maturità delle vittime di reato, rispettandone pienamente l'integrità fisica, psichica e morale. Le vittime di reato dovrebbero essere protette dalla vittimizzazione secondaria e ripetuta, dall'intimidazione e dalle ritorsioni, dovrebbero ricevere adeguata assistenza per facilitarne il recupero e dovrebbe essere garantito loro un adeguato accesso alla giustizia.
- (10) La presente direttiva non affronta le condizioni di soggiorno delle vittime di reati nel territorio degli Stati membri. Gli Stati membri dovrebbero adottare le misure necessarie affinché i diritti previsti dalla presente direttiva non siano subordinati allo status delle vittime in materia di soggiorno nel loro territorio o alla loro cittadinanza o nazionalità. Per contro, la denuncia del reato e la partecipazione al procedimento penale non creano diritti in ordine allo status della vittima in materia di soggiorno.
- (11) La presente direttiva stabilisce norme minime. Gli Stati membri possono ampliare i diritti da essa previsti al fine di assicurare un livello di protezione più elevato.
- (12) I diritti previsti dalla presente direttiva fanno salvi i diritti dell'autore del reato. Il termine «autore del reato» si riferisce a una persona che è stata condannata per un reato. Tuttavia, ai fini della presente direttiva, esso si riferisce altresì a una persona indagata o imputata prima dell'eventuale dichiarazione di responsabilità o della condanna e fa salva la presunzione d'innocenza.
- (13) La presente direttiva si applica in relazione ai reati commessi nell'Unione e ai procedimenti penali che si svolgono nell'Unione. Essa conferisce diritti alle vittime di reati extraterritoriali solo in relazione a procedimenti penali che si svolgono nell'Unione. Le denunce presentate ad autorità competenti al di fuori dell'Unione, quali le ambasciate, non fanno scattare gli obblighi previsti dalla presente direttiva.
- (14) Nell'applicare la presente direttiva, l'interesse superiore del minore deve essere considerato preminente, conformemente alla Carta dei diritti fondamentali dell'Unione europea e alla convenzione delle Nazioni Unite sui diritti del fanciullo adottata il 20 novembre 1989. Le vittime minorenni dovrebbero essere considerate e trattate quali detentori a pieno titolo dei diritti previsti dalla presente direttiva e dovrebbero poter esercitare i loro diritti in un modo che tenga conto della loro capacità di formarsi opinioni proprie.
- (15) Nell'applicare la presente direttiva, gli Stati membri dovrebbero garantire che le vittime con disabilità siano in grado di beneficiare pienamente dei diritti da essa previsti su una base di parità con gli altri, tra l'altro agevolando l'accessibilità ai luoghi in cui si svolge il procedimento penale e l'accesso alle informazioni.
- (16) Le vittime del terrorismo hanno subito aggressioni destinate fondamentalmente a ledere la società e possono pertanto aver bisogno di un'attenzione, un'assistenza e una protezione speciali, a motivo della particolare natura del commesso nei loro riguardi. Le vittime del terrorismo possono trovarsi particolarmente esposte all'opinione pubblica e hanno spesso bisogno di riconoscimento sociale e di essere trattate in modo rispettoso dalla società. Gli Stati membri dovrebbero pertanto tenere particolarmente conto delle necessità delle vittime del terrorismo e cercare di tutelarne la dignità e la sicurezza.

<sup>(1)</sup> GU L 338 del 21.12.2011, pag. 2.

<sup>(2)</sup> GU L 101 del 15.4.2011, pag. 1.

<sup>(3)</sup> GU L 335 del 17.12.2011, pag. 1.

<sup>(4)</sup> GU L 164 del 22.6.2002, pag. 3.

- (17) Per violenza di genere s'intende la violenza diretta contro una persona a causa del suo genere, della sua identità di genere o della sua espressione di genere o che colpisce in modo sproporzionato le persone di un particolare genere. Può provocare un danno fisico, sessuale, emotivo o psicologico, o una perdita economica alla vittima. La violenza di genere è considerata una forma di discriminazione e una violazione delle libertà fondamentali della vittima e comprende la violenza nelle relazioni strette, la violenza sessuale (compresi lo stupro, l'aggressione sessuale e le molestie sessuali), la tratta di esseri umani, la schiavitù e varie forme di pratiche dannose, quali i matrimoni forzati, la mutilazione genitale femminile e i cosiddetti «reati d'onore». Le donne vittime della violenza di genere e i loro figli hanno spesso bisogno di un'assistenza e protezione speciali a motivo dell'elevato rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni connesso a tale violenza.
- (18) La violenza nelle relazioni strette è quella commessa da una persona che è l'attuale o l'ex coniuge o partner della vittima ovvero da un altro membro della sua famiglia, a prescindere dal fatto che l'autore del reato conviva o abbia convissuto con la vittima. Questo tipo di violenza potrebbe includere la violenza fisica, sessuale, psicologica o economica e provocare un danno fisico, mentale o emotivo, o perdite economiche. La violenza nelle relazioni strette è un problema sociale serio e spesso nascosto, in grado di causare un trauma fisico e psicologico sistematico dalle gravi conseguenze in quanto l'autore del reato è una persona di cui la vittima dovrebbe potersi fidare. Le vittime di violenza nell'ambito di relazioni strette possono pertanto aver bisogno di speciali misure di protezione. Le donne sono colpite in modo sproporzionato da questo tipo di violenza e la loro situazione può essere peggiore in caso di dipendenza dall'autore del reato sotto il profilo economico, sociale o del diritto di soggiorno.
- (19) Una persona dovrebbe essere considerata vittima indipendentemente dal fatto che l'autore del reato sia identificato, catturato, perseguito o condannato e indipendentemente dalla relazione familiare tra loro. È possibile che anche i familiari della vittima subiscano un danno a seguito del reato. In particolare, i familiari di una persona la cui morte sia stata causata direttamente da un reato potrebbero subire un danno a seguito del reato. La presente direttiva dovrebbe pertanto tutelare anche questi familiari vittime indirette del reato. Tuttavia, gli Stati membri dovrebbero poter stabilire procedure per limitare il numero di familiari ammessi a beneficiare dei diritti previsti dalla presente direttiva. Nel caso di un minore, il minore stesso o, a meno che ciò non sia in contrasto con l'interesse superiore del minore, il titolare della responsabilità genitoriale a nome del minore dovrebbero avere la facoltà di esercitare i diritti previsti dalla presente direttiva. La presente direttiva fa salve eventuali procedure e formalità amministrative nazionali richieste per stabilire che una persona è una vittima.
- (20) Il ruolo delle vittime nel sistema giudiziario penale e la possibilità per le stesse di partecipare attivamente al procedimento penale variano tra gli Stati membri, a seconda del sistema nazionale, e dipendono da uno o più dei criteri seguenti: se il sistema nazionale prevede lo status giuridico di parte del procedimento penale; se la vittima è obbligata per legge o invitata a partecipare attivamente al procedimento penale, ad esempio in quanto testimone; se la vittima è legittimata a norma del diritto nazionale a partecipare attivamente al procedimento penale e ne ha fatto richiesta, qualora il sistema nazionale non preveda che le vittime abbiano lo status giuridico di una parte del procedimento penale. Gli Stati membri dovrebbero stabilire quale di questi criteri si applica per determinare la portata dei diritti previsti dalla presente direttiva, laddove vi sono riferimenti al ruolo della vittima nel pertinente sistema giudiziario penale.
- (21) Le autorità competenti, i servizi di assistenza alle vittime e i servizi di giustizia riparativa competenti dovrebbero fornire informazioni e consigli con modalità quanto più possibile diversificate e in modo da assicurarne la comprensione da parte della vittima. Tali informazioni e consigli dovrebbero essere forniti in un linguaggio semplice e accessibile. È inoltre opportuno garantire che, nel corso del procedimento, la vittima sia a sua volta compresa, tenendo pertanto conto della sua conoscenza della lingua usata per dare le informazioni, dell'età, della maturità, della capacità intellettuale ed emotiva, del grado di alfabetizzazione e di eventuali menomazioni psichiche o fisiche. Si dovrebbe tenere conto in modo particolare dei problemi di comprensione o di comunicazione che possono sorgere a causa di eventuali disabilità, come problemi di udito o difficoltà di linguaggio. Nel corso del procedimento penale si dovrebbe anche tenere conto di eventuali limitazioni della capacità della vittima di comunicare informazioni.
- (22) Ai fini della presente direttiva si dovrebbe considerare che il momento in cui è presentata una denuncia rientra nell'ambito del procedimento penale. Ciò dovrebbe comprendere i casi in cui le autorità avviano d'ufficio il procedimento penale a seguito del reato subito da una vittima.
- (23) È opportuno che le informazioni sul rimborso delle spese siano fornite sin dal momento del primo contatto con l'autorità competente, ad esempio indicando in forma scritta le condizioni di base per tale rimborso. Gli Stati membri non dovrebbero avere l'obbligo, in questa prima fase del procedimento penale, di decidere se la vittima interessata soddisfi le condizioni per il rimborso delle spese.

- (24) All'atto della denuncia di un reato, la polizia dovrebbe rilasciare alle vittime un avviso di ricevimento scritto della loro denuncia che indichi gli elementi essenziali del reato, quali il tipo di reato, l'ora e il luogo in cui è stato commesso e qualsiasi pregiudizio o danno causato dal reato stesso. Tale avviso di ricevimento dovrebbe comprendere un numero di fascicolo nonché l'ora e il luogo della denuncia del reato per servire come prova dell'avvenuta denuncia del reato, ad esempio in relazione a indennizzi assicurativi.
- (25) Fatte salve le norme relative ai termini di prescrizione, il ritardo nella denuncia di un reato per paura di ritorsioni, umiliazioni o stigmatizzazione non dovrebbe dar luogo al rifiuto di rilasciare l'avviso di ricevimento dell'avvenuta denuncia da parte della vittima.
- (26) Le informazioni fornite dovrebbero essere sufficientemente dettagliate per garantire che le vittime siano trattate in maniera rispettosa e per consentire loro di prendere decisioni consapevoli in merito alla loro partecipazione al procedimento. A tale riguardo, particolarmente importanti sono le informazioni relative allo stato del procedimento. Altrettanto rilevanti sono quelle che servono alle vittime per decidere se chiedere la revisione di una decisione di non esercitare l'azione. Salvo ove diversamente previsto, dovrebbe essere possibile fornire le informazioni comunicate alla vittima in forma orale o scritta, anche per via elettronica.
- (27) Le informazioni destinate alla vittima dovrebbero essere fornite all'ultimo recapito postale conosciuto o alle coordinate elettroniche comunicate dalla vittima all'autorità competente. In casi eccezionali, ad esempio qualora un elevato numero di vittime sia coinvolto in un caso, dovrebbe essere possibile fornire le informazioni tramite la stampa, un sito web ufficiale dell'autorità competente o qualsiasi altro canale di comunicazione analogo.
- (28) Gli Stati membri non dovrebbero avere l'obbligo di fornire informazioni la cui divulgazione potrebbe pregiudicare il corretto svolgimento di un procedimento o arrecare danno ad un determinato caso o ad una data persona o siano considerate in contrasto con gli interessi essenziali della loro sicurezza.
- (29) Le autorità competenti dovrebbero provvedere affinché la vittima ottenga gli estremi aggiornati della persona cui rivolgersi per comunicazioni sul proprio caso, a meno che non abbia espresso il desiderio di non ricevere tali informazioni.
- (30) Il riferimento a una «decisione» nel contesto del diritto all'informazione, all'interpretazione e alla traduzione dovrebbe essere inteso solo come riferimento alla pronuncia di colpevolezza o a una pronuncia che metta altrimenti fine al procedimento penale. I motivi di tale decisione dovrebbero essere forniti alla vittima attraverso una copia del documento che contiene tale decisione o attraverso un breve riassunto.
- (31) Il diritto all'informazione sull'ora e il luogo di un processo conseguente alla denuncia relativa a un reato subito dalla vittima si dovrebbe applicare anche all'informazione sull'ora e il luogo di un'udienza relativa all'impugnazione di una pronuncia nella causa.
- (32) Dovrebbero essere fornite alle vittime, su richiesta, informazioni specifiche sulla scarcerazione o evasione dell'autore del reato, almeno nei casi in cui possa sussistere un pericolo o un rischio concreto di danno per le vittime, salvo se tale notifica comporti un rischio concreto di danno per l'autore del reato, nel qual caso l'autorità competente dovrebbe tenere conto dell'insieme degli altri rischi nel determinare l'azione appropriata. Il riferimento al «rischio concreto di danno per le vittime» dovrebbe comprendere fattori quali la natura e la gravità del reato e il rischio di ritorsioni. Pertanto, non dovrebbe essere applicato alle situazioni in cui siano stati commessi reati minori e vi sia quindi soltanto un debole rischio di danno per le vittime.
- (33) Le vittime dovrebbero essere informate in merito all'eventuale diritto di presentare ricorso avverso una decisione di scarcerazione dell'autore del reato, se tale diritto esiste nell'ordinamento nazionale.
- (34) Non si può ottenere realmente giustizia se le vittime non riescono a spiegare adeguatamente le circostanze del reato e a fornire prove in modo comprensibile alle autorità competenti. È altrettanto importante garantire che le vittime siano trattate in maniera rispettosa e siano in grado di far valere i propri diritti. Dovrebbe quindi essere messa a disposizione l'interpretazione gratuita durante l'interrogatorio delle vittime e per consentire loro di partecipare attivamente alle udienze, a seconda del ruolo della vittima nel pertinente sistema giudiziario penale. Per quanto riguarda gli altri aspetti del procedimento, la necessità di un servizio di interpretazione e traduzione può variare a seconda delle specifiche questioni, del ruolo della vittima nel pertinente sistema giudiziario penale, del suo coinvolgimento nel procedimento e di altri specifici diritti di cui goda. In questi altri casi, il servizio di interpretazione e di traduzione deve essere fornito solo nella misura in cui serva alla vittima per esercitare i propri diritti.

- (35) La vittima dovrebbe avere il diritto di impugnare una decisione che dichiara che non sussiste la necessità di interpretazione o traduzione, conformemente alle procedure previste dal diritto nazionale. Tale diritto non comporta per gli Stati membri l'obbligo di prevedere un meccanismo separato o una procedura di ricorso con cui tale decisione potrebbe essere impugnata e non dovrebbe prolungare irragionevolmente i procedimenti penali. Sarebbe sufficiente un riesame interno della decisione in conformità delle procedure nazionali esistenti.
- (36) Il fatto che la vittima parli una lingua non di uso esteso non dovrebbe costituire di per sé un motivo per decidere che l'interpretazione o la traduzione prolungherebbero irragionevolmente il procedimento penale.
- (37) L'assistenza dovrebbe essere disponibile dal momento in cui la vittima è nota alle autorità competenti e nel corso di tutto il procedimento penale e per un congruo periodo di tempo dopo il procedimento penale in funzione delle necessità della vittima e conformemente ai diritti previsti dalla presente direttiva. L'assistenza dovrebbe essere fornita in modi diversi, senza formalità eccessive e prevedendo una sufficiente distribuzione geografica in tutto lo Stato membro che consenta a tutte le vittime di accedere a tali servizi. Le vittime che hanno subito un notevole danno per la gravità del reato potrebbero chiedere servizi di assistenza specialistica.
- (38) Alle persone particolarmente vulnerabili o in situazioni che le espongono particolarmente a un rischio elevato di danno, quali le persone vittime di violenze reiterate nelle relazioni strette, le vittime della violenza di genere o le persone vittime di altre forme di reato in uno Stato membro di cui non hanno la cittadinanza o in cui non risiedono dovrebbero essere fornite assistenza specialistica e protezione giuridica. I servizi di assistenza specialistica dovrebbero basarsi su un approccio integrato e mirato che tenga conto, in particolare, delle esigenze specifiche delle vittime, della gravità del danno subito a seguito del reato, nonché del rapporto tra vittime, autori del reato, minori e loro ambiente sociale allargato. Uno dei principali compiti di tali servizi e del loro personale, che svolgono un ruolo importante nell'assistere la vittima affinché si ristabilisca e superi il potenziale danno o trauma subito a seguito del reato, dovrebbe consistere nell'informare le vittime dei diritti previsti dalla presente direttiva cosicché le stesse possano assumere decisioni in un ambiente in grado di assicurare loro sostegno e di trattarle con dignità e in modo rispettoso e sensibile. I tipi di assistenza che questi servizi specialistici dovrebbero offrire potrebbero includere la fornitura di alloggi o sistemazioni sicure, assistenza medica immediata, rinvio ad esame medico e forense a fini di prova in caso di stupro o aggressione sessuale, assistenza psicologica a breve e lungo termine, trattamento del trauma, consulenza legale, patrocinio legale e servizi specifici per i minori che sono vittime dirette o indirette di reati.
- (39) Non è richiesto ai servizi di assistenza alle vittime di fornire direttamente vaste competenze specialistiche e professionali. Se necessario, i servizi di assistenza alle vittime dovrebbero aiutare queste ultime a rivolgersi all'assistenza professionale esistente, quali gli psicologi.
- (40) Benché l'offerta di assistenza non debba dipendere dal fatto che le vittime abbiano presentato denuncia in relazione a un reato alle autorità competenti, come la polizia, queste sono spesso le più indicate per informare le vittime delle possibilità di aiuto esistenti. Gli Stati membri sono quindi esortati a instaurare condizioni adeguate che consentano di indirizzare le vittime verso gli specifici servizi di assistenza, garantendo al tempo stesso che gli obblighi in materia di protezione dei dati possano essere e siano rispettati. È opportuno evitare una successione di rinvii.
- (41) Si dovrebbe ritenere che il diritto delle vittime di essere sentite sia stato garantito qualora alle stesse sia permesso di rendere dichiarazioni o fornire spiegazioni per iscritto.
- (42) Non si dovrebbe precludere il diritto delle vittime minorenni di essere sentite in un procedimento penale unicamente in base al fatto che la vittima è un minore o in base all'età della stessa.
- (43) Il diritto alla revisione di una decisione di non esercitare l'azione penale dovrebbe essere inteso come riferito a decisioni adottate da pubblici ministeri e giudici istruttori oppure da autorità di contrasto quali gli agenti di polizia, ma non alle decisioni adottate dalla magistratura giudicante. È opportuno che la revisione di una decisione di non esercitare l'azione penale sia svolta da una persona o da un'autorità diversa da quella che ha adottato la decisione originaria, a meno che la decisione iniziale di non esercitare l'azione penale sia stata adottata dalla massima autorità responsabile dell'esercizio dell'azione penale le cui decisioni non possono formare oggetto di revisione, nel qual caso la revisione può essere svolta da tale stessa autorità. Il diritto alla revisione di una decisione di non esercitare l'azione penale non riguarda le procedure speciali, quali i procedimenti contro membri del parlamento o del governo in relazione all'esercizio della loro funzione ufficiale.

- (44) Dovrebbe essere considerata come una decisione che mette fine al procedimento penale la situazione in cui il pubblico ministero decide di ritirare le accuse o di interrompere il procedimento.
- (45) La decisione del pubblico ministero che si traduce in una composizione extragiudiziale, ponendo così fine al procedimento penale, esclude le vittime dal diritto alla revisione di una decisione di non esercitare l'azione penale solo se la composizione comporta un avvertimento o un obbligo.
- (46) I servizi di giustizia riparativa, fra cui ad esempio la mediazione vittima-autore del reato, il dialogo esteso ai gruppi parentali e i consigli commisurativi, possono essere di grande beneficio per le vittime, ma richiedono garanzie volte ad evitare la vittimizzazione secondaria e ripetuta, l'intimidazione e le ritorsioni. È opportuno quindi che questi servizi pongano al centro gli interessi e le esigenze della vittima, la riparazione del danno da essa subito e l'evitare ulteriori danni. Nell'affidare un caso ai servizi di giustizia riparativa e nello svolgere un processo di questo genere, è opportuno tenere conto di fattori come la natura e la gravità del reato, il livello del trauma causato, la violazione ripetuta dell'integrità fisica, sessuale o psicologica della vittima, gli squilibri di potere, l'età, la maturità o la capacità intellettuale della vittima, che potrebbero limitarne o ridurre la facoltà di prendere decisioni consapevoli o che potrebbero pregiudicare l'esito positivo del procedimento seguito. In linea di principio i processi di giustizia riparativa dovrebbero svolgersi in modo riservato, salvo che non sia concordato diversamente dalle parti o richiesto dal diritto nazionale per preminenti motivi di interesse pubblico. Situazioni quali minacce o qualsiasi altra forma di violenza perpetrate in questo contesto potranno essere ritenute meritevoli di essere segnalate nell'interesse generale.
- (47) Non si dovrebbe pretendere che le vittime sostengano spese per partecipare a procedimenti penali. Gli Stati membri dovrebbero essere tenuti a rimborsare soltanto le spese necessarie delle vittime per la loro partecipazione a procedimenti penali e non dovrebbero essere tenuti a rimborsare le spese legali delle vittime. Gli Stati membri dovrebbero poter imporre condizioni in relazione al rimborso delle spese nel quadro del rispettivo diritto nazionale, tra cui termini per la richiesta di rimborso, importi forfettari per le spese di soggiorno e di viaggio e diaria massima per la perdita di retribuzione. Il diritto al rimborso delle spese in un procedimento penale non dovrebbe sussistere in una situazione nella quale una vittima rende una dichiarazione su un reato. Le spese dovrebbero essere rimborsate solo nella misura in cui la vittima è obbligata o invitata dalle autorità competenti ad essere presente e a partecipare attivamente al procedimento penale.
- (48) I beni restituibili sequestrati nell'ambito del procedimento penale dovrebbero essere restituiti il più presto possibile alla vittima del reato, salvo che ricorrano circostanze eccezionali, quali una controversia riguardante la proprietà o laddove il possesso dei beni o il bene stesso siano illegali. Il diritto alla restituzione dei beni non dovrebbe ostacolare il legittimo mantenimento del sequestro ai fini di altri procedimenti giudiziari.
- (49) Il diritto di ottenere una decisione in merito al risarcimento da parte dell'autore del reato e la pertinente procedura applicabile dovrebbero applicarsi anche alle vittime residenti in uno Stato membro diverso da quello in cui è stato commesso il reato.
- (50) L'obbligo di trasmettere denunce previsto dalla presente direttiva dovrebbe far salva la competenza degli Stati membri ad avviare un procedimento e lascia impregiudicate le norme sui conflitti di competenza relativi all'esercizio della giurisdizione previste dalla decisione quadro 2009/948/GAI del Consiglio, del 30 novembre 2009, sulla prevenzione e la risoluzione dei conflitti relativi all'esercizio della giurisdizione nei procedimenti penali <sup>(1)</sup>.
- (51) Qualora la vittima abbia lasciato il territorio dello Stato membro in cui è stato commesso il reato, tale Stato membro non dovrebbe più essere tenuto a fornire assistenza, sostegno e protezione, eccetto per quanto è direttamente connesso al procedimento penale che ha avviato in relazione al reato interessato, come le misure speciali di protezione durante il procedimento giudiziario. Lo Stato membro di residenza della vittima dovrebbe fornire l'assistenza, il sostegno e la protezione necessari alle esigenze di recupero della vittima.
- (52) Dovrebbero sussistere misure per proteggere la sicurezza e la dignità delle vittime e dei loro familiari da vittimizzazione secondaria e ripetuta, da intimidazione e da ritorsioni, quali provvedimenti provvisori o ordini di protezione o di non avvicinamento.

<sup>(1)</sup> GU L 328 del 15.12.2009, pag. 42.

- (53) È opportuno limitare il rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni — da parte dell'autore del reato o a seguito della partecipazione al procedimento penale — svolgendo il procedimento in un modo coordinato e rispettoso, che consenta alle vittime di stabilire un clima di fiducia con le autorità. È opportuno che l'interazione con le autorità competenti avvenga nel modo più agevole possibile ma che si limiti al tempo stesso il numero di contatti non necessari fra queste e la vittima, ricorrendo ad esempio a registrazioni video delle audizioni e consentendone l'uso nei procedimenti giudiziari. È opportuno che gli operatori della giustizia abbiano a disposizione una gamma quanto più varia possibile di misure per evitare sofferenza alle vittime durante il procedimento giudiziario, soprattutto a causa di un eventuale contatto visivo con l'autore del reato, i suoi familiari, i suoi complici o i cittadini che assistono al processo. A tal fine gli Stati membri dovrebbero essere esortati ad adottare, in particolare in relazione ai tribunali e alle stazioni di polizia, misure pratiche e realizzabili per consentire di creare strutture quali ingressi e luoghi d'attesa separati per le vittime. Inoltre, gli Stati membri dovrebbero, nella misura del possibile, organizzare il procedimento penale in modo da evitare i contatti tra la vittima e i suoi familiari e l'autore del reato, ad esempio convocando la vittima e l'autore del reato alle udienze in orari diversi.
- (54) Proteggere la vita privata della vittima può essere un mezzo importante per evitare la vittimizzazione secondaria e ripetuta, l'intimidazione e le ritorsioni, e a tal fine è possibile avvalersi di una serie di provvedimenti fra cui, ad esempio, la non divulgazione, o la divulgazione limitata, di informazioni riguardanti la sua identità e il luogo in cui si trova. Tale protezione è particolarmente importante in caso di vittime minorenni e include la non divulgazione dei nomi. Tuttavia, potrebbero esservi situazioni in cui, eccezionalmente, la divulgazione o addirittura l'ampia diffusione di informazioni possono giovare al minore, ad esempio nei casi di rapimento. Le misure volte a proteggere la vita privata e l'immagine della vittima e dei suoi familiari dovrebbero sempre essere conformi al diritto a un equo processo e alla libertà di espressione, quali riconosciuti dagli articoli 6 e 10, rispettivamente, della convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali.
- (55) Nel corso dei procedimenti penali alcune vittime sono particolarmente esposte al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni da parte dell'autore del reato. È possibile che tale rischio derivi dalle caratteristiche personali della vittima o dal tipo, dalla natura o dalle circostanze del reato. Solo una valutazione individuale, svolta al più presto, può permettere di riconoscere efficacemente tale rischio. Tale valutazione dovrebbe essere effettuata per tutte le vittime allo scopo di stabilire se corrono il rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni e di quali misure speciali di protezione hanno bisogno.
- (56) Le valutazioni individuali dovrebbero tenere conto delle caratteristiche personali della vittima, quali età, genere, identità o espressione di genere, appartenenza etnica, razza, religione, orientamento sessuale, stato di salute, disabilità, status in materia di soggiorno, difficoltà di comunicazione, relazione con la persona indagata o dipendenza da essa e precedente esperienza di reati. Dovrebbero altresì tenere conto del tipo o della natura e delle circostanze dei reati, ad esempio se si tratti di reati basati sull'odio, generati da danni o commessi con la discriminazione quale movente, violenza sessuale, violenza in una relazione stretta, se l'autore del reato godesse di una posizione di autorità, se la residenza della vittima sia in una zona ad elevata criminalità o controllata da gruppi criminali o se il paese d'origine della vittima non sia lo Stato membro in cui è stato commesso il reato.
- (57) Le vittime della tratta di esseri umani, del terrorismo, della criminalità organizzata, della violenza nelle relazioni strette, di violenza o sfruttamento sessuale, della violenza di genere, di reati basati sull'odio, e le vittime disabili e le vittime minorenni tendono a presentare un elevato tasso di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni. Occorre prestare particolare attenzione quando si valuta se tali vittime corrono il rischio di tale vittimizzazione, intimidazione o di ritorsioni e presumere che trarranno vantaggio da misure speciali di protezione.
- (58) È opportuno che le vittime identificate come vulnerabili al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni possano godere di adeguate misure di protezione durante il procedimento penale. Il preciso carattere di queste misure dovrebbe essere determinato attraverso la valutazione individuale, tenendo conto dei desideri della vittima. La portata di queste misure dovrebbe essere determinata lasciando impregiudicati i diritti della difesa e nel rispetto della discrezionalità giudiziale. Le preoccupazioni e i timori delle vittime in relazione al procedimento dovrebbero essere fattori chiave nel determinare l'eventuale necessità di misure particolari.
- (59) Necessità e vincoli operativi immediati possono rendere impossibile assicurare, per esempio, che le audizioni della vittima siano effettuate sempre dallo stesso operatore di polizia; esempi di questi vincoli sono malattia, maternità o congedo parentale. Inoltre, locali opportunamente concepiti per le audizioni delle vittime potrebbero non essere disponibili, ad esempio per causa di rinnovo. Nel caso di tali vincoli operativi o pratici può non essere possibile provvedere al trattamento specialistico delle vittime.

- (60) Quando, conformemente alla presente direttiva, deve essere nominato un tutore o un rappresentante per il minore, queste funzioni potrebbero essere svolte dalla stessa persona o da una persona giuridica, un'istituzione o un'autorità.
- (61) È opportuno che i funzionari coinvolti in procedimenti penali che possono entrare in contatto personale con le vittime abbiano accesso e ricevano un'adeguata formazione sia iniziale che continua, di livello appropriato al tipo di contatto che intrattengono con le vittime, cosicché siano in grado di identificare le vittime e le loro esigenze e occuparsene in modo rispettoso, sensibile, professionale e non discriminatorio. È opportuno che le persone che possono essere implicate nella valutazione individuale per identificare le esigenze specifiche di protezione delle vittime e determinare la necessità di speciali misure di protezione ricevano una formazione specifica sulle modalità per procedere a tale valutazione. Gli Stati membri dovrebbero garantire tale formazione per i servizi di polizia e il personale giudiziario. Parimenti, si dovrebbe promuovere una formazione per gli avvocati, i pubblici ministeri e i giudici e per gli operatori che forniscono alle vittime sostegno o servizi di giustizia riparativa. Tale obbligo dovrebbe comprendere la formazione sugli specifici servizi di sostegno cui indirizzare le vittime o una specializzazione qualora debbano occuparsi di vittime con esigenze particolari e una formazione specifica in campo psicologico, se del caso. Ove necessario, tale formazione dovrebbe essere sensibile alle specificità di genere. Le azioni degli Stati membri in materia di formazione dovrebbero essere completate da orientamenti, raccomandazioni e scambio di buone prassi, conformemente alla tabella di marcia di Budapest.
- (62) Gli Stati membri dovrebbero incoraggiare le organizzazioni della società civile, comprese le organizzazioni non governative riconosciute e attive che lavorano con le vittime di reato, e collaborare strettamente con esse, in particolare per quanto riguarda le iniziative politiche, le campagne di informazione e sensibilizzazione, i programmi nel campo della ricerca e dell'istruzione, e la formazione, nonché la verifica e valutazione dell'impatto delle misure di assistenza e di protezione di tali vittime. Per prestare alle vittime di reato assistenza, sostegno e protezione adeguate è opportuno che i servizi pubblici operino in maniera coordinata e intervengano a tutti i livelli amministrativi: a livello dell'Unione e a livello nazionale, regionale e locale. Le vittime andrebbero assistite individuando le autorità competenti e indirizzandole ad esse al fine di evitare la ripetizione di questa pratica. Gli Stati membri dovrebbero prendere in considerazione lo sviluppo di «punti unici d'accesso» o «sportelli unici», che si occupino dei molteplici bisogni delle vittime allorché sono coinvolte in un procedimento penale, compreso il bisogno di ricevere informazioni, assistenza, sostegno, protezione e risarcimento.
- (63) Al fine di incoraggiare e agevolare la segnalazione di reati e di permettere alle vittime di rompere il ciclo della vittimizzazione ripetuta, è essenziale che siano a loro disposizione servizi di sostegno affidabili e che le autorità competenti siano pronte a rispondere alle loro segnalazioni in modo rispettoso, sensibile, professionale e, non discriminatorio. Ciò potrebbe accrescere la fiducia delle vittime nei sistemi di giustizia penale degli Stati membri e ridurre il numero dei reati non denunciati. Gli operatori preposti a raccogliere denunce di reato presentate da vittime dovrebbero essere adeguatamente preparati ad agevolare la segnalazione di reati, e dovrebbero essere poste in essere misure che consentano a parti terze, comprese le organizzazioni della società civile, di effettuare le segnalazioni. Dovrebbe essere possibile avvalersi di tecnologie di comunicazione, come la posta elettronica, videoregistrazioni o moduli elettronici in linea per la presentazione delle denunce.
- (64) La raccolta sistematica e adeguata di dati statistici è un elemento riconosciuto essenziale per la definizione di politiche efficaci in ordine ai diritti previsti dalla presente direttiva. Al fine di agevolare la valutazione dell'attuazione della presente direttiva, gli Stati membri dovrebbero comunicare alla Commissione i dati statistici relativi all'applicazione delle procedure nazionali in materia di vittime di reato, compresi almeno il numero e il tipo dei reati denunciati e, nella misura in cui tali dati sono noti e disponibili, il numero, il sesso e l'età delle vittime. Dati statistici pertinenti possono includere i dati registrati dalle autorità giudiziarie e dalle autorità di contrasto e, per quanto possibile, i dati amministrativi raccolti dai servizi di assistenza sanitaria e di assistenza sociale e dalle organizzazioni pubbliche e non governative di assistenza alle vittime o dai servizi di giustizia riparativa e di altro tipo che lavorano con le vittime di reato. I dati giudiziari possono includere informazioni sul reato denunciato, il numero di casi oggetto di indagine e le persone processate e condannate. I dati amministrativi inerenti a servizi possono includere, per quanto possibile, informazioni sulle modalità di ricorso delle vittime ai servizi offerti dalle autorità statali e dalle organizzazioni di assistenza pubbliche e private, quali il numero di casi di rinvio da parte della polizia ai servizi di assistenza alle vittime, il numero delle vittime che chiedono, ottengono o non ottengono assistenza o giustizia riparativa.
- (65) La presente direttiva è volta a modificare e ad ampliare le disposizioni della decisione quadro 2001/220/GAI. Poiché le modifiche da apportare sono considerevoli per quantità e natura, a fini di chiarezza è opportuno sostituire completamente la suddetta decisione quadro in relazione agli Stati membri che partecipano all'adozione della presente direttiva.



(66) La presente direttiva rispetta i diritti fondamentali e osserva i principi riconosciuti dalla Carta dei diritti fondamentali dell'Unione europea. In particolare, è volta a promuovere il diritto alla dignità, alla vita, all'integrità fisica e psichica, alla libertà e alla sicurezza, il rispetto della vita privata e della vita familiare, il diritto di proprietà, il principio di non-discriminazione, il principio della parità tra donne e uomini, i diritti dei minori, degli anziani e delle persone con disabilità e il diritto a un giudice imparziale.

(67) Poiché l'obiettivo della presente direttiva, vale a dire stabilire norme minime in materia di diritti, assistenza e protezione delle vittime di reato, non può essere conseguito in misura sufficiente dagli Stati membri e può dunque, a motivo della portata e degli effetti potenziali, essere conseguito meglio a livello di Unione, quest'ultima può intervenire in base al principio di sussidiarietà sancito dall'articolo 5 del trattato sull'Unione europea (TUE). La presente direttiva si limita a quanto è necessario per conseguire tale obiettivo in ottemperanza al principio di proporzionalità enunciato nello stesso articolo.

(68) I dati personali trattati nell'ambito dell'attuazione della presente direttiva dovrebbero essere protetti conformemente alla decisione quadro 2008/977/GAI del Consiglio, del 27 novembre 2008, sulla protezione dei dati personali trattati nell'ambito della cooperazione giudiziaria e di polizia in materia penale <sup>(1)</sup>, e conformemente ai principi stabiliti dalla convenzione del Consiglio d'Europa del 28 gennaio 1981 sulla protezione delle persone rispetto al trattamento automatizzato di dati di carattere personale, che tutti gli Stati membri hanno ratificato.

(69) La presente direttiva non incide sulle disposizioni di più ampia portata contenute in altri atti giuridici dell'Unione che trattano in modo più mirato le specifiche esigenze di particolari categorie di vittime quali le vittime della tratta degli esseri umani e i minori vittime di abuso e sfruttamento sessuale e pedopornografia.

(70) A norma dell'articolo 3 del protocollo n. 21 sulla posizione del Regno Unito e dell'Irlanda rispetto allo spazio di libertà, sicurezza e giustizia, allegato al TUE e al TFUE, detti Stati membri hanno notificato che desiderano partecipare all'adozione e all'applicazione della presente direttiva.

(71) A norma degli articoli 1 e 2 del protocollo n. 22 sulla posizione della Danimarca, allegato al TUE e al TFUE, la Danimarca non partecipa all'adozione della presente direttiva, non è da essa vincolata, né è soggetta alla sua applicazione.

(72) Il 17 ottobre 2011 <sup>(2)</sup> il Garante europeo della protezione dei dati ha espresso un parere basato sull'articolo 41, paragrafo 2, del regolamento (CE) n. 45/2001 del Parlamento europeo e del Consiglio, del 18 dicembre 2000, concernente la tutela delle persone fisiche in relazione al trattamento dei dati personali da parte delle istituzioni e degli organismi comunitari, nonché la libera circolazione di tali dati <sup>(3)</sup>,

HANNO ADOTTATO LA PRESENTE DIRETTIVA:

## CAPO 1

### DISPOSIZIONI GENERALI

#### Articolo 1

#### Obiettivi

1. Scopo della presente direttiva è garantire che le vittime di reato ricevano informazione, assistenza e protezione adeguate e possano partecipare ai procedimenti penali.

Gli Stati membri assicurano che le vittime siano riconosciute e trattate in maniera rispettosa, sensibile, personalizzata, professionale e non discriminatoria, in tutti i contatti con servizi di assistenza alle vittime o di giustizia riparativa o con un'autorità competente operante nell'ambito di un procedimento penale. I diritti previsti dalla presente direttiva si applicano alle vittime in maniera non discriminatoria, anche in relazione al loro status in materia di soggiorno.

2. Gli Stati membri assicurano che nell'applicazione della presente direttiva, se la vittima è un minore, sia innanzitutto considerato l'interesse superiore del minore e si proceda a una valutazione individuale. Si privilegia un approccio rispettoso delle esigenze del minore, che ne tenga in considerazione età, maturità, opinioni, necessità e preoccupazioni. Il minore e il titolare della potestà genitoriale o altro eventuale rappresentante legale sono informati in merito a eventuali misure o diritti specificamente vertenti sui minori.

#### Articolo 2

#### Definizioni

1. Ai fini della presente direttiva si intende per:

a) «vittima»:

i) una persona fisica che ha subito un danno, anche fisico, mentale o emotivo, o perdite economiche che sono stati causati direttamente da un reato;

ii) un familiare di una persona la cui morte è stata causata direttamente da un reato e che ha subito un danno in conseguenza della morte di tale persona;

<sup>(1)</sup> GU L 350 del 30.12.2008, pag. 60.

<sup>(2)</sup> GU C 35 del 9.2.2012, pag. 10.

<sup>(3)</sup> GU L 8 del 12.1.2001, pag. 1.

- b) «familiare»: il coniuge, la persona che convive con la vittima in una relazione intima, nello stesso nucleo familiare e in modo stabile e continuo, i parenti in linea diretta, i fratelli e le sorelle, e le persone a carico della vittima;
- c) «minore»: una persona di età inferiore agli anni diciotto;
- d) «giustizia riparativa»: qualsiasi procedimento che permette alla vittima e all'autore del reato di partecipare attivamente, se vi acconsentono liberamente, alla risoluzione delle questioni risultanti dal reato con l'aiuto di un terzo imparziale.

## 2. Gli Stati membri possono stabilire procedure:

- a) per limitare il numero di familiari ammessi a beneficiare dei diritti previsti dalla presente direttiva tenendo conto delle circostanze specifiche di ciascun caso; e
- b) in relazione al paragrafo 1, lettera a), punto ii), per determinare quali familiari hanno la priorità in relazione all'esercizio dei diritti previsti dalla presente direttiva.

## CAPO 2

### INFORMAZIONI E SOSTEGNO

#### Articolo 3

#### **Diritto di comprendere e di essere compresi**

1. Gli Stati membri adottano le misure adeguate per assistere la vittima, fin dal primo contatto e in ogni ulteriore necessaria interazione con un'autorità competente nell'ambito di un procedimento penale, incluso quando riceve informazioni da questa, a comprendere e a essere compresa.
2. Gli Stati membri provvedono a che le comunicazioni fornite alla vittima siano offerte oralmente o per iscritto in un linguaggio semplice e accessibile. Tali comunicazioni tengono conto delle personali caratteristiche della vittima, comprese eventuali disabilità che possano pregiudicare la sua facoltà di comprendere o di essere compreso.
3. Gli Stati membri consentono alla vittima di essere accompagnata da una persona di sua scelta nel primo contatto con un'autorità competente, laddove, in conseguenza degli effetti del reato, la vittima necessita di assistenza per comprendere o essere compresa, a condizione che ciò non pregiudichi gli interessi della vittima o l'andamento del procedimento.

#### Articolo 4

#### **Diritto di ottenere informazioni fin dal primo contatto con un'autorità competente**

1. Gli Stati membri provvedono a che alla vittima siano offerte fin dal primo contatto con un'autorità competente, senza indebito ritardo, e affinché possa accedere ai diritti previsti dalla presente direttiva, le informazioni seguenti:

- a) il tipo di assistenza che può ricevere e da chi, nonché, se del caso, informazioni di base sull'accesso all'assistenza sanitaria, ad un'eventuale assistenza specialistica, anche psicologica, e su una sistemazione alternativa;
- b) le procedure per la presentazione di una denuncia relativa ad un reato e il ruolo svolto dalla vittima in tali procedure;
- c) come e a quali condizioni è possibile ottenere protezione, comprese le misure di protezione;
- d) come e a quali condizioni è possibile avere accesso all'assistenza di un legale, al patrocinio a spese dello Stato e a qualsiasi altra forma di assistenza;
- e) come e a quali condizioni è possibile l'accesso a un risarcimento;
- f) come e a quali condizioni ha diritto all'interpretazione e alla traduzione;
- g) qualora risieda in uno Stato membro diverso da quello in cui è stato commesso il reato, quali sono le misure, le procedure o i meccanismi speciali a cui può ricorrere per tutelare i propri interessi nello Stato membro in cui ha luogo il primo contatto con l'autorità competente;
- h) le procedure disponibili per denunciare casi di mancato rispetto dei propri diritti da parte dell'autorità competente operante nell'ambito di un procedimento penale;
- i) a chi rivolgersi per comunicazioni sul proprio caso;
- j) i servizi di giustizia riparativa disponibili;
- k) come e a quali condizioni le spese sostenute in conseguenza della propria partecipazione al procedimento penale possono essere rimborsate.

2. L'entità o il livello di dettaglio delle informazioni di cui al paragrafo 1 possono variare in base alle specifiche esigenze e circostanze personali della vittima, nonché al tipo o alla natura del reato. Ulteriori informazioni dettagliate possono essere fornite nelle fasi successive, in funzione delle esigenze della vittima e della pertinenza di tali informazioni in ciascuna fase del procedimento.

### Articolo 5

#### Diritti della vittima al momento della denuncia

1. Gli Stati membri provvedono a che la vittima ottenga un avviso di ricevimento scritto della denuncia formale da essi presentata alla competente autorità di uno Stato membro che indichi gli elementi essenziali del reato interessato.

2. Gli Stati membri assicurano che la vittima che intende presentare una denuncia relativa a un reato e non comprende o non parla la lingua dell'autorità competente abbia la possibilità di presentare la denuncia utilizzando una lingua che comprende o ricevendo la necessaria assistenza linguistica.

3. Gli Stati membri assicurano che la vittima che non comprende o non parla la lingua dell'autorità competente disponga, qualora ne faccia richiesta, della traduzione gratuita, in una lingua che comprende, dell'avviso di ricevimento scritto della sua denuncia di cui al paragrafo 1.

### Articolo 6

#### Diritto di ottenere informazioni sul proprio caso

1. Gli Stati membri provvedono a che la vittima sia informata, senza indebito ritardo, del proprio diritto di ricevere le seguenti informazioni sul procedimento avviato a seguito della denuncia relativa a un reato da essa subito e provvedono a che la stessa ottenga, previa richiesta, tali informazioni:

- a) un'eventuale decisione di non esercitare l'azione penale o di non proseguire le indagini o di non perseguire l'autore del reato;
- b) la data e il luogo del processo e la natura dei capi d'imputazione a carico dell'autore del reato.

2. Gli Stati membri provvedono a che, secondo il ruolo nel pertinente sistema giudiziario penale, la vittima sia informata, senza indebito ritardo, del proprio diritto di ricevere le seguenti informazioni sul procedimento penale avviato a seguito della denuncia relativa a un reato da essa subito e provvedono a che la stessa ottenga, previa richiesta, tali informazioni:

- a) l'eventuale sentenza definitiva di un processo;
  - b) le informazioni che consentono alla vittima di essere al corrente dello stato del procedimento, salvo in casi eccezionali in cui tale comunicazione potrebbe pregiudicare il corretto svolgimento del procedimento.
3. Le informazioni di cui al paragrafo 1, lettera a), e al paragrafo 2, lettera a), includono la motivazione o una breve sintesi della motivazione della decisione in questione, eccetto il caso di una decisione della giuria o di una decisione qualora le motivazioni siano riservate, nel qual caso le stesse non sono fornite in base alla legge nazionale.

4. La volontà della vittima di ottenere o di non ottenere informazioni vincola l'autorità competente, a meno che tali

informazioni non debbano essere comunicate a motivo del diritto della vittima a partecipare attivamente al procedimento penale. Gli Stati membri consentono alla vittima di modificare in qualunque momento la sua volontà e ne tengono conto.

5. Gli Stati membri garantiscono alla vittima la possibilità di essere informata, senza indebito ritardo, della scarcerazione o dell'evasione della persona posta in stato di custodia cautelare, processata o condannata che riguardano la vittima. Gli Stati membri garantiscono che la vittima riceva altresì informazioni circa eventuali pertinenti misure attivate per la sua protezione in caso di scarcerazione o evasione dell'autore del reato.

6. La vittima, previa richiesta, riceve le informazioni di cui al paragrafo 5 almeno nei casi in cui sussista un pericolo o un rischio concreto di danno nei suoi confronti, salvo se tale notifica comporta un rischio concreto di danno per l'autore del reato.

### Articolo 7

#### Diritto all'interpretazione e alla traduzione

1. Gli Stati membri assicurano che la vittima che non comprende o non parla la lingua del procedimento penale in questione sia assistita, previa richiesta, da un interprete secondo il ruolo della vittima previsto nel pertinente sistema giudiziario penale nell'ambito del procedimento penale, gratuitamente, almeno durante le audizioni o gli interrogatori della vittima nel corso del procedimento penale dinanzi alle autorità inquirenti e giudiziarie, inclusi gli interrogatori di polizia, così come per la sua partecipazione attiva alle udienze, comprese le necessarie udienze preliminari.

2. Fatti salvi i diritti della difesa e nel rispetto della discrezionalità giudiziale, è possibile utilizzare tecnologie di comunicazione quali la videoconferenza, il telefono o internet, a meno che la presenza fisica dell'interprete non sia necessaria perché la vittima possa esercitare correttamente i suoi diritti o comprendere il procedimento.

3. Gli Stati membri assicurano che alla vittima che non comprende o non parla la lingua del procedimento penale in questione sia fornita, secondo il ruolo della vittima previsto nell'ambito del procedimento penale dal pertinente sistema giudiziario penale, previa richiesta, la traduzione delle informazioni essenziali affinché possa esercitare i suoi diritti nel procedimento penale in una lingua da essa compresa, gratuitamente, nella misura in cui tali informazioni siano rese accessibili alla vittima. Le traduzioni di tali informazioni comprendono almeno la decisione che mette fine al procedimento penale relativo al reato da essa subito e, previa richiesta della vittima, la motivazione o una breve sintesi della motivazione della decisione, eccetto il caso di una decisione della giuria o di una decisione le cui motivazioni siano riservate, nel qual caso le stesse non sono fornite in base al diritto nazionale.

4. Gli Stati membri assicurano che alla vittima che ha diritto a informazioni sulla data e sul luogo del processo, a norma dell'articolo 6, paragrafo 1, lettera b), e che non comprende la lingua dell'autorità competente, sia fornita la traduzione delle informazioni che ha diritto a ricevere, previa richiesta.

5. La vittima può presentare una richiesta motivata affinché un documento sia considerato fondamentale. Non vi è l'obbligo di tradurre i passaggi di documenti fondamentali che non sono rilevanti allo scopo di consentire alle vittime di partecipare attivamente al procedimento penale.

6. In deroga ai paragrafi 1 e 3, è possibile fornire una traduzione orale o un riassunto orale di documenti fondamentali, anziché una traduzione scritta, a condizione che tale traduzione orale o riassunto orale non pregiudichi l'equità del procedimento.

7. Gli Stati membri provvedono affinché l'autorità competente valuti se le vittime necessitano dell'interpretazione o della traduzione, come previsto ai paragrafi 1 e 3. La vittima può impugnare una decisione di non fornire l'interpretazione o la traduzione. Le norme procedurali di tale impugnazione sono determinate dal diritto nazionale.

8. L'interpretazione e la traduzione e l'eventuale esame di un'impugnazione avverso una decisione di non fornire l'interpretazione o la traduzione a norma del presente articolo non prolungano irragionevolmente il procedimento penale.

#### Articolo 8

##### **Diritto di accesso ai servizi di assistenza alle vittime**

1. Gli Stati membri provvedono a che la vittima, in funzione delle sue esigenze, abbia accesso a specifici servizi di assistenza riservati, gratuiti e operanti nell'interesse della vittima, prima, durante e per un congruo periodo di tempo dopo il procedimento penale. I familiari hanno accesso ai servizi di assistenza alle vittime in conformità delle loro esigenze e dell'entità del danno subito a seguito del reato commesso nei confronti della vittima.

2. Gli Stati membri agevolano l'indirizzamento delle vittime da parte dell'autorità competente che ha ricevuto la denuncia e delle altre entità pertinenti verso gli specifici servizi di assistenza.

3. Gli Stati membri adottano misure per istituire servizi di assistenza specialistica gratuiti e riservati in aggiunta a, o come

parte integrante di, servizi generali di assistenza alle vittime, o per consentire alle organizzazioni di assistenza alle vittime di avvalersi di entità specializzate già in attività che forniscono siffatta assistenza specialistica. In funzione delle sue esigenze specifiche, la vittima ha accesso a siffatti servizi e i familiari vi hanno accesso in funzione delle loro esigenze specifiche e dell'entità del danno subito a seguito del reato commesso nei confronti della vittima.

4. I servizi di assistenza alle vittime e gli eventuali servizi di assistenza specialistica possono essere istituiti come organizzazioni pubbliche o non governative e possono essere organizzati su base professionale o volontaria.

5. Gli Stati membri assicurano che l'accesso a qualsiasi servizio di assistenza alle vittime non sia subordinato alla presentazione da parte della vittima di formale denuncia relativa a un reato all'autorità competente.

#### Articolo 9

##### **Assistenza prestata dai servizi di assistenza alle vittime**

1. I servizi di assistenza alle vittime, di cui all'articolo 8, paragrafo 1, forniscono almeno:

- a) informazioni, consigli e assistenza in materia di diritti delle vittime, fra cui le possibilità di accesso ai sistemi nazionali di risarcimento delle vittime di reato, e in relazione al loro ruolo nel procedimento penale, compresa la preparazione in vista della partecipazione al processo;
- b) informazioni su eventuali pertinenti servizi specialistici di assistenza in attività o il rinvio diretto a tali servizi;
- c) sostegno emotivo e, ove disponibile, psicologico;
- d) consigli relativi ad aspetti finanziari e pratici derivanti dal reato;
- e) salvo ove diversamente disposto da altri servizi pubblici o privati, consigli relativi al rischio e alla prevenzione di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni.

2. Gli Stati membri incoraggiano i servizi di assistenza alle vittime a prestare particolare attenzione alle specifiche esigenze delle vittime che hanno subito un notevole danno a motivo della gravità del reato.

3. Salvo ove diversamente disposto da altri servizi pubblici o privati, i servizi di assistenza specialistica di cui all'articolo 8, paragrafo 3, sviluppano e forniscono almeno:

- a) alloggi o altra eventuale sistemazione temporanea a vittime bisognose di un luogo sicuro a causa di un imminente rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni;
- b) assistenza integrata e mirata a vittime con esigenze specifiche, come vittime di violenza sessuale, vittime di violenza di genere e vittime di violenza nelle relazioni strette, compresi il sostegno per il trauma subito e la relativa consulenza.

### CAPO 3

#### PARTECIPAZIONE AL PROCEDIMENTO PENALE

##### Articolo 10

#### Diritto di essere sentiti

1. Gli Stati membri garantiscono che la vittima possa essere sentita nel corso del procedimento penale e possa fornire elementi di prova. Quando la vittima da sentire è un minore, si tengono in debito conto la sua età e la sua maturità.

2. Le norme procedurali in base alle quali la vittima può essere sentita nel corso del procedimento penale e può fornire elementi di prova sono stabilite dal diritto nazionale.

##### Articolo 11

#### Diritti in caso di decisione di non esercitare l'azione penale

1. Gli Stati membri garantiscono alla vittima, secondo il ruolo di quest'ultima nel pertinente sistema giudiziario penale, il diritto di chiedere il riesame di una decisione di non esercitare l'azione penale. Le norme procedurali per tale riesame sono determinate dal diritto nazionale.

2. Laddove, a norma del diritto nazionale, il ruolo della vittima nel pertinente sistema giudiziario penale è stabilito soltanto in seguito alla decisione di esercitare l'azione penale contro l'autore del reato, gli Stati membri garantiscono almeno alle vittime di gravi reati il diritto di chiedere il riesame di una decisione di non esercitare l'azione penale. Le norme procedurali per tale riesame sono determinate dal diritto nazionale.

3. Gli Stati membri provvedono a che la vittima sia informata, senza indebito ritardo, del proprio diritto di ricevere e di ottenere informazioni sufficienti per decidere se chiedere il riesame di una decisione di non esercitare l'azione penale, previa richiesta.

4. Qualora la decisione di non esercitare l'azione penale sia adottata dalla massima autorità responsabile dell'esercizio dell'azione penale avverso le cui decisioni non è possibile chiedere la revisione secondo il diritto nazionale, la revisione può essere svolta dalla stessa autorità.

5. I paragrafi 1, 3 e 4 non si applicano a una decisione di non esercitare l'azione penale se tale decisione si traduce in una composizione extragiudiziale, sempre che il diritto nazionale disponga in tal senso.

##### Articolo 12

#### Diritto a garanzie nel contesto dei servizi di giustizia riparativa

1. Gli Stati membri adottano misure che garantiscono la protezione delle vittime dalla vittimizzazione secondaria e ripetuta, dall'intimidazione e dalle ritorsioni, applicabili in caso di ricorso a eventuali servizi di giustizia riparativa. Siffatte misure assicurano che una vittima che sceglie di partecipare a procedimenti di giustizia riparativa abbia accesso a servizi di giustizia riparativa sicuri e competenti, e almeno alle seguenti condizioni:

- a) si ricorre ai servizi di giustizia riparativa soltanto se sono nell'interesse della vittima, in base ad eventuali considerazioni di sicurezza, e se sono basati sul suo consenso libero e informato, che può essere revocato in qualsiasi momento;
- b) prima di acconsentire a partecipare al procedimento di giustizia riparativa, la vittima riceve informazioni complete e obiettive in merito al procedimento stesso e al suo potenziale esito, così come informazioni sulle modalità di controllo dell'esecuzione di un eventuale accordo;
- c) l'autore del reato ha riconosciuto i fatti essenziali del caso;
- d) ogni accordo è raggiunto volontariamente e può essere preso in considerazione in ogni eventuale procedimento penale ulteriore;
- e) le discussioni non pubbliche che hanno luogo nell'ambito di procedimenti di giustizia riparativa sono riservate e possono essere successivamente divulgate solo con l'accordo delle parti o se lo richiede il diritto nazionale per preminenti motivi di interesse pubblico.

2. Gli Stati membri facilitano il rinvio dei casi, se opportuno, ai servizi di giustizia riparativa, anche stabilendo procedure o orientamenti relativi alle condizioni di tale rinvio.

##### Articolo 13

#### Diritto al patrocinio a spese dello Stato

Gli Stati membri garantiscono che le vittime che sono parti del procedimento penale abbiano accesso al patrocinio a spese dello Stato. Le condizioni o le norme procedurali in base alle quali le vittime accedono al patrocinio a spese dello Stato sono stabilite dal diritto nazionale.

*Articolo 14***Diritto al rimborso delle spese**

Gli Stati membri concedono alle vittime che partecipano al procedimento penale la possibilità di ottenere il rimborso delle spese sostenute a seguito di tale attiva partecipazione, secondo il ruolo della vittima nel pertinente sistema giudiziario penale. Le condizioni o le norme procedurali in base alle quali le vittime possono ottenere il rimborso sono stabilite dal diritto nazionale.

*Articolo 15***Diritto alla restituzione dei beni**

Gli Stati membri provvedono a che, in seguito a una decisione di un'autorità competente, i beni restituibili sequestrati nell'ambito del procedimento penale siano resi senza ritardo alle vittime, tranne quando il procedimento penale imponga altrimenti. Le condizioni o le norme procedurali in base alle quali tali beni sono restituiti alle vittime sono stabilite dal diritto nazionale.

*Articolo 16***Diritto di ottenere una decisione in merito al risarcimento da parte dell'autore del reato nell'ambito del procedimento penale**

1. Gli Stati membri garantiscono alla vittima il diritto di ottenere una decisione in merito al risarcimento da parte dell'autore del reato nell'ambito del procedimento penale entro un ragionevole lasso di tempo, tranne qualora il diritto nazionale preveda che tale decisione sia adottata nell'ambito di un altro procedimento giudiziario.

2. Gli Stati membri promuovono misure per incoraggiare l'autore del reato a prestare adeguato risarcimento alla vittima.

*Articolo 17***Diritti delle vittime residenti in un altro Stato membro**

1. Gli Stati membri garantiscono che le proprie autorità competenti siano in grado di adottare le misure appropriate per ridurre al minimo le difficoltà derivanti dal fatto che la vittima è residente in uno Stato membro diverso da quello in cui è stato commesso il reato, in particolare per quanto concerne lo svolgimento del procedimento. A tal fine le autorità dello Stato membro in cui è stato commesso il reato devono essere in grado, in particolare:

- a) di raccogliere la deposizione della vittima immediatamente dopo l'avvenuta denuncia relativa al reato all'autorità competente;
- b) di ricorrere nella misura del possibile, per l'audizione delle vittime che risiedono all'estero, alle disposizioni relative alla videoconferenza e alla teleconferenza di cui alla convenzione del 29 maggio 2000 relativa all'assistenza giudiziaria in materia penale tra gli Stati membri dell'Unione europea <sup>(1)</sup>.

2. Gli Stati membri assicurano che la vittima di un reato perpetrato in uno Stato membro diverso da quello in cui essa risiede possa sporgere denuncia presso le autorità competenti dello Stato membro di residenza qualora non sia stata in grado di farlo nello Stato membro in cui è stato commesso il reato o, in caso di reato grave ai sensi del diritto nazionale di tale Stato membro, qualora non abbia desiderato farlo.

3. Gli Stati membri provvedono affinché l'autorità competente dinanzi alla quale la vittima presenta la denuncia la trasmetta senza indugio all'autorità competente dello Stato membro in cui è stato commesso il reato, qualora la competenza ad avviare il procedimento non sia esercitata dallo Stato membro in cui è stata presentata la denuncia.

## CAPO 4

**PROTEZIONE DELLE VITTIME E RICONOSCIMENTO DELLE VITTIME CON SPECIFICHE ESIGENZE DI PROTEZIONE***Articolo 18***Diritto alla protezione**

Fatti salvi i diritti della difesa, gli Stati membri assicurano che sussistano misure per proteggere la vittima e i suoi familiari da vittimizzazione secondaria e ripetuta, intimidazione e ritorsioni, compreso il rischio di danni emotivi o psicologici, e per salvaguardare la dignità della vittima durante gli interrogatori o le testimonianze. Se necessario, tali misure includono anche procedure istituite ai sensi del diritto nazionale ai fini della protezione fisica della vittima e dei suoi familiari.

*Articolo 19***Diritto all'assenza di contatti fra la vittima e l'autore del reato**

1. Gli Stati membri instaurano le condizioni necessarie affinché si evitino contatti fra la vittima e i suoi familiari, se necessario, e l'autore del reato nei locali in cui si svolge il procedimento penale, a meno che non lo imponga il procedimento penale.

2. Gli Stati membri provvedono a munire i nuovi locali giudiziari di zone di attesa riservate alle vittime.

*Articolo 20***Diritto delle vittime alla protezione durante le indagini penali**

Fatti salvi i diritti della difesa e nel rispetto della discrezionalità giudiziale, gli Stati membri provvedono a che durante le indagini penali:

- a) l'audizione della vittima si svolga senza indebito ritardo dopo la presentazione della denuncia relativa a un reato presso l'autorità competente;
- b) il numero delle audizioni della vittima sia limitato al minimo e le audizioni abbiano luogo solo se strettamente necessarie ai fini dell'indagine penale;

<sup>(1)</sup> GU C 197 del 12.7.2000, pag. 3.

- c) la vittima possa essere accompagnata dal suo rappresentante legale e da una persona di sua scelta, salvo motivata decisione contraria;
- d) le visite mediche siano limitate al minimo e abbiano luogo solo se strettamente necessarie ai fini del procedimento penale.

#### Articolo 21

##### **Diritto alla protezione della vita privata**

1. Gli Stati membri provvedono a che le autorità competenti possano adottare, nell'ambito del procedimento penale, misure atte a proteggere la vita privata, comprese le caratteristiche personali della vittima rilevate nella valutazione individuale di cui all'articolo 22, e l'immagine della vittima e dei suoi familiari. Gli Stati membri provvedono altresì affinché le autorità competenti possano adottare tutte le misure legali intese ad impedire la diffusione pubblica di qualsiasi informazione che permetta l'identificazione di una vittima minorenni.

2. Per proteggere la vita privata, l'integrità personale e i dati personali della vittima, gli Stati membri, nel rispetto della libertà d'espressione e di informazione e della libertà e del pluralismo dei media, incoraggiano i media ad adottare misure di autoregolamentazione.

#### Articolo 22

##### **Valutazione individuale delle vittime per individuare le specifiche esigenze di protezione**

1. Gli Stati membri provvedono affinché le vittime siano tempestivamente oggetto di una valutazione individuale, conformemente alle procedure nazionali, per individuare le specifiche esigenze di protezione e determinare se e in quale misura trarrebbero beneficio da misure speciali nel corso del procedimento penale, come previsto a norma degli articoli 23 e 24, essendo particolarmente esposte al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni.

2. La valutazione individuale tiene conto, in particolare, degli elementi seguenti:

- a) le caratteristiche personali della vittima;
- b) il tipo o la natura del reato; e
- c) le circostanze del reato.

3. Nell'ambito della valutazione individuale è rivolta particolare attenzione alle vittime che hanno subito un notevole danno a motivo della gravità del reato, alle vittime di reati motivati da pregiudizio o discriminazione che potrebbero essere correlati in particolare alle loro caratteristiche personali, alle vittime che si trovano particolarmente esposte per la loro relazione e dipendenza nei confronti dell'autore del reato. In tal senso, sono

oggetto di debita considerazione le vittime del terrorismo, della criminalità organizzata, della tratta di esseri umani, della violenza di genere, della violenza nelle relazioni strette, della violenza o dello sfruttamento sessuale o dei reati basati sull'odio e le vittime con disabilità.

4. Ai fini della presente direttiva si presume che i minori vittime di reato abbiano specifiche esigenze di protezione essendo particolarmente esposti al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni. Per determinare se e in quale misura debbano avvalersi delle misure speciali di cui agli articoli 23 e 24, i minori vittime di reato sono oggetto di una valutazione individuale come previsto nel paragrafo 1 del presente articolo.

5. La portata della valutazione individuale può essere adattata secondo la gravità del reato e il grado di danno apparente subito dalla vittima.

6. La valutazione individuale è effettuata con la stretta partecipazione della vittima e tiene conto dei suoi desideri, compresa la sua eventuale volontà di non avvalersi delle misure speciali secondo il disposto degli articoli 23 e 24.

7. Qualora gli elementi alla base della valutazione individuale siano mutati in modo sostanziale, gli Stati membri provvedono affinché questa sia aggiornata durante l'intero corso del procedimento penale.

#### Articolo 23

##### **Diritto alla protezione delle vittime con esigenze specifiche di protezione nel corso del procedimento penale**

1. Fatti salvi i diritti della difesa e nel rispetto della discrezionalità giudiziale, gli Stati membri provvedono a che le vittime con esigenze specifiche di protezione che si avvalgono delle misure speciali individuate sulla base di una valutazione individuale di cui all'articolo 22, paragrafo 1, possano avvalersi delle misure di cui ai paragrafi 2 e 3 del presente articolo. Una misura speciale prevista a seguito di una valutazione individuale può non essere adottata qualora esigenze operative o pratiche non lo rendano possibile o se vi è urgente bisogno di sentire la vittima e in caso contrario questa o un'altra persona potrebbero subire un danno o potrebbe essere pregiudicato lo svolgimento del procedimento.

2. Durante le indagini penali le vittime con esigenze specifiche di protezione individuate a norma dell'articolo 22, paragrafo 1, possono avvalersi delle misure speciali seguenti:

- a) le audizioni della vittima si svolgono in locali appositi o adattati allo scopo;
- b) le audizioni della vittima sono effettuate da o tramite operatori formati a tale scopo;

c) tutte le audizioni della vittima sono svolte dalle stesse persone, a meno che ciò sia contrario alla buona amministrazione della giustizia;

d) tutte le audizioni delle vittime di violenza sessuale, di violenza di genere o di violenza nelle relazioni strette, salvo il caso in cui siano svolte da un pubblico ministero o da un giudice, sono svolte da una persona dello stesso sesso della vittima, qualora la vittima lo desideri, a condizione che non risulti pregiudicato lo svolgimento del procedimento penale.

3. Durante il procedimento giudiziario le vittime con esigenze specifiche di protezione individuate a norma dell'articolo 22, paragrafo 1, possono avvalersi delle misure seguenti:

a) misure per evitare il contatto visivo fra le vittime e gli autori dei reati, anche durante le deposizioni, ricorrendo a mezzi adeguati fra cui l'uso delle tecnologie di comunicazione;

b) misure per consentire alla vittima di essere sentita in aula senza essere fisicamente presente, in particolare ricorrendo ad appropriate tecnologie di comunicazione;

c) misure per evitare domande non necessarie sulla vita privata della vittima senza rapporto con il reato; e

d) misure che permettano di svolgere l'udienza a porte chiuse.

#### Articolo 24

### **Diritto dei minori a beneficiare di protezione nel corso del procedimento penale**

1. Se la vittima è un minore gli Stati membri, oltre alle misure di cui all'articolo 23, provvedono affinché:

a) nell'ambito delle indagini penali tutte le audizioni del minore vittima di reato possano essere oggetto di registrazione audiovisiva e tali registrazioni possano essere utilizzate come prova nei procedimenti penali;

b) nell'ambito delle indagini penali e del procedimento, secondo il ruolo della vittima nel pertinente sistema giudiziario penale, le autorità competenti nominino un rappresentante speciale per i minori vittime di reato qualora, ai sensi del diritto nazionale, i titolari della responsabilità genitoriale non siano autorizzati a rappresentare il minore vittima di reato in ragione di un conflitto di interesse con quest'ultimo oppure il minore vittima di reato non sia accompagnato o sia separato dalla famiglia;

c) i minori vittime di reato, qualora abbiano diritto a un avvocato, godano del diritto alla consulenza e rappresentanza legale, in nome proprio, nell'ambito di procedimenti in cui

sussiste, o potrebbe sussistere, un conflitto di interessi tra il minore vittima di reato e i titolari della potestà genitoriale.

Le norme procedurali per le registrazioni audiovisive di cui al primo comma, lettera a), e la loro utilizzazione sono determinate dal diritto nazionale.

2. Ove l'età della vittima risulti incerta e vi sia motivo di ritenere che si tratti di un minore, ai fini della presente direttiva si presume che la vittima sia un minore.

#### CAPO 5

### **ALTRE DISPOSIZIONI**

#### *Articolo 25*

### **Formazione degli operatori**

1. Gli Stati membri provvedono a che i funzionari suscettibili di entrare in contatto con la vittima, quali gli agenti di polizia e il personale giudiziario, ricevano una formazione sia generale che specialistica, di livello appropriato al tipo di contatto che intrattengono con le vittime, che li sensibilizzi maggiormente alle esigenze di queste e dia loro gli strumenti per trattarle in modo imparziale, rispettoso e professionale.

2. Fatta salva l'indipendenza della magistratura e le differenze nell'organizzazione del potere giudiziario nell'ambito dell'Unione, gli Stati membri richiedono che i responsabili della formazione di giudici e pubblici ministeri coinvolti nei procedimenti penali offrano l'accesso a una formazione, sia generale che specialistica, che li sensibilizzi maggiormente alle esigenze delle vittime.

3. Con il dovuto rispetto per l'indipendenza della professione forense, gli Stati membri raccomandano che i responsabili della formazione degli avvocati offrano l'accesso a una formazione, sia generale che specialistica, che sensibilizzi maggiormente questi ultimi alle esigenze delle vittime.

4. Attraverso i loro servizi pubblici o finanziando organizzazioni che sostengono le vittime, gli Stati membri incoraggiano iniziative che consentano a coloro che forniscono servizi di assistenza alle vittime e di giustizia riparativa di ricevere un'adeguata formazione, di livello appropriato al tipo di contatto che intrattengono con le vittime, e rispettino le norme professionali per garantire che i loro servizi siano forniti in modo imparziale, rispettoso e professionale.

5. A seconda delle mansioni svolte e della natura e del livello dei contatti fra l'operatore e le vittime, la formazione mira ad abilitare l'operatore a riconoscere le vittime e a trattarle in maniera rispettosa, professionale e non discriminatoria.



*Articolo 26***Cooperazione e coordinamento dei servizi**

1. Gli Stati membri adottano azioni adeguate per facilitare la cooperazione tra Stati membri al fine di migliorare l'accesso delle vittime ai diritti previsti dalla presente direttiva e dal diritto nazionale. Tale cooperazione persegue almeno i seguenti obiettivi:

- a) scambio di migliori prassi;
- b) consultazione in singoli casi; e
- c) assistenza alle reti europee che lavorano su questioni direttamente pertinenti per i diritti delle vittime.

2. Gli Stati membri adottano azioni adeguate, anche attraverso internet, intese a sensibilizzare circa i diritti previsti dalla presente direttiva, riducendo il rischio di vittimizzazione e riducendo al minimo gli effetti negativi del reato e i rischi di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni, in particolare focalizzandosi sui gruppi a rischio come i minori, le vittime della violenza di genere e della violenza nelle relazioni strette. Tali azioni possono includere campagne di informazione e sensibilizzazione e programmi di ricerca e di istruzione, se del caso in cooperazione con le pertinenti organizzazioni della società civile e con altri soggetti interessati.

## CAPO 6

**DISPOSIZIONI FINALI***Articolo 27***Recepimento**

1. Gli Stati membri mettono in vigore le disposizioni legislative, regolamentari e amministrative necessarie per conformarsi alla presente direttiva entro il 16 novembre 2015.

2. Quando gli Stati membri adottano tali disposizioni, queste contengono un riferimento alla presente direttiva o sono corredate di un siffatto riferimento all'atto della pubblicazione ufficiale. Le modalità di tale riferimento sono decise dagli Stati membri.

*Articolo 28***Comunicazione di dati e statistiche**

Entro il 16 novembre 2017, e successivamente ogni tre anni, gli Stati membri trasmettono alla Commissione i dati disponibili

relativi al modo e alla misura in cui le vittime hanno avuto accesso ai diritti previsti dalla presente direttiva.

*Articolo 29***Relazione**

Entro il 16 novembre 2017 la Commissione presenta al Parlamento europeo e al Consiglio una relazione in cui valuta in che misura gli Stati membri abbiano adottato le misure necessarie per conformarsi alla presente direttiva, compresa una descrizione delle misure adottate ai sensi degli articoli 8, 9 e 23, corredata se del caso di proposte legislative.

*Articolo 30***Sostituzione della decisione quadro 2001/220/GAI**

La decisione quadro 2001/220/GAI è sostituita in relazione agli Stati membri che partecipano all'adozione della presente direttiva, fatti salvi gli obblighi degli Stati membri relativi ai termini per il recepimento nel diritto nazionale.

In relazione agli Stati membri che partecipano all'adozione della presente direttiva, i riferimenti alla suddetta decisione quadro si intendono fatti alla presente direttiva.

*Articolo 31***Entrata in vigore**

La presente direttiva entra in vigore il giorno successivo alla pubblicazione nella *Gazzetta ufficiale dell'Unione europea*.

*Articolo 32***Destinatari**

Gli Stati membri sono destinatari della presente direttiva conformemente ai trattati.

Fatto a Strasburgo, il 25 ottobre 2012

Per il Parlamento europeo

Il presidente

M. SCHULZ

Per il Consiglio

Il presidente

A. D. MAVROYIANNIS



# VICTIMS AND CORPORATIONS

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

## Rights of Victims, Challenges for Corporations

Project's first findings

2016



This Report is one of the outcomes of the project *Victims and Corporations. Implementation of Directive 2012/29/EU for Victims of Corporate Crimes and Corporate Violence*, funded by the programme “Justice” of the European Union (Agreement number - JUST/2014/JACC/AG/VICT/7417).

**Project coordination**

Gabrio Forti (Coordinator) and (in alphabetical order) Stefania Giavazzi, Claudia Mazzucato, Arianna Visconti  
Università Cattolica del Sacro Cuore , Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale - “Federico Stella” Centre for Research on Criminal Justice and Policy

**Project partners**

Leuven Institute of Criminology, Catholic University of Leuven  
Max-Planck-Institut für ausländisches und internationales Strafrecht

**Steering group members**

Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Carolin Hillemanns, Katrien Lauwaert, Stefano Manacorda, Enrico Maria Mancuso

**Project website**

[www.victimsandcorporations.eu](http://www.victimsandcorporations.eu)

This publication has been produced with the financial support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of the contributors and can in no way be taken to reflect the views of the European Commission.

This publication has been edited by Claudia Mazzucato.

Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale, Milan, 2016

ISBN 978-88-942229-1-3

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This project is co-funded by  
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## List of Contributors

### **Ivo Aertsen**

Full Professor of Criminology, Leuven Institute of Criminology, Catholic University of Leuven (KU Leuven)

### **Gabriele Della Morte**

Assistant Professor of International Law, Università Cattolica del Sacro Cuore

### **Marc Engelhart**

Head of Research Group, Max-Planck-Institut für ausländisches und internationales Strafrecht

### **Gabrio Forti**

Full Professor of Criminal Law and Criminology, Dean of the Faculty of Law, Director of the “Federico Stella” Centre for Research on Criminal Justice and Policy, Università Cattolica del Sacro Cuore

### **Stefania Giavazzi**

Lawyer and researcher, “Federico Stella” Centre for Research on Criminal Justice and Policy, Università Cattolica del Sacro Cuore

### **Katrien Lauwaert**

Senior researcher, University of Leuven (Belgium) and holder of the Bianchi chair in restorative justice, Vrije Universiteit Amsterdam (the Netherlands)

### **Stefano Manacorda**

Full Professor of Criminal Law, Seconda Università di Napoli

### **Enrico Maria Mancuso**

Assistant Professor of Criminal Procedure, “Federico Stella” Centre for Research on Criminal Justice and Policy, Università Cattolica del Sacro Cuore

**Claudia Mazzucato**

Associate Professor of Criminal Law, "Federico Stella" Centre for Research on Criminal Justice and Policy, Università Cattolica del Sacro Cuore

**Arianna Visconti**

Assistant Professor of Criminal Law, "Federico Stella" Centre for Research on Criminal Justice and Policy, Università Cattolica del Sacro Cuore

The Research Unit also comprises

**Carolin Hillemanns**

Scientific Coordinator of International Max Planck Research School on Retaliation, Mediation and Punishment (REMEP), Max-Planck-Institut für ausländisches und internationales Strafrecht

## Foreword

*Gabrio Forti*

**European Union Directive 29/2012** inaugurates a relevant **change**: it introduces a 'system' of minimum standards on the rights, support and protection for victims of crimes, and their participation to criminal proceedings, without prejudice to the rights of the offender.

Within the scope of the Directive and its definition of 'victim', though, there is a relevant group of victims who have not yet received enough consideration, and whose access to justice may be at stake. It is the **victims of corporate crimes, and particularly of corporate violence**, meaning those criminal offences committed by corporations in the course of their legitimate activities, which result in harms to natural persons' health, integrity, or life.

**These victims are not a minority.** The crossing of the pertinent Eurostat data demonstrates that corporate violence effects within EU are as prevalent as violent criminality. Official statistics provide ample evidence of the vast and **trans-boundary** nature of this victimisation and, moreover, the number of victims of corporate violence will grow dramatically in the future, facing increasingly complex claims for justice also due to **long latency periods** typical of exposure to toxic agents. Not to mention the million victims of financial frauds and other corporate crimes.

Actually, within the vast area of corporate crime, our project – and therefore this report – will focus on **three main strands** of victimisation: **environmental crime, food safety violations and offences in the pharmaceutical industry**. This choice is due to the idea of exploring – and possibly exploiting – intersections and potential synergies between Directive 2012/29/EU and the existing body of EU legal tools in these three sectors, which – it must be said – currently focus on a different, preventive, risk-based approach, coupled with compensation and reparation remedies. A strategy which, we assume, could benefit from a

comparison and coordination with the *ex post facto*, victim-centered approach of the new Directive.

Victims of corporate violence appear to have an extreme need – quoting from the Directive – to «receive appropriate information, support and protection», and to be supported and made «able to participate in criminal proceedings», as they reveal themselves as a further category – together with more 'traditional' victims of family violence, abuses, human trafficking, terrorism etc. – of **extremely vulnerable subjects**, also (and often mostly) due to a lack of (public as well as personal) awareness about their victimisation.

**Asymmetry of information and of means** between individual victims and corporate offenders has heavy repercussions on **access to justice** and fair judicial decisions. **Lack of awareness among practitioners** and lack of legal attention for the position of these victims in criminal justice systems are other obstacles in accessing to justice. Also, the **long-lasting effects** on their health caused by this sort of violence may require a kind of **support** that public agencies are not currently adequately prepared to provide.

We think that the study of the needs of protection and support of these specific victims could provide **a highly revealing insight into the condition of many other kind of victims**, as the consequences victims of corporate violence suffer are made more serious and durable due to the imbalance of power and knowledge – we could say the imbalance in the power *of* knowledge – they suffer while confronting the often impressive power of huge corporations and their well equipped staffs, including legal staffs. Developing a category devised by Miranda Fricker (Fricker 2007; Brady and Fricker 2016), we could say that they are victims of a kind of «epistemic injustice». An idea – that of epistemic injustice – which itself, has been said, «is innovative to the point of initiating a conceptual shift in epistemology as it has traditionally been practiced» (Code 2008). This epistemic imbalance takes often the 'radical' form of victims' inability to perceive, recognize and acknowledge their victimisation, or at least causes them to discover such condition 'too late', with heavy repercussions on their ability to access justice and get timely help and support and/or fair redress, as well as, quite often, on increased risks of repeat victimisation.

Due to the complex nature of the issues involved in working on a specific and effective implementation of Directive 2012/29/EU with respect to victims of corporate violence, a deep and inter-disciplinary preliminary

research has preceded the more operational stages of our project – a research whose results the reader will find summarized in this Report.

Starting from an overview of the current 'state of the art' with respect to the *general* issue of victims' rights, support and protection in light of the Directive (**Part I**), a thorough examination of the European, international and national (in the three countries involved in the project: i.e. Italy, Germany and Belgium: **section II.3**) legal background can be found in **Chapter II**, where specific attention has been devoted to victims' participation in criminal proceedings (**section II.2**), as well as to possible synergies between the EU perspective and the procedural and substantial dimensions of victims under international law (**section II.4**). An analysis of the promising business and human rights perspective also integrates this initial overview (**section II.5**).

Through an analysis of the existing criminological and victimological literature on victims' vulnerability and victims' needs in general, as well as on corporate crime, its harms, and its victims, we then proceeded to a first attempt at assessing the negative consequences of these *specific* offences (i.e. environmental crimes and food and drugs safety violations) for communities and individuals, and therefore these victims' ensuing specific needs of protection and support (**Part II, Chapter III**) – a research that will be deepened in a further, empirical stage of our project, through a set of interviews and focus groups with victims of corporate violence whose results will be the object of a further report. This preliminary review of existing studies, however, already revealed some peculiar basic needs of victims of corporate violence, namely: a need for specific psychological and emotional support that is in no way lesser than the one experienced by victims of 'common' crimes and 'true' violence; an increased need for information and legal support, to deal with the greater legal and regulatory complexities implicit in these offences, as well as with the great disproportion of resources that opposes victims and offenders in this area; a need for specialized medical and social support, especially in all cases of long-term and/or disabling diseases, as well as in all cases of exposure to the risk of contracting long-latent illnesses, with a specific need for preventive screening; a general need for research and advocacy with respect to a typology of crimes that remain opaque and underestimated for both the general population and public institutions; possibly, an even greater need of recognition of their 'victim status' and of the wrongs they suffered, than many victims of 'common' crimes, with an (even) greater value placed on 'moral' redress (including a reasonable assurance that no further offences, and therefore, no further

victimisations, will happen) than on instrumental outcomes. How and to which extent the participation of this kind of victims in criminal proceedings, when compared to access to different remedies (i.e. civil proceedings, State-funded compensation schemes, and restorative justice programmes), appears capable of responding to their specific needs is also discussed.

The issue of the respect and implementation of corporate violence victims' rights specifically, through the new instrument represented by the Directive and its national transpositions was then explored (**Chapter IV**), with a specific attention to synergies and complementarities between the Directive and other EU legislation in the fields of environment protection, food safety and drugs safety (**Chapter V**). It is quite revealing of the persistent need of protection and assistance of these victims, as well as of how the current criminal justice discourse seems still largely unable to adequately integrate this kind of victim's perspective, that at least two main legal documents providing for criminal penalties for infringements of environmental law, namely the 2008 Directive on the protection of the environment through criminal law (Directive 2008/99/EC) and the 2009 Directive on ship-source pollution and the introduction of penalties for infringements (Directive 2009/123/EC), appear to have scarcely paid attention to the status, position and substantive/procedural rights of victims of environmental crime. Actually, the 2008 Directive on the protection of the environment through criminal law targets unlawful conducts that cause or are likely to cause death or injury, thereby expressly punishing the endangering or harm to human life and health. However, despite dealing directly with the impact of environmental criminal offences on individuals, such Directive seems neither to devote specific attention to victims and their definition, nor to take into account the conditions making them more exposed and vulnerable to such harms.

Finally, the issues related to corporate violence victims' access to justice where also studied through a survey of a large number of judicial cases (at various stages of development and collected in all three interested countries, i.e. Italy, Germany and Belgium), where data on number and typologies of victims, their involvement in criminal proceedings (with or without the combined presence of associations, NGOs and/or victims support services), the nature of their requests, the outcomes of the proceedings and/or the presence of extra-judicial agreements, and, whenever possible, the prevalence and reasons for victims not participating in the proceedings were collected and analysed (**Chapter VI**).



As the aims of our project place great importance on **rising awareness of rights and specific needs of victims of corporate violence** at all social and institutional levels, and **specifically amongst law practitioners across EU**, further steps will follow, besides the already mentioned empirical research. Building on the results thereby achieved, a set of **guidelines for the individual assessment of victims protection needs in case of corporate violence** will be drafted and published, as well as a set of specific **guidelines for all kinds of professionals potentially involved in dealing with victims of corporate violence** (i.e. police officers, prosecutors, judges, lawyers, victims services, victims associations, restorative justice services, corporate legal officers and representatives). Such guidelines will also be instrumental to the **training** of said professionals – a training which, in turn, will be aimed at promptly recognizing this kind of victims and dealing with them in a sensitive way, at best assessing their peculiar needs, at effectively addressing their specific problems in accessing justice, at best supporting them. A comprehensive action plan that is conceived also to foster corporate social responsibility and reduce controversy loads, while enhancing the victims' chances of fair compensation and restorations.

Making victims' rights effective and responding to their most cherished expectation – namely, that society shows due respect to their sufferings through an active and close engagement in restoring the conditions of their safe and peaceful living, as well as protecting them from secondary victimisation and future harms to their health and the environment where they live – remains a great challenge for law makers and politicians, criminal justice and social service professionals, prosecutors and judges, lawyers and police officers, and especially corporations personnel and managements. A challenge to which this project hopes to rise to.

In the following pages you will find a collection of contributions of different content, structure and depth. Some of them are first findings, other represent a more advanced analysis of relevant topics. This is consistent with the nature of the document itself, which is, as a mid-term report, just an intermediate step within a two-years project. It must therefore be read as a work in progress and a working paper.

For updates about the project's next steps and results please refer to our website: [www.victimsandcorporations.eu](http://www.victimsandcorporations.eu)

## **PART I**

# **VICTIMS' RIGHTS, SUPPORT AND PROTECTION: AN OVERVIEW IN LIGHT OF THE DIRECTIVE 2012/29/EU**

## Chapter I

### Victims' Rights: an Overview

*Ivo Aertsen*

#### ***From victims' needs to victims' rights***

Since the 1950s, the western industrialised world has witnessed a re-birth of the victim (Mawby & Walklate 1994). This renewed attention for victims of crime took place within the context of a growing welfare state, where - after the era of civil and political rights achievements - a social rights movement developed. Applied to the phenomenon of violence, the feminist movement first drew attention to the fate of women and children victims of physical and sexual abuse, while new mechanisms of state compensation for victims of violent crime in general were advocated by penal reformers. In particular different types of *violent* crime, committed by juveniles in urban environments, alarmed politicians during the 1960s, first in the USA, later in the UK and the European continent. The predominant focus on issues of violence resulted in the creation of new types of services, first for particular categories of victims and later - throughout the 1970s and 1980s - for victims of crime in general. The focus on violence would also push the development of victim policies in western countries into an individualising and selective approach. The unequal distribution of attention for different groups of victims of crime, together with a clear focus on conventional types of crime, would strongly influence the conceptualisation and implementation of victim related initiatives both in practice and policy. Until today both in victim assistance programmes and new legal provisions in western countries victims of *violent* crimes seem to deserve much more attention than other groups of victims, in particular property (including financial and economic) crimes (who nevertheless make up for the majority of all crime victims).

To understand the growth of the victims movement and its *foci*, we have to take into account the leading role of international institutions. United Nations, Council of Europe and - more recently - European Union have been influential

in this respect, even when most of the adopted policy instruments did not constitute binding law to member states.<sup>1</sup> Three domains related to victims' needs have been covered by a series of regulating instruments at a supra-national level: (1) the urgent need for creating state compensation schemes for victims of violent crime, (2) the strengthening of the legal position of victims in criminal justice procedures, and (3) the creation and implementation of victim assistance programmes. The work of the Council of Europe has been most instrumental in this regard: as prepared by the European Committee on Crime Problems (CDPC) and its committees of experts, numerous resolutions, recommendations and even conventions have been drafted and finally adopted, for both particular categories of victims (eg, domestic violence, terrorism) and victims of crime in general. An added value of the Council of Europe initiatives has been the call that emanates from these instruments towards society at large: not only the police, judicial authorities and specialised victim support services should take care of victims. Victim assistance has to be considered a responsibility of many actors in society, including health care, housing and employment services, insurance companies and the media, and a broad range of educational and social services.<sup>2</sup> The role of both state agencies and non-governmental organisations has been stressed in various recommendations, as well as the support that can be provided by organisations working with (well trained) volunteers.

Another dimension worth mentioning when looking at the development of victim policies in western countries, is the relationship - and tension - between victim *services* and victims' *rights*. It has often been argued that initially an important difference in victim policies between the USA and Europe related to the much stronger focus on victims' rights in the USA (as promoted by victims' and law and order lobby groups) as compared to a more distinct role of victim assistance in Europe. In other words, victim policies in the USA were from the very beginning much more driven by a legal rights approach, while Europe followed a more moderate victims' needs and services approach that was also

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<sup>1</sup> UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (General Assembly Resolution 40/34, 29 November 1985); European convention on the *compensation of victims of violent crimes* (Council of Europe, 24 November 1983); Council Europe Recommendation R(85)11 *on the position of the victim in the framework of criminal law and procedure*; Council of Europe Recommendation R(87)21 *on assistance to victims and the prevention of victimisation*; Council of Europe Recommendation Rec(2006)8 *on assistance to crime victims* (replacing R(87)21); European Union Council Framework Decision of 15 March 2001 *on the standing of victims in criminal proceedings*; European Union Council Directive 2004/80/EC of 29 April 2004 relating to *compensation to crime victims*; 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*.

<sup>2</sup> See for example Council of Europe Recommendation Rec(2006)8 *on assistance to crime victims*.

concerned not to jeopardise offenders' rights and their social reintegration. However, we clearly have witnessed also in Europe a tendency to a more pronounced rights' approach towards the end of the 1990s and in the first decade of the new millennium. Both the 2001 Framework Decision and the 2012 Directive are illustrative for the new direction.

As a next step, we can have a closer look content wise at the emanating victims' rights in Europe. What types of rights are these, and how have these been conceived? Victims' rights have initially been developed within the context of criminal justice proceedings, although an extension of the scope became visible in a second phase. There is a remarkable and clear line of development visible on how specific rights have been identified, defined and multiplied within European countries and at the level of the European Union. For a first official adoption of victims' rights in the framework of criminal justice at the national level, we have to go back to the adoption of the Victims' Charter in England/Wales in 1990, as modified in 1996. Here, under the influence of Victim Support (an independent national charity) a list of fundamental rights for victims was approved by the national government. In a later phase, this list of victims' rights would result in a Victims' Code established under the Domestic Violence, Crime and Victims Act of 2004. It was the English Victims' Charter that also inspired Victim Support Europe (VSE), when this European umbrella organisation of national and regional victim services adopted its Statement of Victims' Rights in the Process of Criminal Justice in 1996.<sup>3</sup> There is a strong similarity in the identification and formulation of fundamental rights between the English Victims' Charter and the VSE Statement. Moreover, being aware of the role VSE has been able to play at the EU policy level in the subsequent years, it should not surprise that this accordance in formulation of victims' rights has continued in the EU Framework Decision of 2001. The Framework Decision was, in comparison to the previous Council of Europe Recommendations, no longer 'soft law', but binding legislation for EU member states containing formal rights for victims. Under the 2012 Directive, victims are even entitled to exercise their formal rights in a more direct way.

This line of development reveals the changing nature of approaching victims' needs into the direction of providing legal rights. Besides considerable although very uneven efforts that have been undertaken in various European countries in the field of victim assistance, a consensus has grown on the general acceptance of a uniform catalogue of victims' rights throughout Europe. These recurrent rights – at least in the framework of criminal justice proceedings –

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<sup>3</sup> After 1996, Victim Support Europe has proclaimed victims' rights in other fields as well: The Social Rights of Victims of Crime (1998), Statement of Victims' Rights to Standards of Service (1999), and Statement on the Position of the Victim within the Process of Mediation (2004). Some of these broader rights and positions are reflected in the Victims Directive 2012/29/EU.

can be enlisted as follows: the right to respect and recognition, the right to receive information, the right to provide information, the right to legal assistance, the right to compensation, the right to protection and privacy, and the right to (social) assistance.

### ***Towards an effective implementation of victims' rights***

When evaluating the effectiveness of legal reform and the creation of formal rights on behalf of victims of crime in the framework of criminal justice, critical victimologists in North America and Europe have pointed out the aspirational nature of victims' rights (Pemberton & Vanfraechem 2015) and have warned of a type of legislation that risks to be ineffective or is just offering 'lip service' to victims (Fattah 1999; Rock 2004). They criticised that often newly adopted victims' rights are formulated in very general or conditional terms ('to the extent possible ...') and that neither appeal procedures are foreseen nor sanctions in case the exercise of rights is hindered. Legal rights are adopted without providing additional resources or training in practice to implement the new provisions. The adoption of legal rights often takes place in the context of political responses to major events and they therefore remain limited to particular groups of victims. The selectivity of victims' rights also becomes manifest through their limitation to parties with a formal status in the criminal justice process (eg, party civil); therefore legal provisions are excluding the majority of victims. Because of their formal nature, rights are – against the background of the complex life-world of people - also restrictive and do not recognise the personal and subjective nature of a victimisation experience. Finally, the emphasis on legal rights for victims within the context of an increasing 'politicisation' of victim issues (the 'use' of victims' needs and suffering in political campaigns and programmes) creates a false opposition between victim and offender, reinforces polarising tendencies in society and increases feelings of insecurity. Even when victims' rights are being adopted with the best intentions for the wellbeing of victims, for example by imposing on the public prosecutor a legal duty to inform the victims about his decision to prosecute or not, or by offering victims more possibilities to participate in criminal proceedings, the implementation of these rights is cumbersome. One interpretation for these shortcomings at the implementation level refers to the 'Solomon' character of criminal procedure, where judicial authorities have to deal with files under time pressure and in a formalistic way leaving no mental room for integrating a thorough victim perspective in daily decision making work (Shapland 2000). Therefore a fundamental gap remains between the criminal justice process and the victim: the victim as *fremdkörper* is not considered to be an integral part of formal justice processes, but rather as a

new problem for the system to be managed as good as possible and to whom some concessions can be done and help must be offered.

Some of the above mentioned shortcomings and limitations might have been responsible for the weak implementation of the 2001 Framework Decision in Europe as well. The 2004 and 2009 European Commission reports have pointed to an 'unsatisfactory' level of transposal into national law.<sup>4</sup> Member states adopt new legislation on victims in very different ways and often legislation reflects the state of affairs as it existed already before 2001. In many countries new victim regulations are carried out through non-binding guidelines or just recommendations. The poor implementation of the 2001 Framework Decision has been attributed to factors such as a too short implementation period, not taking into account important (practical) conditions at organisational, policy or legislative level, and the very open formulation of many of its articles leaving room to a large freedom of interpretation and implementation (Groenhuijsen & Pemberton 2009; Pemberton & Groenhuijsen 2012). Even when we keep in mind the set-up of the 2012/29/EU Directive as a stronger legal instrument on victims' rights in Europe, it is good to repeat the conclusion by Groenhuijsen and Pemberton (2009: 59) when they commented on the implementation of the 2001 Framework Decision, 'that the adoption of a hard law instrument only leads to slightly different results than the soft-law instruments (...). Both types of standards provide a level of aspiration – a benchmark – on which most if not all members of the international community agree. The binding character, which often implies at least an external mechanism for monitoring compliance, has definitively had some added value, but this addition should not be overestimated or made absolute.'

On the basis of the above presented observations, we must conclude that making victims' rights effective – even when conceived in a legally binding way at EU level - remains a challenge. A criminal justice context on itself seems to contain important obstacles to integrate a victim's perspective. In order to make legal reform sustainable, new initiatives must be perceived by those working within the system as being in the interest of the criminal justice system itself, while clear and limited goals should be put forward and implementation should be done in phases. Other conditions for success within the criminal justice seem to be: a change of attitudes, improvement of knowledge, availability of resources and networking with external agencies (Groenhuijsen 2000). Moreover, the implementation of rights, also for victims of crime, can only be understood within a broader context of 'societal ecology', taking into

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<sup>4</sup> Report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (COM(2004) 54 final); Report from the Commission pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) (COM(2009) 166 final). See also van der Aa et al. (2009).

account – amongst other factors – citizens' perceptions and opinions about crime and the role of the criminal justice system in society, the relationship of criminal justice processes to other types of interventions and remedies, and more broadly the social, cultural, economic and personal conditions in a given country (Biffi et al. 2016).



## Chapter II

### European, International and National Legal Backgrounds

#### II.1.

#### Victims in the European Union and the Directive 2012/29/EU

*Claudia Mazzucato*<sup>\*</sup>

*Victims matter: a priority for the European Union*<sup>5</sup>

'Victims matter'.

This apparently simple – yet not obvious, and somehow problematic and disputed – declaration stands at the very beginning of the 2011 European Commission (EC) Communication titled *Strengthening Victims Rights in the EU*<sup>6</sup> (where it is explained *why* victims do matter). This EC Communication contained a 'legislative package' of proposals 'as a step towards putting victims at the heart of the EU criminal justice agenda'. The Communication was immediately followed by the EU Council Resolution of the of 10 June 2011 concerning *a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings* (Budapest Road Map): the opening Recital of the Council Resolution solemnly states that 'The active protection of victims of crime is a high priority for the European Union and its Member States'. The Budapest Road Map, in turn, has led to the approval

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<sup>\*</sup> Davide Amato, PhD, Paola Cavanna, PhD student, Marina Di Lello, PhD, and Biancamaria Spricigo, PhD, have contributed to general bibliographical research behind the analysis presented in this Chapter and in Chapter IV.

<sup>5</sup> Official links to the legal resources, summaries of the legislation, and case law, quoted and mentioned in this Chapter are available in the Appendix to this publication (*European and International Selected Legal Resources and Case Law*).

<sup>6</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions *Strengthening Victims' Rights in the EU* COM(2011) 274 final, 18 May 2011.

of the Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 *establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*. Furthermore, the 2013 DG Justice *Guidance Document* related to the transposition and implementation of Directive 2012/29/EU<sup>7</sup> stresses once again that 'The rights, support, protection and participation of victims in criminal proceedings are a European Commission priority' (DG Justice 2013: 3).

Victims are no more left 'on the periphery of domestic and international political agenda' (de Casadevante Romani 2012: 3). Victims matter to the European Union.

The path, which resulted in a comprehensive 'horizontal package of measures' (DG Justice 2013: 3) for *all* victims, is an interesting one. It shows the evolution of European law in a legally, politically, and socially 'sensitive' field; it displays a picture of the EU agenda and policies; it offers a sort of 'thermometer' of the degrees reached in the complex process of the European integration and in the delicate harmonisation in criminal matters.

The origins of this quite long and progressive path date back to the entry into force of the Maastricht Treaty (1993) and the Amsterdam Treaty (1997), and culminate in the Lisbon Treaty, whose entry into force in 2009 overcame the intergovernmental 'Third Pillar', thus creating inside the EU (its 'Policies and Internal Action') the 'Area of freedom, security and justice', within which 'Judicial cooperation in criminal matters' has its place (Vervaele 2014). Here, in the 'Judicial cooperation in criminal matters', the 'rights of victims of crime' receive their most formal, and up to now final, recognition within Europe's system of Law, as a topic that matters to the European Union. Article 82(2) TFEU is the primary source and the first legal basis for the European legislation on the rights of victims of crime (see, eg, Allegrezza 2015: 4; Allegrezza 2012: 5; Mitsilegas 2015; Savy 2013: 23).

The Charter of the Fundamental Rights of the European Union and the European Convention of Human Rights (ECHR) also provide 'foundations' for the rights of victims, as pointed out, for instance, in Recital 66 of the Directive 2012/29/EU: 'the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial' are among the fundamental

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<sup>7</sup> European Commission, DG Justice *Guidance Document related to the Transposition and Implementation of Directive 2012/29/UE of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, December 2013 (now on DG Justice 2013).

rights recognized by the EU that may be violated, infringed or at stake when falling victim of a crime. This is why victims matter.

Alongside this broad and general roadmap linking the above-mentioned treaties, the Charter and the ECHR, several other steps towards the establishment of a legal set (or a legal *system*) of rights of victims in the EU have taken place (eg, the 1998 Action Plan of the Council and the Commission *on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice*; the 1999 Communication by the Commission titled *Crime Victims in the EU: reflections on standards and action*; the 1999 Tampere Council Conclusions; the 2005 Council's Hague Programme). In addition to the afore-mentioned Council Framework Decision 2001/220/JHA, to the 2011 Victims Package and to the Budapest Road Map, the adoption of the Victims Directive was 'prepared' by the Council's Stockholm Programme, titled *An open and secure Europe serving and protecting citizens*, and its Action Plan (2010-2014).

Soft law provisions by the United Nations and the Council of Europe, through Basic Principles and various CE recommendations, have also influenced the EU legislator, who considered them when drafting normative instruments in favour of victims of crime in general (Aertsen, *supra* Chapter I; Della Morte, *infra* Chapter II.4)<sup>8</sup>.

At the European Union level, this 'horizontal' system of protection of *all* victims of *all* crimes, culminating in Directive 2012/29/EU, is further completed by a series of other binding legal provisions, both in criminal and civil matters, that must be applied in close coordination with the implementation of the Victims Directive, within a comprehensive approach to victims' protection and support (Savy 2013: 93):

- Council Directive 2004/80/EC of 29 April 2004 relating to *compensation to crime victims*;
- Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 *on the European protection order*;
- Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 *on mutual recognition of protection measures in civil matters*.

The European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) case law<sup>1</sup> is also of paramount importance in understanding the reach (and the limits) of the support, protection and role of victims' rights in criminal proceedings in the EU (Gialuz 2015; Mitsilegas 2015: 329; Savy 2013: 39; Venturoli 2015: 120). Actually, in framing the

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<sup>8</sup> *cf also European and International Selected Legal Resources and Case Law in the Appendix.*

Victims Directive the European lawmaker has taken into consideration the jurisprudence of the European courts. One relevant example, for the scope of this project and research, is for instance the definition in the Directive of 'victim' (only) as 'a natural person' (Article 2(1a)), thus confirming the exclusion of legal persons stated by the CJEU in *Dell'Orto* and *Eredics* (Case C-467/05 *Dell'Orto* 28 June 2007; Case C-205/09, *Eredics* – Sápi 21 October 2010).

The replacement of the Third Pillar's Framework Decision 2001/220/JHA and the enrichment of its provisions thanks to the adoption of the 'post-Lisbon', 'more supranational', Victims Directive (Mitsilegas 2015: 318, 326) attract, as a 'side effect', the whole set of judicial competences of the EU Court of Justice (and the correspondent possibilities to resort to the Court). This will probably further inspire the European jurisprudence on victims' rights. CJEU case law, in fact, has so far been very relevant for – and sometimes has truly instructed – European law, like *Pupino* (CJEU Case C-105/03 *Pupino* 16 June 2005), but it has been centred mainly by necessity on cases concerning the sole interpretation and application of the 2001 Framework Decision. Furthermore, the very nature of a directive produces a more effective penetration of European law into national legal systems: this pervasiveness, in fact, is not limited to the control of complete transposition and actual fulfilment of obligations, but it also includes, of course, the possibility of the direct application of the Directive's self-executing provisions by national judges (Allegrezza 2015: 5; Mitsilegas 2015: 333; Pemberton and Groenhuijsen 2012).

A 1989 landmark decision of the CJEU has even anticipated the actions of the European legislator: the *Cowan* case (CJEU Case 186/87 *Cowan v Trésor* 2 February 1989) framed victims' rights (and particularly the right to compensation) within the principle of non-discrimination on grounds of nationality and residence status, as a condition for freedom of movement in the EU. Still, today this issue remains one the primary concerns of European institutions, as highlighted by its placement right in the opening article of Directive 2012/29/EU (article 1(1)). Non-discrimination, incidentally, is strictly linked nowadays to the principle of 'mutual recognition of judgment and judicial decisions', and to the constant need to enhance 'approximation of the laws and regulations of the Member States' in order to ensure 'judicial cooperation in criminal matters', as stated by Art 82 TFEU (Mitsilegas 2015: 315). The prevention of discrimination in order to ensure freedom of movement, mutual trust regards to national criminal justice systems, and European citizens' confidence in justice are among the main reasons, together with humanitarian reasons and reasons of solidarity, of why victims matter, and why their protection falls within the 'policies and internal action' of the EU, seen as an 'area of freedom, security and justice' for all. Yet

doubts are raised by scholars on whether the Victims Directive actually 'meets the legality criteria set out by Article 82(2) TFEU', which attribute to the EU competence to 'establish minimum rules', by means of directives, 'to the extent necessary to facilitate mutual recognition of judgements and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension' (Mitsilegas 2015: 325). Besides, others point out how post-Lisbon cooperation in criminal matters 'has become, compared to Article 2 of the Amsterdam TEU, an objective that is related to rights and duties of citizens, not only related to free movement of persons' (Vervaele 2014: 38) or mutual recognition of judicial decisions.

***A priority in the priority: vulnerable victims and victims with 'specific protection needs'. Lights and shades***

Vulnerable victims are a priority within the priority (Gialuz 2012: 60).

The notion of vulnerable victims in international and European legal documents and tools is broad, depending either on the 'subjective' condition of the person, or the 'objective' nature of the crime, or a combination of both (see Lauwaert, *infra* Chapter III.2; Ippolito and Iglesias Sánchez 2015). Vulnerability, though, is one of main fields in which the 2012 Victims Directive is a turning point in EU victims' legislation.

Throughout in international and European legal documents, the followings are often quoted as (abstract groups of) persons in need of specific protection, and therefore deserving specific attention and tailored protective actions:

- children;
- women;
- the elderly;
- people with disabilities;
- victims of crimes occurred in a Country of which they are not nationals or residents;
- victims of gender-based violence;
- victims of violence in close relationships and domestic violence;
- victims of sexual violence and other sexual offences;
- victims of trafficking in human beings;
- victims of terrorism;
- victims of organized crime;
- victims of crimes committed with a bias or discriminatory motive.

Interestingly, the United Nations, the Council of Europe and the European Union have often devoted attention to the same situations, due to common protection priorities (such as the primary consideration of the best interest of the child), or due to the need to combat certain transnational crimes (such as terrorism or trafficking in human beings), or due to an increased sensitivity towards specific forms of violence and of criminal phenomena (such as gender-based violence, violence in close relationships, violence against women).

In various hard and soft legal documents, the United Nations, the Council of Europe and the EU have taken into account other forms of victimisation, such as, respectively, victims of abuse of power and victims of torture, victims of genital mutilations (Stockholm Programme) and victims of road traffic accidents (Victims Package: 7). Minorities who can be victims of hate crimes also receive special consideration by the international community and the EU<sup>9</sup> (Ippolito and Iglesias Sánchez 2015). Victims of international core crimes are the focus of increased attention, and the beneficiaries of a set of international provisions, as described by Della Morte (*infra* Chapter II.4.)<sup>10</sup>.

Through the years, some of the above-mentioned 'specific situations' (DG Justice 2013: 3) of 'vulnerable' victims in 'areas of crime' of EU concern, now under Article 83(1) TFEU, have become the objective of *ad hoc* – 'vertical' – binding provisions and measures at the European Union level, which complement the CE Lanzarote and Istanbul European Conventions. These EU legal instruments are:

- 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, and replacing Council Framework Decision 2002/629/JHA*;

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<sup>9</sup> On racial discrimination, see Council Directive 2000/43/EC of 29 June 2000 *implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*. This Directive addresses, among others, the following issues relevant to the topics of this publication: a) protection of natural persons against discrimination on grounds of racial or ethnic origin (Recital 16), b) adequate judicial protection against victimisation (Recital 20); c) concrete assistance for the victims (Recital 24); d) Article 9: Victimisation. See also Council Framework Decision 2008/913/JHA of 28 November 2008 on *combating certain forms and expressions of racism and xenophobia by means of criminal law*.

<sup>10</sup> de Casadevante Romani (2012: 39), while provocatively affirming that there are 'almost as many concepts of victim as categories of victims', lists the following 'different international categories of victims' according to international soft or conventional law: a) victims of crime; b) victims of abuse of power; c) victims of gross violations of international human rights law; d) victims of serious violations of international humanitarian law; e) victims of enforced disappearance; f) victims of trafficking; g) victims of terrorism.

- Directive 2011/92/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, and replacing Council Framework Decision 2004/68/JHA*;
- Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA *on combating terrorism*, which will be replaced in case of the adoption of the recent Proposal for a Directive of the European Parliament and of the Council *on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism*, COM(2015) 625 final, Brussels, 2 December 2015.

Directive 2011/36 is the first legislative initiative taken under Article 83(1) TFEU (Vervaele 2014: 44). Both Directive 2011/36 on trafficking in human beings and Directive 92/2011/EU on sexual offences against children combine a threefold objective: prevention, repression, protection. Therefore, protection of these particular victims – in terms of assistance, support, protection from secondary victimisation, on so on – comes together with prevention and, primarily, with the binding criminalisation on the part of Member States of the acts described in those directives. These Directives ‘go beyond’ the ‘classic content as foreseen under the Council’s model provisions’, including *inter alia* ‘many aspects of victim protection and victim rights’ (Vervaele 2014: 45). And in fact both Directives’ Preambles refer to Article 82(2) *and* Article 83(1). This combination is quite unique in the panorama of the European legislation, where either criminalisation and repression of offences *or* victims’ protection are usually set forth, as separate areas of intervention. As described by Manacorda (*infra* Chapter V), policies in the field, for instance, of environmental protection, while sometimes compelling to criminalise and to punish conducts causing death and/or injury to physical persons, do *not* contemplate victims and victims’ rights as such. *Pour cause*, one might provisionally add. The Victims Directive, on the other hand, has the sole purpose of protecting, supporting, and assisting victims of criminal offences and of ensuring they are entitled to certain procedural rights in criminal justice. The Directive 2012/29/EU *Guidance Document* clearly affirms that ‘its object is *not to criminalise* certain acts or behaviours in the Member States’ (DG Justice 2013: 7) (emphasis added). This said, the above-mentioned European Commission’s Communication presenting the 2011 Victims Package of proposals clearly states that the needs of crime victims are a ‘central part of the justice system, alongside catching and punishing the offenders’ (2): a controversial statement, as Mitsilegas points out (2015: 335).

On the contrary, criminalisation, as the obligation of a Member State under the ECHR to effectively *protect* its citizens, stands in the jurisprudence of the European Court of Human Rights (and not without debate) (Gialuz 2012: 29). In the Strasbourg Court's decisions, criminalisation comes in combination with another affirmed obligation of Member States: that of a thorough investigation, capable of reaching, under due conditions, the disclosure of criminal facts and the conviction and punishment of the offender found guilty (Gialuz 2015: 29; Allegrezza 2012: 21). Conviction and punishment, though, are in no way, among the rights of victims. Much thought is still needed on the issue of a State's obligation to investigate, which is echoed, for instance, in international and EU 'vertical' provisions regarding specific vulnerable groups of victims. For instance, according to Article 9 of the Directive on trafficking in human beings, investigation and prosecution of such offences are '*not* dependent on reporting or accusation by a victim', and '*criminal proceedings may continue even if the victims has withdrawn his or her consent*'. Another example of similar provisions is offered by Article 8 of the Framework Decision 2008/913/JHA on racism and xenophobia, with the motivation that victims of these crimes '*are often particularly vulnerable and reluctant to initiate legal proceedings*' (Recital 11) (Gialuz 2012: 68). A proactive enforcement may be a necessity in certain areas of crime, also in order to adequately protect victims of those crime. Yet, proactive criminal enforcement may trap victims into the vicious cycle of secondary victimisation resulting from criminal proceedings, especially if during those proceedings the vulnerability of each individual victim to secondary victimisation is not carefully and accurately assessed and avoided.

There is another series of decisions of the European Court of Human Rights on a parallel, yet different, topic of extreme importance for our project: it is the ECtHR case law concerning the lack (or failure) on the part of national authorities to protect fundamental rights, such as life, health, private and family life, under Articles 2 and 8 ECHR, in cases *inter alia* of exposure to polluted sites and industrial emissions, of dangerous industrial activities, natural disasters, and so on. Interestingly, these judgments are not – or not entirely – focused on the lack of *investigation*, but more openly and directly focused on the State's obligation to *protect* individuals' rights via appropriate and effective *measures* that, in the given situation, would have prevented harm in the first place, and the lack of which resulted in an infringement of the said rights.

Tracing the issue of 'vulnerability' throughout the European legislation is a fascinating task. The term ('vulnerability', 'vulnerable') appears quite early and it accompanies the whole evolution of the legislation concerning victims' rights: we find the word 'vulnerability' (and its various declinations) in legal instruments concerning both 'general' victims and 'specific groups'



of victims, as identified above: from the 'general' Framework Decision 2001/220/JHA (Arts 2, 8, 18), to the Stockholm Programme, to the 'specific' 2011/36/EU Directive on human trafficking (Recitals 2, 8, 12, 22, 23, Art 2) etc. The reference to the 'particular vulnerability' of (certain) victims appears expressly four times even in the Directive 2012/29/EU (Recitals 38, 58; Art 22(1)(3)), a Directive known for its overcoming of abstract categories in favour of the notion of the '*individual* assessment' of '*specific* protection needs' of *each* victimised person (Arts 22, 23) (emphasis added) (Parizot 2015: 284).

In some ways, the term 'vulnerability' is even contradictory. First, 'vulnerability can be considered as an attribute inherent to human nature' (Ippolito and Iglesias Sánchez 2015: 1): we are all vulnerable in many ways. Second, vulnerability is not exclusively a characteristics of victims of crime: as Ippolito and Iglesias Sánchez point out in their Preface (2015: 5), the conception of vulnerability concerns, individually or collectively, several groups of people: from asylum seekers to the elderly in nursing homes. This aspect becomes quite significant for the scope of this project and research: Manacorda (*infra* Chapter V) recalls the many references to vulnerable population or vulnerable subjects (pregnant women, unborn, infants, workers etc), for instance, in EU product safety law. Third, victims of crime are not only *vulnerable*, they are 'vulnerated' (or *violated*) persons *already*. Speaking about 'vulnerable victims' is one more 'paradox' (Gialuz 2012: 91)<sup>11</sup> of the victim condition, together with other paradoxes (ie, the need to be heard, and the risk of secondary victimisation that often stems from criminal proceedings; the need to be protected not only from the offender, but also from justice itself).

One of the core novelties of the 2012 Victims Directive is precisely that it (partly) overcomes abstract 'macro' categories of vulnerable subjects (the elderly, women, etc) in favour of the key idea that *every* victim may be 'vulnerable', even if they do not belong to (objective or subjective) vulnerable 'groups'. The Directive therefore focuses the attention on an individualised and personalised comprehensive approach in which the *individual* 'protection needs' must be singularly assessed and taken into account (FRA 2014: 47, 77). This assessment must guide competent authorities (police and judicial authorities) and victims support services in dealing with victims case by case, and in offering them the most adequate and *tailored* protection, assistance, support (Rafaraci 2015: 221).

Articles 22 and 23 of the 2012 Directive open a whole new space for scientific reflection and research. The individual assessment of (each) victim's protection needs is, in fact, still greatly unexplored by both scholars

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<sup>11</sup> Stitt and Giacomassi (1993: 71) also refer to the 'paradox of victimization' in relation to victims of corporate harms (see *infra* Chapters III and IV).

and practitioners.<sup>12</sup> Its effectiveness requires a significant competence, sensitivity, attention, and care on the part of the police, the judiciary and victims support organizations. Sufficient time will therefore have to be spent by practitioners with every single victim, in order to carefully listen to (and understand) their personal narratives. Only a tailored, active listening to the story and deposition – including what remains untold or unspeakable of it – will reveal the actual needs for protection of that very person. These are important aspects of the victim's right 'to be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner' (Art 1 (1)), 'to be understood' (Art 3), and 'to be heard' (Art 10).

We may wonder (or... doubt) whether the criminal justice system and the victim support services are sufficiently equipped with the afore-mentioned precious, yet scarce, resources of time, attention, etc. A real fulfilment of the Victims Directive provisions, though, highly depends on the individual assessment being taken seriously by national legislators and competent authorities (see, eg, Pemberton and Groenhuijsen 2012; Artsen, *supra* Chapter I, and Lauwaert, *infra* Chapter III.2). A diffuse lack of awareness and of specialised training must still be filled, especially in those EU Member States where victims rights do not matter (yet) as much as they do for the European Union.

Awareness-raising campaigns, education, research, and exchange of information are in fact among the indications given by the 2012 Directive (Recital 62 and Art 26). Training of practitioners is another important part of the Victims Directive provisions (Art 25 and Recital 61), particularly when the EU norms underline the necessity of an appropriate training in order to enable all the relevant practitioners (police officers, court staff, prosecutors, judges, public services) 'to recognise victims and to treat them in a respectful, professional and non-discriminatory manner' (Art 25 (5)). Timely recognition of victims – and moreover of victims with specific needs – is both a duty and a mission that the Directive puts in the hands of Member States and of national authorities and professionals. Recognition of victims is

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<sup>12</sup> On this topic, among reports and publications stemming from previous EU co-funded projects, see, *ex multis*, eg: *IVOR Report* (Biffi et al 2016); Victims Support Europe reports and manuals ([www.victimssupport.eu](http://www.victimssupport.eu)); *Good practices for protecting victims inside and outside the criminal process*, research project coordinated by the University of Milano (Lupária 2015) ([www.protectingvictims.eu](http://www.protectingvictims.eu)); Centre for European Constitutional Law & Institute for Advanced Legal Studies (sine dato) *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial Comparative Report and Policy Recommendations* ([www.victimsprotection.eu](http://www.victimsprotection.eu)). *EVVI Guide - Evaluation of Victims*, 2015 (available at <http://www.justice.gouv.fr/aide-aux-victimes-10044/un-guide-pour-levaluation-des-victimes-28155.html>, last accessed on 15 December 2016). On the assessment of specific groups of victims needs, see, eg, the INASC project *Make It Happen. European Toolkit to Improve needs assessment and victims support in domestic violence related criminal proceedings* ([www.inasc.org](http://www.inasc.org)).

indeed crucial, and it is in fact a condition to ensure victims' effective access to support, protection and to the exercise of their rights.

This said, new problems arise. Issues concerning victims' rights are in fact invariably 'complex, multifaceted and controversial' (Bottoms and Roberts 2010: xx). The individual assessment of protection needs – one of the main highlights of the Directive 2012/29/EU – brings about what has been stigmatised as an 'individualisation of security', involving a 'potential reconfiguration of the relationship between the individual and the State', and having 'profound justice implications', especially in regards to the defendants (Mitsilegas 2015: 334; see also Tonry 2010). Moreover, according to this analysis, individualising security fosters the possible 'expansion of State power', which requires the most careful scrutiny, especially in times when freedom is in constant tension with the need for security (Mitsilegas 2012 and 2015: 334; Tonry 2010). Pleas coming from these critical voices are relevant and deserve attention, also in light of another significant – yet again complex and multifaceted – aspect of the Victims Directive: that is, its definition of crime as 'a wrong against society as well as a violation of *the individual rights of the victims*' (Recital 9, emphasis added). This definition opens another set of philosophical, juridical and political questions, in which criminal law scholars have been engaged for centuries.

### ***A comprehensive and multi-level system***

Much has been written about the contents of the Victims Directive and its enrichment of the Framework Decision 2001/220/JHA it replaces. A supplement of analysis in relation to victims' participation in criminal proceedings is provided in the next Chapter II.2. Instead of focusing on a description of the single provisions, it is preferable to briefly concentrate here on a more general view of the changes in policies, culture, and practices that the adoption of the Directive triggers in addressing victims' rights.

According to Mitsilegas (2015: 320), the Directive 2012/29/EU 'introduces a multi-level system of protection of the victim', while 'constitut(ing) an attempt to establish minimum standards rules on the rights of victims in face of the considerable diversity in national criminal justice system as regards the position and rights of the victim'. The Directive, in fact, builds a 'comprehensive' (DG Justice 2013: 4) system, which takes into account multiple needs of the victim (corresponding to as many rights and interests), such as:

- recognition
- recognition of vulnerability and/or of specific protection needs
- respect
- information
- support
- protection
- access to justice and participation in criminal proceedings
- access to compensation and restoration.

Within this already articulated system, two major axes interestingly intersects. On one hand, there is a constant appeal to *tailor* and *target* each intervention on the *individual* victim's condition and needs, as mentioned above. On the other, the implementation of the Directive 2012/29/EU requires to look at 'the wider picture': that is, to combine 'legislative, administrative and practical measures', as stated in the *Guidance Document* (DG Justice 2013: 4), and to coordinate the horizontal system of rights attributed by the Victims Directive with the *whole* European set of legal instruments concerning victims of crime, such as Directives 2004/80/EC (compensation) or 2011/99/EU (European protection order in criminal matters), but also, for instance, Regulation 606/2013 (mutual recognition of protection measures in civil matters). In addition, the Commission's transposition and the implementation *Guidance Document* continuously calls for a *coordination* among 'all stakeholders' (DG Justice 2013: 3): from national legislators (in the exercise of their discretion when transposing the Directive) to criminal justice authorities in day-to-day activities, 'including the police, judicial authorities, relevant administrative bodies (such as legal aid administration, probation and mediation service) and victims' support providers' (DG Justice 2013: 33), ending with NGOs and the civil society (DG Justice 2013: 49). The Victims Directive multi-level system has to be implemented within a wider *network* of international, European and national subjects, legal tools and actions.

### ***Protection: the bridge between 'support' and 'justice'***

Following Article 8 of the Directive 2012/29/EU, one of the primary rights of the victims is that to access confidential victims support services, and if necessary specialist support ones (Gialuz 2012: 73). These services are in charge of 'acting in the interests of victims' (Art 8(1)).

For a victim, the right to access support services is of extreme practical importance, despite it being greatly neglected by many of the EU Member States. Interestingly, access to victim support is completely parallel and

independent from criminal justice, having to be ensured 'before, during and for an appropriate time after criminal proceedings', irrespective whether the victim has made a formal complaint (Art 8(1)(5)). This significant right of the victim does not create tensions *vis à vis* the rights and interests of the suspects, the accused persons and the offenders. As outlined by Lupária (2012: 39) with reference to the US *Parallel Justice Project* ([paralleljustice.org](http://paralleljustice.org)), the idea of 'parallel obligations' towards victims and offenders is promising, since it manages to separate the focus on the needs of actual victims from (punitive) criminal justice. Bottoms and Roberts (2010: xx) note how 'the victims' right movement cannot be seen as a monolithic enterprise ..., exercis(ing) a unidimensional influence on criminal justice policy-making' in punitive directions: there is in fact a perspective that primarily 'seeks to ensure that victims ... receive their service rights'. There is a lot that can (and must) be done in favour of victims outside criminal justice, and independently from it.

In the European 'horizontal' system of protection of each and all victims, as comprehensively outlined by both the EU law and the ECtHR-CJEU case law, the relationship between victims and 'justice' is multi-faceted, and not limited to criminal justice any way. It comprises, in fact, a wide range of profiles, which corresponds to as many rights or interests of the victim. They can be summarised as follows:

- access to information, including access to simple and accessible communication, to translation and interpretation (Arts 3ff of the Directive 2012/29/EU);
- an articulated series of rights set out by the Directive 2012/29/EU in relation to victims' 'interaction' with competent authorities, inside or/and outside criminal justice;
- an articulated series of rights attributed by the Directive 2012/29/EU in relation to victims' participation in criminal proceedings (Chapter IV of the Directive);
- access to: a) criminal, administrative or civil measures of protection which include protection orders in criminal and civil matters; b) measures of protection tailored on an individualised assessment to identify specific protection needs; and c) special measures in case of particular vulnerability (Arts 18ff of the Directive 2012/29/EU; Directive 2011/99/EU; Regulation 606/2013). Protection of the victims further includes measures (diverse in nature) that the State has to provide in order to safeguard the rights granted under the ECHR (ECtHR case law);
- the right to compensation from the offender, which includes the right to a decision on this issue in the course of criminal proceedings (Art

- 16); the right to compensation from a Member State's authority in case of violent intentional crimes having a cross border dimension (Directive 2004/80/EC);
- a set of rights and interests related to situations having a cross-border dimensions which might affect free movement and non-discrimination on grounds of residence status (Directive 2012/29/EU; Directive 2011/99/EU; Directive 2004/80/CE etc);
- an interest to investigate on the part of the State, corresponding to its obligation to protect individual rights under ECHR (ECtHR case law).

From the list above it appears that the issue of protection is ideally located between service rights and procedural rights, as to seal those two aspects of the European targeted system in favour of victims. Victim protection seems to be two sided : it has something in common with victims support, because of its forward-looking aim to sustain the victim and to avoid further negative consequences, such as repeat and secondary victimisation. But it has something in common with access to justice in the broad sense, since protection measures are made available by resorting to the 'competent authorities' (be them criminal, administrative or civil). In addition, some of the protection measures envisaged by the Directive take place inside criminal justice, and during criminal investigations or criminal proceedings. Finally, protection measures involve in many ways the very position of the victims in the relevant criminal proceeding. It is not by chance, perhaps, that 'one of the major achievement' of the Victims Directive (DG Justice 2013: 44) concerns precisely the 'individual assessment of victims' in order to identify their 'specific protection needs' (Art 22): it is in this ground-breaking provision that all the levels and dimensions of the protection of victims seem to concentrate.

### ***Suspects, accused persons and offenders (must) matter too***

The European Union is clearly victim *sensitive*. One may argue that the European Union is nowadays also victim *centred*. Is this happening *at the expenses* of the suspect, the accused person, or of the convicted offender?

The topic is thorny and questioned. Attention to victims *because of* their suffering and harm is due for many noble reasons (including the freedom of movement without discrimination throughout the EU), reasons that the European Union has decided to put 'at the heart of its criminal justice agenda'. Up to now, protection and respectful treatment – not repression *per se* – have been expressly the core objectives of the EU in making victims matter. Nevertheless, putting the victim at the centre of criminal justice and of criminal policies may challenge fundamental principles, guarantees and

safeguards (Allegrezza 2012: 8, 26; Mitsilegas 2015: 313; Tonry 2010; Venturoli 2015: 117). This challenge has many pitfalls, and it therefore requires a constant attention and considerable wisdom on the part of policy makers, European and national legislators, Justices in Strasbourg and Luxembourg, national judges and prosecutors, and enforcement agencies in general throughout the Union.

The 'victim paradigm', in fact, may everywhere steer criminal justice towards enemy criminal law, penal populism, excessive severity in punishments (Garland 2001: 11, 103). It may twist the guarantee to a fair trial and other fundamental procedural and penal guarantees in favour of the *victims of crime* instead of the potential *victims of justice* (Stella 2003; Dubber 2002). According to some analyses, an excessive attention to the rights of victims may reverse the culture of human rights into a 'culture of complaint' (Huges 1993), and may run the risk of, at its extreme consequences, transforming vulnerable, defenceless, victims of crime into the 'heroes of our times' (Giglioli 2014), the '*étoiles de la scène pénale*' (Gialuz 2015: 21)<sup>13</sup>, entitled to political power and to some sort of celebrity status (Eliacheff and Soulez Larivière 2007). Of course, populist victimism tends to 'use' victims for purposes other than their true protection and the respect for their dignity.

The formal recognition of and the respect for the rights of the suspect, of the accused and of the offender is therefore of utmost importance. European Union legal instruments and other documents, and the jurisprudence by both the European Court of Human Rights and the Court of Justice of the European Union, stress the need of a constant respect for both the rights and interests of the victims and the rights, interests and guarantees of the accused person and the offender. This must in fact be a permanent concern, since only a system capable of ensuring the protection of both those who harmed and those who were harmed, regardless of nationality and residence status, is a true, non-discriminatory, *justice* system (Eusebi 2013).

Yet, rights of victims and rights of defendants are (sometimes) conflicting.

Due to the enormous diversity in criminal justice systems, and especially in criminal procedures, between different States, national legislators still have great discretion in framing the turning point at which the rights and safeguards of the accused overcome the rights of protection and participation in the criminal proceedings of the victims (Allegrezza 2015: 6; Lupária 2012; Mitsilegas 2015: 330). And, even more thornily, vice versa.

The European Court of Human Rights and the CJEU also greatly contribute in designing the 'impact' of victims in criminal trials and the limits to their

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<sup>13</sup> Quoting literally from Wyvekens, A (1999) *L'insertion locale de la justice pénale. Aux origines de la justice de proximité* (Paris, L'Harmattan).

role, and consequently in fixing the actual balance of the scale. How to conduct hearings involving victims in the course of criminal trials, protection of vulnerable 'categories' of victims, and the need of sheltering victims from secondary victimisation are some of the frequently disputed matters. The issue of the balance between victims' rights and the rights and safeguards of the suspected or accused is especially present in the Court of Human Rights numerous case law, whereas the Luxembourg Court primarily devoted itself to defining the exact frame of the notion of 'victim' and to interpret the scope of the (then) Framework Decision 2001/220/JHA, mainly as far as victims' testimony and the protection of vulnerable persons are concerned.

According to Tonry (2010), the very idea to 'balance' – or 're-balance' – criminal justice 'in favour of the victim' must be contested, *if* (or when, or because) it comes along with punitive victims' movements that manage to shift policies towards repression. On the contrary, as Tonry further argues, 'few will disagree that victims should be dealt with sympathetically and supportively. That implies nothing, however, about treating defendants and offenders badly' (Tonry 2010: 76). Not to mention the fact that offenders, and especially imprisoned offenders, can immediately become 'vulnerable' subjects, if and when improper forms of authority or unjustified rights restrictions are imposed to them (the ECtHR case law is clear on this topic).

Articles 5, 6, 7 of the European Convention of Human Rights and articles 47-50 of the European Charter of Fundamental Rights comprise the rights and safeguards of defendants. Besides legal tools to protect victims, the European Union has increasingly set (minimum) binding standards 'to ensure that the basic rights of suspects and accused persons are protected sufficiently'<sup>14</sup> (although the balance in the scale of European priorities when it comes to rights of victims and rights of defendants is still scholarly disputed). In the period 2010-2013, three directives have been adopted with regards to procedural rights in criminal proceedings in favour of the suspects and the accused persons. They are worth mentioning:

- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 *on the right to interpretation and translation in criminal proceedings*;
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 *on the right to information in criminal proceedings*;
- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 *on the right of access to a lawyer in criminal*

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<sup>14</sup> European Commission webpage informing about the EU commitment to the 'rights of suspects and accused': [http://ec.europa.eu/justice/criminal/criminal-rights/index\\_en.htm](http://ec.europa.eu/justice/criminal/criminal-rights/index_en.htm) (last accessed on 15 December 2016).



*proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.*

Returning to the Victims Directive provisions, Recital 12 openly states that the rights of victims set out by the EU binding instrument 'are without prejudice to the rights of the offender': a necessary and due affirmation which requires some clarification.

The *service rights* (advice, support and assistance) do not pose problems *per se* with regards to the rights of the defendants. These service rights, in fact, are in principle directed to the victim according to a tailored and professional approach (as required by the Directive) and they do not (should not) cause immediate limitations to the freedoms and rights of the accused person or the convicted offender, nor they rebalance fair trial safeguards in favour of the victim.

The *procedural rights*, instead, are (much) more controversial, since they expressly assign the victim a participatory 'role in the relevant criminal proceeding'. This role challenges adversarial rules and the right to confrontation (and procedures thereafter); it may restrain the action of the defence council during interviews of victims and witness hearings, especially in case of vulnerable people or people with special needs of protection from secondary victimisation. Victims impact statements and other forms of participation in the proceedings may even influence decisions about conviction, punishment and release of a person in custody. It is with special regards to procedural rights, though, that the Victims Directive has 'hedged' the European contours of victims' interests, by conferring national legislators an ample discretion (Allegrezza: 2015; Mitsilegas 2015: 333). This topic is discussed in Chapter II.2. (see Mancuso, *infra*).

The right to *protection* and the adoption of *protection measures* or *special measures* resulting from the individual assessment of specific needs (Chapter 4 of the Directive) raise further questions. Victims have the right to the protection of their dignity and to be protected from 'secondary and repeat victimisation', from 'intimidation and retaliation', and 'against the risk of emotional or psychological harm' (Arts 18, 22). It is not in their rights to say *how* this protection should occur, although according to Article 22(6) victims must be closely involved and their wishes should be taken into account, including their wish not to benefit from protective measures.<sup>15</sup> One

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<sup>15</sup> The provisions of Art 22 (6) raise the question of whether a future shift will occur in CJEU jurisprudence from the precedent of Joined cases C-483/09 and C-1/10 *Gueye – Sanchez* 15 September 2011 (both cases resulting in the irrelevance of the victim's will to be

may argue that 'measures' (Art 18) and 'special measures' of protection (Arts 22, 23) reach the climax of the conflicting relationship between victims' rights and defendants' rights in the frame of Directive 2012/29/EU. These measures, in fact, might have a substantial impact on the defendant's procedural rights and might significantly constrain his/her freedoms, as it is the case with protection orders. And yet, the rationale and the explicit *protective* (not punitive) purpose of these measures are actually grounds for legitimately balancing the two conflicting interests. References to 'victims concerns and fears' (Recital 58), to 'emotional and psychological harm' (Art 18), and to 'wishes' (Art 22(6)), though, are indeed problematic: these are too subjective aspects to meet the robust criteria needed to ascertain the actual necessity of issuing protection measures that limit or restrict one or more of the defendant's rights and freedoms. Recital 58 and Articles 18 and 23 of the Victims Directive fix the insuperable limits of this balance of conflicting interests: 'without prejudice to the rights of the defence and in accordance with rules of judicial discretion'. These safeguards accompany those already envisaged, for instance, by the Directive 2011/99/EU concerning the European protection order in favour of the 'person causing or threatening a danger' (Recitals 17, 37, Art 9, etc.). The tension between criminal justice and victims of crime: from a private, 'an eye for eye', retributive justice in the hands of those who have been harmed to victims being long 'forgotten', and only recently 're-discovered' (Forti 2000: 252). Both the 'wrong' inclusion and the 'wrong' exclusion of victims deeply affect the legitimacy of the criminal justice system, and the search for the proper, and 'right', role of victims in criminal justice often poses 'intractable dilemmas' (Bottoms and Roberts 2010: xix).

Victims may be an 'uncomfortable' presence in criminal justice systems: their presence compels to face suffering and vulnerability. Yet, it is precisely victims' 'uncomfortable-ness' that questions criminal justice: its abstract technicalities, its incapability to give reasonable responses to crime, its brutality, often, towards actual persons (offenders, who may fall victims of an 'unjust' justice; innocents, who may fall victims of judicial miscarriages; victims of crime *stricto sensu*, who may encounter secondary victimisation). This questioning, though, offers in return a unique chance for criminal justice to change. It is in fact true that a wise victim-sensitive criminal justice may have a 'positive impact on individual victims and on society as a whole', as stated by the European Commission in its 2011 Communication.

A possible 'right' direction of change may be borrowed from the South African Constitutional Court's landmark decision invalidating capital

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approached by the offender in the frame of a judicial decision confirming an ancillary penalty enjoining a domestic violence offender not to do so).

punishment (*S v Makwanyane and Another* [1995] CCT/3/94 [88]): 'It is only if there is a willingness to protect the worst and the weakest amongst us, that all of us can be secure that our own rights will be protected'. This is 'the test of our commitment to a culture of rights', as eloquently put in South African Justice Langa's concurrent opinion in 'dialogue' with us. This echoes in Michael Tonry's words too: 'treating offenders well, better, or sympathetically does no damage to victims. Victims have the same interests as other citizens in having a criminal justice system that is fair, efficient and humane'.

This challenge is risky, but a fascinating one.

## II.2. Victims' Participation in Criminal Proceedings

*Enrico Maria Mancuso*

The Directive 2012/29/EU serves a double purpose<sup>1</sup>: on one hand, it seeks to ensure that victims of crime receive appropriate information, support and protection regardless of the existence of an ongoing criminal investigation; on the other hand, it seeks to ensure that victims are able to participate in the criminal proceedings.

Member States should thus recognise the victim as an individual with individual needs, with a key role in the criminal proceedings, while respecting the fair trial principle and without prejudice to the rights of the offender.<sup>2</sup>

The European law-maker has laid down minimum rules that Member States may extend.<sup>3</sup> However, the approach seems to vary depending on the objectives pursued. If the right to information and support seems to receive full recognition, we cannot say that the Directive has taken the final step and entitled victims to a 'right to a criminal trial'<sup>4</sup>, nor a 'right to be party to criminal trial'. In fact, the provisions concerning the victim's participation to criminal proceedings always go together with national safeguards clauses that allow Member States, during the implementation process, to vary significantly the extent of the procedural rights of victims set out in this Directive, depending on the victims' formal role in the relevant criminal justice system. The harmonisation thus remains a mere intent destined to raise the white flag before a national scarce consideration of the role of victims in criminal proceedings.<sup>5</sup>

The territorial scope of application of the procedural rights, here at stake, includes criminal offences that are committed in the Union and criminal proceedings that take place in the Union, disregarding any residence status,

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<sup>1</sup> See Article 1 of the directive 2012/29/EU

<sup>2</sup> DJ Justice *Guidance Document* of 2013 related to the transposition and implementation of Directive 2012/29/EU, commenting on Art 1 of the Directive.

<sup>3</sup> Recital 10.

<sup>4</sup> For an overview: Chiavario 2001: 938; Simonato 2014: 53. On positive obligations of the ECHR: Klatt 2011: 691.

<sup>5</sup> Recital 20 is of utmost importance to understand the scope of application of procedural rights here set out.

citizenship or nationality requirement for victims. Consequently, the Directive also confers rights on victims of extra-territorial offences in relation to proceedings that take place in the Union<sup>6</sup> and rights on victims that are resident of a different Member State. Many provisions oblige Member States to minimise the difficulties faced by non-native victims, particularly with regard to the organisation of the proceedings. For example, according to article 17, appropriate measures should be taken in order to ensure that victims resident in another Member State can: a) make immediately their complaints and statements to the competent authorities of the place where the offence was committed or, sometimes, before authorities of their Member State of residence (who will take care of the transmission of the complaint, without delay and if necessary, to the competent authorities) b) participate via video conferencing or telephone conference calls during the hearings. Other provisions envisage the rights to linguistic assistance to victims who cannot speak or understand the language, as illustrated below.

The approach taken in the Directive seeks to ensure the individual victim's ability to 'follow the proceedings'.<sup>7</sup> For this purpose, victims are entitled, from the very first contact with competent authorities, to a set of rights to information contemplated in Chapter II. Article 3, recognising the right to understand and to be understood, represents the very essence of the new personalised approach; it is intended for assuring victims full access to information and minimising as far as possible 'communication difficulties'. The latter notion was already contemplated in the Framework Decision<sup>8</sup> but it had been interpreted by Member States as to be limited to linguistic barriers. The Directive furthermore requires that authorities pro-actively assist victims to reach a full understanding *of the procedure*, bearing in mind the personal characteristic of the victim (eg, disability, age, maturity, gender, relationship to or dependence on the offender).

Authorities should also provide linguistic assistance by offering interpretation and translation services to those victims who do not speak or understand the language (Lupária 2014: 97). Since they may entail considerable costs and a slowdown in the conduct of proceedings, the effectiveness of these rights may largely depends on the role recognised to the victim in the relevant judicial criminal system. If, under paragraph 2 of Article 5, all victims should be provided with 'necessary linguistic assistance', only victims with a formal role in the proceedings may be provided, according to article 7, with 'interpretation' during criminal proceedings. Upon request and free of charge, victims should be provided with interpretation at least during any interviews or questioning before

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<sup>6</sup> Recital 10 and 13.

<sup>7</sup> DJ Justice *Guidance Document* of 2013 commenting on Art 3.

<sup>8</sup> Article 5 FD requiring 'to minimise as far as possible communication difficulties'.

investigative and judicial authorities and during court hearings; information essential to the exercise of their rights should always be translated in a language that they understand (this provision is linked to information rights envisaged in articles 4 and 6). For other aspects of the criminal proceedings, interpretation and translation may depend on specific issues or the victim's role in the proceedings and need only be provided to the extent necessary for victims to exercise their rights;<sup>9</sup> they could be denied if they unreasonably prolong the criminal proceedings.<sup>10</sup> The victim may challenge the decision not to provide interpretation or translation, but the applicable procedural rules depends on national law.<sup>11</sup> The victim may also submit a request for the translation of a document to be considered essential (i.e., relevant for the active participation of the victim in the proceedings),<sup>12</sup> but the Directive does not explain what are the criteria for the assessment nor which authority is competent for it.

A special attention is dedicated to the delicate moment of the first contact between the victim and the competent authorities. Article 4 requires that victims are offered, without unnecessary delay, of some basics information enlisted in paragraph 1, such as the type of support that they can obtain, the procedure for making complaints, the conditions of access to legal aid and to interpretation and translation services, the availability of special protection measures and contact details for communications about their case. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime.<sup>13</sup>

Victims must receive at least a written acknowledgment of their formal complaint, stating the basic elements of the criminal offence concerned, such as the type of crime, the time and place, any damage or harm caused.<sup>14</sup> A delay of reporting, due to fear of retaliation, humiliation or stigmatisation, should not result in refusing the acknowledgment.<sup>15</sup>

The information flow must be continuous throughout the proceedings to enable victims to make informed decision about their participation in

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<sup>9</sup> Recital 34. This article draws on Article 2 of the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings ('Interpretation and Translation Directive').

<sup>10</sup> Article 8(2).

<sup>11</sup> Article 7(7). *cf* the different approach of Directive 2010/64/EU as explained in Civello Conigliaro 2012: 3.

<sup>12</sup> Article 7(5).

<sup>13</sup> Article 4(2).

<sup>14</sup> Article 5(1) and recital 24: 'If the acknowledgment includes a file number and the time and place for reporting of the crime, it can serve as evidence that the crime has been reported'.

<sup>15</sup> Recital 25.

proceedings. Article 6 obliges Member States to notify victims, without unnecessary delay, of their right to receive, upon request, information about their case. Such information, which can be provided orally or in writing or through electronic means<sup>16</sup>, must be detailed and precise. According to paragraph 1, all victims must be informed with regard to a decision not to proceed or to end an investigation or not to prosecute the offender, the time and place of the trial and the nature of the charges against the offender. According to paragraph 2, only the victims that also have a *role* in the relevant criminal justice system may also receive, upon request, information about any final judgment and the state of the proceedings.

Notably, paragraph 3 imposes an obligation to provide reasons or a brief summary of reasons for the above-mentioned decisions to end proceedings or the final judgment, except if a jury decision or the confidential nature of the reasons prevent from their disclosure as a matter of national law.<sup>17</sup> Victims may waive this right to be informed, but they must be allowed to modify their wish at any moment.<sup>18</sup>

If provided by the national legal system<sup>19</sup>, the right to information should also include indications how to make a recourse against the release or escape from detention of the alleged offender. However, such a right could not be provided, upon a weighted decision of the authorities, if the notification could entail a tangible risk of harm for the offender.

The second set of procedural rights directly concern the victim's participation in criminal proceedings. Chapter III is articulated into several provisions aimed at recognising an active role and effective participation of the victim during the trial: the right to be heard (article 10), the right to a review of a decision not to prosecute (article 11), the right to safeguards in the context of restorative justice services (article 12), the right to legal aid (article 13), the right to reimbursement of expenses (article 14), the right to return of property (article 15), the right to decision on compensation from the offender in the course of criminal proceedings (article 16) and the rights of victims resident in another Member State (article 17).

Notably, the individuation of the applicable procedural rules that should give effect to these rights is left to the discretion of Member States: since

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<sup>16</sup> In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel. See also Verges 2013: 121.

<sup>17</sup> Recital 28.

<sup>18</sup> Article 6(4) and recital 29.

<sup>19</sup> The Directive does not introduce the right for victims to lodge a recourse against a decision on releasing the offender, nor the right to be heard in the decision-making process before the competent authorities. Extending victims' procedural participation in the release procedure remains a matter of national discretion.

the role of the victim<sup>20</sup> in the criminal justice system and investigation rules vary among the Member States, the Directive only affirms common objectives, and national law-makers are up to decide what mechanisms can best guarantee them, in accordance to the peculiarity of the respective legal system. What matters is that the level of safeguards is effective.

The right to be heard<sup>21</sup> represents an essential moment of recognition (Garapon 2004: 123) of the individual as a victim, by him/herself and by the society. The victim has the right<sup>22</sup> to tell what happened, his or her side of the story, the pain suffered. The Directive imposes a duty to listen to the victim, but it does not determine when and before which judicial body it has to be done. It only requires that such declarations must have the value of 'elements of proof'. Ergo, the supranational indications are compatible with both inquisitorial and adversarial legal systems.

A complex set of powers is recognized to victims in case of a decision not to prosecute. The notion of 'decision' that is relevant under article 11 refers to any decision ending the criminal decision, included the prosecutor's decision to withdraw charges or discontinue proceedings.<sup>23</sup> Only decisions not to prosecute resulting in out-of-court settlements and in special procedures (such as those against member of parliament or government having acted in their official position) may be excluded from the scope of application of this article.<sup>24</sup> Victims are entitled with the right to a review of the decision not to prosecute (that is linked to the right to be informed about it provided by Article 6). However, the precise modalities of such a mechanism shall be determined by national law, as well as the extent of such a right in accordance with the formal role given to victims in the relevant criminal justice system. If the role of the victim is to be established only after a decision to prosecute the offender<sup>25</sup>, Member States should ensure the right to a review at least to victims of 'serious crime'.<sup>26</sup> The review should be carried out by a person or authority other than whoever made the original decision, in accordance with the principle of impartiality<sup>27</sup>.

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<sup>20</sup> The notion 'role of the victim' determines in particular the procedural rights of victims set out in the Directive and should not be confused with the definition of 'victim' included in Article 2.

<sup>21</sup> Article 10.

<sup>22</sup> That can be waived.

<sup>23</sup> Recital 44.

<sup>24</sup> Article 11(5). Although, the out-of-court settlement should envisage a warning or an obligation. See recital 43.

<sup>25</sup> The Guidance for example recall the question whether the victim wishes to constitute civil party.

<sup>26</sup> Article 11(2). The notion of 'serious crime' is not defined by the Directive, and shall be determined by the national interpreter, likely taking into account the existing EU criminal law legislation and the international criminal justice standards.

<sup>27</sup> Article 11(4).



However, the Directive respects national procedural autonomy and does not interfere with the relations of hierarchy among authorities. The reading of recital 43 further clarifies that the right to a review cannot be interpreted as something close to the appeal's scheme: "it should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by court".

The provisions aimed at assuring that victim's participation to proceedings is not frustrated by financial obstacles of the individual (articles 13-16), use a very different tone. But the apparent peremptory nature of the right, under article 16, to obtain a decision on compensation during the criminal proceedings, cannot be interpreted as if the Directive establishes an obligation to handle the requests for compensation in the course of criminal proceedings: national legal system may provide for such a decision to be made in other legal proceedings. Member States are also asked to 'encourage' offenders to pay compensation to victims, but the meaning of this paragraph is completely vague: it does not explain what 'encourage' means, nor does the preamble; what happens if a convicted offender lacks the means to provide compensation? Do Member States have a subsidiary responsibility or can the State advance payment to the victim? How can the victim enforce a decision on compensation?

The third set of rights aimed at safeguarding the participation of the victim is envisaged in Chapter IV. The Directive ensures to victims and their family members a wide range of protection measures during the proceedings and from the proceedings, particularly to prevent emotional distress to the victim. The measures that a State can adopt, without prejudice of the rights of the defendant, follow three main strands: avoiding secondary and repeat victimisation; shielding the victim from any intimidation and retaliation (including physical, emotional and psychological harm) and protecting the victim's dignity in particular during questioning and witnessing (Simonato 2014: 119; Parlato 2012: 381; Belluta 2012: 96). Unnecessary contacts between victim and offender should be avoided within the court's premises (article 19); during criminal investigations, interviews should be carried out without unjustified delay, only where strictly necessary for the purposes of the investigation, and also medical examination (particularly relevant in relation to sex crimes) should be kept to a minimum (article 20); privacy, personal integrity and personal data of victims should be protected and balanced with the freedom of expression and information and freedom and pluralism of media (article 21). Victims should be always treated in a respectful, professional and non-

discriminatory manner by properly trained practitioners who have contact with them, in accordance with their needs.<sup>28</sup>

Here, the winds of change blow once again toward an individualised approach, and suggest that Member States make individual assessments (case-by-case approach) to identify other specific protection needs and vulnerability of the relevant victim, taking into account, in particular, the following criteria: a) personal characteristics of the victim; b) type or nature of the crime; c) the circumstances of the crime<sup>29</sup>.

A special sensitivity emerges towards the most vulnerable victims such as women and children, as the Directive follows the path already traced by the European Council Conventions of Istanbul and Lanzarote. However, no victim is standardised: Member States are required to always give a personalised attention to each individual with his or her own specific needs (Simonato 2014: 108; Cassibba 2014: 5; Laxminarayan 2012: 390; Savy 2013: 78).

The major achievements of the Directive 2012/29/EU reflect a changing perception of the role of criminal law, called upon to respond the needs of the victim as a protagonist (Allegrezza 2015: 18; Parlato 2012: 91 with reference to Hirsch 2008: 28; Lupária 2014: 615).

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<sup>28</sup> Article 25.

<sup>29</sup> Article 22.

## II.3.

# The Process of Transposition and Implementation of the Directive 2012/29/EU in the Three Member States Involved in the Project

### II.3.1.

## Belgium

*Katrien Lauwaert*

The overview underneath summarises what Belgium has undertaken to implement the 2012 Victims Directive. Moreover it provides the reader with a short overview of the baselines of Belgian victim policies, victim assistance services put in place, and some of the victim policy's strengths and flaws. Doing this, the text also points out the relevant services, professionals and coordination mechanisms the Victims and Corporations project can approach to learn about their experience with victims of corporate violence. At the same time they will be the target audiences for feeding back the knowledge the project will generate on the specific group of victims of corporate violence so that these new insights can be taken into account in future policy and practice.

In Belgium *no specific new laws* were adopted in view of the implementation of the Directive. Overall victims in Belgium have well elaborated possibilities of participation in the criminal proceedings and have access to a well-established network of victim assistance and restorative justice services. An official report on the implementation of the Directive in Belgium is not available. The academic rapporteur for Belgium in a European research project about the implementation of the Directive<sup>1</sup> concluded – after a thorough analysis of the themes contained in the Directive - that 'it is clear that victims in Belgium benefit from a strong position in the criminal procedure, a position that goes beyond the minimum standards found in EU legislation' (De Bondt sine dato).

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<sup>1</sup> *Protecting victims' rights in the EU: the theory and practice of diversity of treatment during the criminal trial*, JUST/2011/JPEN/AG/2919, implemented between December 3rd, 2012 and June 2nd, 2014, by the [Centre for European Constitutional Law – Themistokles and Dimitris Tsatsos Foundation](#), in collaboration with the [Institute for Advanced Legal Studies of the University of London](#).

Although no specific formal law was adopted as a consequence of the Directive, *some changes were introduced in victim related regulations* in the period just preceding and the period following the adoption of the Victims' Directive.

On November 12, 2012 a circular was issued by the college of prosecutors general concerning the respectful treatment of deceased victims, the announcement of their death and the organisation of a respectful moment of farewell<sup>2</sup>. On the same date another circular was adopted concerning the reception of victims at the prosecution services and the courts<sup>3</sup>. Both were new versions of earlier guidelines on these topics which needed to be adapted following legislative and institutional developments and in order to take better into account the needs of victims in all stages of criminal procedure.

In a similar way and as a consequence of changes in the code of criminal procedure<sup>4</sup>, a circular was adopted introducing adapted rules for access to the judicial file on 13 March 2013.<sup>5</sup> In view of the improvement of the quality of information provided to victims at all stages of the procedure, an adapted circular concerning the written acknowledgement of the formal complaint (attesten van klachtneerlegging) and the registration of the declarations of registered victims was adopted on 13 November 2014<sup>6</sup>. Finally, the obligation to provide information about the possibilities for mediation was clarified in a new circular of 29 April 2014, which had been in the pipeline for several years<sup>7</sup>.

Policies in favour of victims of crime have developed in Belgium *since the 1980s* for general victim support and specialized victim support services *and*

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<sup>2</sup> Omzendbrief nr. 17/2012 van het college van procureurs-generaal inzake het respectvol omgaan met de overledene, de mededeling van zijn overlijden, het waardig afscheid nemen en de schoonmaak van de plaats van de feiten, in geval van tussenkomst door de gerechtelijke overheden, 12 november 2012.

<sup>3</sup> Omzendbrief nr. 16/2012 van het college van procureurs-generaal bij de hoven van beroep betreffende het slachtofferonthaal op parketten en rechtbanken, 12 november 2012.

<sup>4</sup> Wet van 27 december 2012 houdende diverse bepalingen betreffende justitie, B.S., 31 januari 2013.

<sup>5</sup> Omzendbrief nr. 5/2013 van het college van procureurs-generaal bij de hoven van beroep betreffende de inzage van het strafdossier of tot verkrijgen van een afschrift ervan, 13 maart 2013.

<sup>6</sup> Omzendbrief nr. COL 5/2009 van het college van procureurs-generaal bij de hoven van beroep betreffende richtlijnen met betrekking tot de attesten van klachtneerlegging en de registratie van de verklaringen van benadeelde persoon, 13 november 2014.

<sup>7</sup> Omzendbrief nr. 5/2014 van het college van procureurs-generaal bij de hoven van beroep betreffende de informatieverplichting inzake bemiddeling – artikelen 553, 554, 555 van het wetboek van strafvordering en de scharnierprocedure tussen bemiddeling in strafzaken krachtens artikel 216ter van het wetboek van strafvordering en herstelbemiddeling.

since the 1990s at the level of the police, public prosecution and the courts. Legislation and services came about in a context of renewed interest in victims of crime. More specifically the Belgian developments were influenced by international legislation concerning victims of crime at the level of the Council of Europe, the United Nations and the European Union. Also groups of citizens played an active role in bringing about change. One example is the pressure brought on the system by a self-help group of parents of murdered children, who requested a more adequate and humane treatment of victims by the professionals in the criminal justice system (Aertsen 1992). Some criminal cases which were widely covered in the media, provoked a shock in public opinion about the inadequate support victims received and the lack of possibilities for the victims to influence the course of criminal investigation and further proceedings. The most famous and influential one was the Dutroux case, named after the offender who was convicted for the abduction, rape and murder of several children (Lemonne, Vanfraechem and Vanneste 2010). The credibility of the criminal justice system was heavily damaged by the way the case had been handled. A protest movement – the so-called white movement – supported by a large segment of the population – led to a parliamentary inquiry and consequently reshaping of the position of victims in criminal procedure in the 1998 Franchimont law (De Bondt sine daThe to). *main objectives and principles of Belgian victim policy* - summarised in a 2014 circular of the college of prosecutors general<sup>8</sup> - resonate well with the main goals of the Directive as set out in Art 1 and recital (9).

A first objective is to offer victims the possibility to overcome the trauma incurred by the crime and to find a new balance. Secondly, victim policies aim at preventing secondary victimisation by making sure that interventions by the police, other criminal justice officials and other intervening professionals or services do not worsen the victim's trauma or do not provoke a second trauma.

In order to reach these objectives victim policy is developed according to the following principles:

1° The victim has a right to self-determination. No one should take over from the victim when decisions have to be taken and actions to be decided which concern the victim.

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<sup>8</sup> These goals and principles are summarised in Omzendbrief nr. 16/2012 van het college van procureurs-generaal bij de hoven van beroep betreffende het slachtofferonthaal op parketten en rechtbanken, 12 november 2012, p. 9-10.

2° The State, and more specifically the judicial authorities, are responsible for decisions concerning prosecution, punishment and execution of sentences.

3° The victim has rights. Most important are the right to be treated correctly and carefully, the right to receive and provide information, the right to legal assistance, the right to reparation of harm, the right to assistance, the right to protection and the right to privacy.

4° Agencies work according to an integrated multi-level approach. Various aspects of victim policy depend on different agencies which belong to different levels of competence in the Belgian state ( the federal state, the three Communities, local authorities). Cooperation protocols are concluded amongst these agencies and their respective tasks are clearly defined and delineated.

5° All criminal justice professionals should, when needed, refer victims to support services organised by the Communities or to legal assistance.

Different *victim assistance services* (Art 8 and 9 Directive) have been put in place. It is the task of the police to provide initial assistance to victims by treating them respectfully and providing information. For sensitive and complicated cases they can count on the support of a specialised in-house victim assistance unit. At the courts, victim reception units provide information about the victim's case and about possibilities for support. They accompany victims, for example, to court sessions, reconstructions and consultation of the case file. Outside the criminal justice system, victims have direct access to victim support services who are part of more general welfare services. They provide for free information and short term practical, emotional and psychological support. More traumatised victims who need long term psychological help are referred to general centers for mental health. Certain categories of victims can be referred to specific support structures. This is for example the case for families of missing persons, for victims of child abuse, human trafficking, partner violence and for victims of road traffic incidents.

*Mediation services* (Art 12 Directive) are available nationwide for cases involving adult offenders.

Restorative mediation (Arts 553-554 Code of Criminal Procedure) is directly accessible and for free. Restorative mediation is guided by professional mediators working for an independent non-governmental organisation and no type of offences or offenders is excluded. A law from 22 June 2005 provides a solid framework for this mediation practice which runs parallel to the criminal procedure.

Mediation can also be offered by the prosecutor (Art 216 ter Code of criminal procedure). This so called penal mediation is a diversion mechanism to avoid less serious cases to go to court. The mediation is carried out by justice assistants, these are social workers working closely with the public prosecutor.

Since 1985 victims of violent crime and family members of deceased victims of violent crime can obtain financial support from a *State compensation fund*. This is a subsidiary mechanisms which is complementary to other channels for compensation such as private insurances and legal proceedings. Over time the group of victims who can make use of the compensation fund has been broadened.

While we will not detail all the victims' rights during criminal proceedings, it is noticeable that victims also have rights during the execution of the prison sentence of their offender. Victims have a right to information about and a right to be heard during the decision making processes concerning modalities of sentence execution such as conditional release.<sup>9</sup>

The multilevel integrative victim policy approach requires thorough and systematic coordination. Therefore *coordination mechanisms* have been set up at different levels.

At the national level intergovernmental action plans have been developed to coordinate the work concerning specific types of victims amongst all departments concerned at the federal level and the level of the three Communities and the relevant civil society organisations. These action plans exist for example for gender related violence, homophobia, transphobia and human trafficking.

Cooperation agreements have been concluded between the federal and the Communities level; the federal level being competent for the police, the prosecution and the courts, and the Communities being competent for victim reception and victim support.

A national forum for victim support policy was set up already in 1994. The national forum gathered representatives of different ministries, the police, the prosecution, and several civil society organisations working with victims and was tasked to set up a dialogue amongst all these stakeholders and formulate advice concerning victim policy. Although very productive in the first years of its existence, it has more recently almost completely stopped functioning by lack of funding and staff.

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<sup>9</sup> Wet van 17 mei 2006 betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten, B.S., 15 juni 2006.

The college of prosecutors general takes up a general coordination role concerning the tasks of the judicial actors towards victims of crime. It is assisted by a network of excellence on victim policy in which representatives of the prosecution services meet with representatives of the ministry of justice, the police and victims services.

At the level of the judicial district liaison magistrates focus on victim policy in their respective judicial districts. They work in collaboration with the district victim policy council, which brings together representatives of the police, criminal justice and welfare services who have all a role to play in victim assistance. Together they follow up and evaluate the implementation of victim policies.

For the Victims and Corporation project the implementation of Art 22 of the Directive on individual assessment to identify special protection needs is of special interest. As many other member states Belgium does not mention the individual needs assessment as such in its legislation. Rather, procedures, methods and directives are formulated throughout the national legislation which give guidance to the services working with victims on how to take into account specific needs victims may have according to the nature of the crime or characteristics of the victims.

An extensive referral system is put in place through which victims who come in contact with police or judicial services can or have to be referred to victim reception services at the public prosecutors offices and the courts and to the victim support services in society. These services can monitor and evaluate the specific needs of victims and refer them to more specialised services, self-help groups and other initiatives according to the specific problems they are dealing with.

Detailed instructions have been developed for dealing with specific categories of victims such as victims of partner violence<sup>10</sup>, child abuse, human trafficking<sup>11</sup> and hate crime<sup>12</sup> and for the close family of deceased victims<sup>13</sup> or missing persons<sup>14</sup>. They explain how to guide these victims

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<sup>10</sup> Gemeenschappelijke omzendbrief COL 18/2012 van de minister van Justitie, van de minister van Binnenlandse zaken en van het College van procureurs-generaal betreffende het tijdelijk huisverbod ingeval van huiselijk geweld, 18 december 2012.

<sup>11</sup> Omzendbrief COL 8/2008 inzake de invoering van een multidisciplinaire samenwerking met betrekking tot de slachtoffers van mensenhandel en/of van bepaalde zwaardere vormen van mensensmokkel, 7 november 2008.

<sup>12</sup> Gemeenschappelijke omzendbrief COL 13/2013 van de minister van Justitie, de minister van Binnenlandse Zaken en het College van Procureurs-generaal betreffende het opsporings- en vervolgingsbeleid inzake discriminatie en haatmisdrijven (met inbegrip van discriminaties op grond van het geslacht), 17 juni 2013.

<sup>13</sup> Gemeenschappelijke omzendbrief COL 17/2012 van de minister van Justitie, de minister van Binnenlandse Zaken en het College van procureurs-generaal inzake het respectvol omgaan met de overledene, de mededeling van zijn overlijden, het waardig afscheid nemen



through the procedure, which specific services can be proposed and which specific measures can be taken.

Victims belonging to more vulnerable groups automatically benefit from specific arrangements. Victims of child abuse, for example, are automatically referred to specialist centers and victims of certain types of crime (such as victims of burglary and victims who were personally confronted with the offender) are automatically referred to victim support. Moreover, victims under the age of eighteen have the right to be accompanied by an adult of their choice during interrogation and the interview must take place in a suitable room or be done through audiovisual recording (IVOR 2016).

The robust Belgian legislative framework for victims of crime suffers from its *complexity and from a lack of transparency*. For professionals and victims it is difficult to find their way in the labyrinth of legislation and to understand the division of tasks amongst professionals.

The complexity is first of all due to the large number of different laws which were adopted over time, and which are not brought together in one coherent legislative instrument. This would to a certain extent also not be possible as these laws and regulations are situated at different levels of competence: the federal level, the level of the three Communities and the local level. That many different actors, each with well delineated competencies, are tasked to deal with victims issues adds to the complexity. The division of tasks over all justice professionals fits however with the choice to develop a multi-level, integrated system with a low level threshold for victims. Basically each police and justice professional who comes in contact with victims should be able to deal with victims appropriately and to refer to more specialised services if needed.

Another factor which brings complexity to the situation for Belgian victims of crime is the lack of a unique and uniform definition of the 'victim'. Who qualifies as a victim varies across the legal texts. Individual laws providing rights to victims often define the scope of the term victim for that particular law. Mostly direct victims and relatives are covered. Contrary to the Directive legal persons can also qualify as victims.

Within the criminal procedure victims can opt for three different kinds of standing: mere victim, registered victim and civil party. Mere victims do not have a particular connection with the criminal procedure. They can be called as a witness or interrogated, but they have no right to be kept informed of their case. Victims who are registered have the right to be informed about

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en de schoonmaak van de plaats van de feiten, in geval van tussenkomst door de gerechtelijke overheden, 12 november 2012.

<sup>14</sup> Ministeriele richtlijn COL 12/2014 - Opsporing van vermiste personen (aangepaste versie van 26 april 2014).

the decisions in their case and they have the right to access the case file. Civil parties are parties to the proceedings and they benefit from extra rights such as the right to ask for compensation through the criminal proceedings and the right to ask for additional investigative measures.

Despite the adoption of a rather impressive set of legislation and the development of a large network of general and specialized victim assistance services, there is still a long way to go before the multilevel, integrative approach will be working smoothly in practice and before a real change-over of the criminal justice culture will be realised in which all of its professionals regard the victim as a full-fledged stakeholder who merits the fulfillment of all the rights mentioned in the Directive.

## **II.3.2.**

### **Germany**

*Marc Engelhart*

Germany dealt with the implementation of Directive 2012/29/EU during the legislative procedure for a general revision of legislation on the rights of victims in 2014/2015. Parliament decided on the final version of the Act, the Third Victims' Rights Reform Act on 21 December 2015.<sup>1</sup> The bill came into force on 31 December 2015, but the provisions on so-called psychosocial support will only enter into force on 1 January 2017. The act expressly implements Directive 2012/29/EU.

A first draft of the bill by the Federal Ministry of Justice and Consumer Protection was made public on 10 September 2014. The bill took up the implementation requirements of Directive 2012/29/EU but also those of Art 31 a) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 1 July 2010. Additionally, the bill formally introduced the system of psychosocial support already practiced by some German States into federal legislation. The state Ministers of Justice had asked the federal ministry to consider federal legislation for psychosocial support at its 85th Conference of Ministers of Justice on 25-26 June 2014.

The main focus for the implementation of Directive 2012/29/EU was to strengthen the rights of the victim to be informed about procedural steps and to improve the possibilities to participate in the proceedings as well as the means for receiving compensation and getting in contact with victim support institutions. Insofar, the bill provided for reform of sections 406i (Information as to rights in criminal proceedings), 406j (Information as to rights in non-criminal proceedings), 406k (Information as to further rights) and 406l (Rights of relatives and heirs of aggrieved persons) Code of Criminal Procedure as well as sections 158 and 406d (Notification of different steps taken in criminal proceedings) Code of Criminal Procedure. Sec. 406g Code of Criminal Procedure and a new law on psychosocial assistance (Gesetz

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<sup>1</sup> 'Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz)', Act of 21.12.2015, Federal Law Gazette (Bundesgesetzblatt – BGBl.), part. I of 30.12.2015, pp. 2525-2530.

über die psychosoziale Prozessbegleitung im Strafverfahren) provide the framework for psychosocial assistance. Several changes concern language assistance and translation for victims. Although the legislation was heavily criticized, eg, by the association of defense lawyers, as impeding the rights of the accused,<sup>2</sup> the bill passed through parliament without any substantial changes.

The 'Third Victims' Rights Reform Act' builds upon an already rather elaborate system of victim protection that has been introduced and reformed several times in the last four decades. The modern discussion of strengthening victims' rights first came up in the 1970s and led to the Crime Victims Compensation Act (Opferentschädigungsgesetz). This act provides for compensation of victims of intentional violent crimes if the victim is not able to work or is otherwise helpless because of the crime. This public compensation scheme supplements the existing system of civil damages (where the victim has to claim damages against the perpetrator) on his own risk in civil proceedings without state support). Under the act victims of violent crime receive the same compensation as war victims, eg, treatment and - in the case of permanent damage - a pension. Yet, there is no compensation for damage to property or financial loss. Insofar the government does not fully take the place of the perpetrator and is not actually subject to moral reproach.

This development and international influences such as the United Nations' Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985 have led to an increasing interest of legal academics as well as policy-makers in the situation of victims in criminal proceedings since the mid 1980s.

A major step forward was the 'First Act for the Improvement of the Standing of Aggrieved Persons in Criminal Proceedings', the so-called Victim Protection Act (Opferschutzgesetz ) of 18 December 1986.<sup>3</sup> This was followed by legislation such as the 'Act for the Protection of Witnesses in Examinations in Criminal Proceedings and for the Improvement of Victim Protection' (Witness Protection Act - Zeugenschutzgesetz ) of 30 April 1998<sup>4</sup> and the 'Act for the Improvement of the Rights of Aggrieved Persons in Criminal Proceedings' (Victims' Rights Reform Act -

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<sup>2</sup> See Deutscher Anwaltverein, Stellungnahme SN 66/14 of 17.12.2014 (Stellungnahme des Deutschen Anwaltvereins durch die Task Force 'Anwalt für Opferrechte' unter Beteiligung des DAV-Ausschusses Strafrecht zum Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz Entwurf eines Gesetzes zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz)), [www.anwaltverein.de/de/newsroom](http://www.anwaltverein.de/de/newsroom) (as of 23 May 2016).

<sup>3</sup> Federal Law Gazette (Bundesgesetzblatt – BGBl.) 1986, part. I, p. 2496.

<sup>4</sup> Federal Law Gazette (Bundesgesetzblatt – BGBl.) 1998, part. I, p. 820.

Opferrechtsreformgesetz) of 1 September 2004<sup>5</sup>. In 2009 the 'Act to Strengthen the Rights of Aggrieved Persons and Witnesses in Criminal Proceedings' (Second Victims' Rights Reform Act - 2. Opferrechtsreformgesetz)<sup>6</sup> was the last major reform before the current 'Third Victims' Rights Reform Act'.

All these pieces of legislation concentrated on expanding victim's rights by improving the level of protection for victims and witnesses and their procedural rights. Until the Third Victims' Rights Reform Act the fundamental role of victims as well as the allocation of roles stipulated in the system of criminal proceedings remained unaffected. The proceedings were constructed around the objective prosecution by the state and the role of victims mainly as (the often most important) witness in a case. Therefore, the aim was to achieve practical improvements for victims without affecting the right of the accused to a fair trial.

One of the main aspects was to improve the right to information about the case and the participation during the proceedings. These rights now include: The crime victim has the status of a witness before the investigation is closed. As such the victim can apply for information regarding whether the suspect is in custody. Moreover the victim has under certain circumstances he/she has also the right to inspect the files or to obtain information from the files and the right to involve a lawyer that may also represent the victim in court. As a witness, the victim will be informed of the day of the hearing. He/she has the right to be accompanied and to be represented by a lawyer. Some expenses are reimbursed if claimed within three months after questioning: travel costs, expenses incurred, loss of time, disadvantages in housekeeping or loss of earnings. After giving testimony, the witness is also allowed to be present during the proceedings even if they are not public (eg, proceedings against juvenile offenders).

In some cases victims or their relatives can join the proceedings as a private accessory prosecutor as soon as the public prosecutor has sent the indictment to the court. The possibility to join the proceedings as private accessory prosecutors is mainly restricted to victims of certain criminal offences against a person, such as sexual violence, bodily injury, trafficking in humans, stalking and attempted homicide, but also open to the victims of all types of criminal offences who suffered serious consequences (Sec. 395 Code of Criminal Procedure). If the victim of a crime is entitled to act as a private accessory prosecutor, a lawyer may already be assigned at public expense during the investigation proceedings. In any case, victims may be supported and represented by a lawyer during the court proceedings. With the status as a private accessory prosecutor the victim can actively join the

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<sup>5</sup> Federal Law Gazette (Bundesgesetzblatt – BGBl.) 2004, part. I, p. 1354.

<sup>6</sup> Federal Law Gazette (Bundesgesetzblatt – BGBl.) 2009, part. I, p. 2280.

proceedings with rights similar to that of the prosecution. As there is no time-limit for joining proceedings victims can do so even after the judgment was rendered if they want to appeal it.

Victims also have the right to file a civil suit against the accused within the criminal proceedings in order to claim compensation for damages sustained. This is possible only if the victim has not claimed damages from the offender before another court. Within the criminal proceedings, the court will decide on the claim as part of the judgment on the accused's guilt.

Another aspect besides information and participation is victim protection. The Federal Act for the Protection against Violence<sup>7</sup>, in force since 2002, enables courts to pass orders of restraint. This includes barring the perpetrator from access to the victim's place of abode, from trespassing beyond a certain diameter around the victim's place of abode, and/or from coming near the victim or from contacting the victim in any way. Such orders of restraint are not limited to cases of domestic violence but may also be invoked to prevent a perpetrator from stalking another person.

There are special protection mechanisms in place for witnesses. If the confrontation with the accused or the questioning of the witness in the presence of him or his lawyer would cause imminent risk of serious harm the questioning can take place in a different room and can be broadcast into the courtroom. The victim can also be examined in the courtroom without the accused being present; in this case the examination will generally be broadcast to the accused who then can ask questions via telephone or computer. Under certain circumstances, if the testimony is essential and there is a special threat to the victim, the victim and his relatives can be included in a witness protection programme (with eg, the possibility to receive a new identity).

Inssofar, the German system offers a number of participation rights mainly in the court proceedings whereas participation in an earlier stage is limited to a very small number of cases. This means, a victim can participate quite actively if a trial takes place. Yet, in the vast number of cases that do not reach the trial stage because the case is dropped for various reasons (eg, a kind of settlement between the prosecution and the accused), the victim is only scarcely involved in the proceedings.

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<sup>7</sup> Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen (Gewaltschutzgesetz - GewSchG), Federal Law Gazette (Bundesgesetzblatt – BGBl.) 2001, part. I, p. 3513.

### II.3.3.

## Italy

*Enrico Maria Mancuso*

Italy has transposed the directive 2012/29/EU into its domestic system by adopting the Leg. Decree No. 212 of December 15, 2015 '*implementing the 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, and replacing Council Framework Decision 2001/220/JHA*', which was published in the OJ on January 5, 2016 and entered into force on January 20, 2016.<sup>1</sup> The Italian lawmaker has chosen the transposition technique of amending the existing Criminal Procedure Code (from now on, CPC). In particular, the Leg. Decree No. 212/2015 has amended eight existing articles and has introduced four new articles plus two implementing provisions (from now on, impl. prov. CPC). Notably, the National Implementing Measures adopted by Italy are very scant, but the Ministerial Report explains that: 'Italian law is already strongly oriented towards the recognition of rights, support and protection for victims of a crime; based on a detailed analysis, we deem our legislation to be substantially consistent with the European standards and already including some of the provisions indicated by the Directive'<sup>2</sup>.

Unhappily, it looks like a set of fundamental safeguards was completely left out: signally, the right to access victim support services (Article 8), the kind of assistance offered by the support services (Article 9) and some obligations included in the right to protection of victims with specific protection needs during criminal proceedings (Article 23). In other words, the Decree has not implemented such safeguards nor they were already provided for by the Italian justice system, irrespective of their utmost importance to the European institutions.<sup>3</sup>

Under this respect, the Leg. Decree No. 212/2015 is a 'missed opportunity' (Bouchard 2016). It is limited to the integration of few, spotted, procedural and formalistic amendments notwithstanding the European standards demand for an all-embracing, substantial protection and care about victims' individual needs in connection with criminal proceedings.

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<sup>1</sup> After a short delay: the transposition's deadline was 16 November 2015.

<sup>2</sup> [http://www.governo.it/sites/governo.it/files/REL\\_ILL.pdf](http://www.governo.it/sites/governo.it/files/REL_ILL.pdf), p. 1.

<sup>3</sup> Article 29 Directive requires the Commission to submit a report, by November 2016, assessing the extent of national implementation measures taken including, in particular, the actions taken under article 8, 9 and 23.

Likely, this is due to the peculiarities of the Italian criminal justice system and the complicated role played in it by the victim. First of all, the Italian legislation never say the word, commonly used in the international community, 'victim', which is instead referred as 'person *offended* by the crime', 'person *harmed* by the crime' or 'civil party'<sup>4</sup> with different meanings and roles. In brief, only the person offended by a crime that has also been harmed can become a *party* in the proceedings, if he or she wishes so. Otherwise, the 'victim' is merely considered as a person involved in criminal proceedings with less powers and rights, without any legal status of a party (Luparia 2012 and 2013; Vassalli 2001). The core provision has to be found in Article 90 CPC, that essentially entitles the person offended by the crime to some rights to be found in the code (for example the right to legal assistance, the right to make a complaint, the right to attend hearings and to be heard in some circumstances, a limited right to challenge a decision to end proceedings and so on) and the right to present written statements and to provide evidence. It is only with the Decree No. 93 of 2013, converted into Law No. 119 of 2013, aimed at combating gender-based violence, that Italy has started to guarantee victims some rights to information<sup>5</sup>.

Relevance of mediation tools could only be found in the proceedings before the Italian Justice of the Peace (Scalfati 2001)<sup>6</sup>, who can promote the reconciliation between the victim and the offender when the crime is to be prosecuted only upon complaint of the victim. If deemed useful, the Judge can postpone the hearing to this purpose and he can also refer the parties to public and private mediation structures if available. Other relevant provisions are those providing the acquittal for irrelevance of the misconduct (Article 34, Leg. Decree No. 274/2000) and the acquittal following restorative conducts (Article 35 Leg. Decree No. 274/2000).

The recent Law No. 67 of 2014, introducing a new tool already applied by juvenile courts, a singular kind of 'probation' for adults, represents another important step of the Italian criminal justice system in upgrading the role played by victims: the application submitted by the defendant cannot be

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<sup>4</sup> In Italian, respectively: 'persona offesa dal reato', 'danneggiato', 'parte civile'. The victim can also play the role of 'complainant' ('querelante').

<sup>5</sup> A duty has been imposed, for the public prosecution and the judicial police, when acknowledging the *notitia criminis*, to inform the person offended by the crime of his or her right to appoint a defence council and the conditions for the access to legal aid from the State (Art101 CPC); the decree No. 93 also introduced the duty to notify the defence council, or, in case of failure, directly the person offended by the crime, with the notice of conclusion of the preliminary investigations, but only if the investigations were in connection with crimes of repeated domestic violence and stalking (Art 415-*bis* CPC). This first implementation of the victims' right to information however did not sufficiently cover the objectives pursued under Articles 4 and 6 of the Directive.

<sup>6</sup> Legislative Decree No. 274 of 28 August 2000.



approved if it does not include, among others, commitments to promote mediation<sup>7</sup> with the victim (Mannozi 2003; Patanè 2014).

The Leg. Decree No. 212/2015 has implemented the existing regulations with the provisions illustrated below.

First of all, the legislator has amended Article 90 CPC with the further statement that, where the age of the victim is uncertain, the victim shall, in relation to favourable provisions, be presumed to be child (in accordance with Article 24 paragraph 2). Moreover, in case of death of the victim, powers and rights recognised to the spouse have been extended to the person living with him or her in an intimate relationship and on a stable basis, in accordance with Article 2 paragraph 1 letter b) (definition of 'family members').

The decree has also added three new articles to the CPC's section expressly dedicated to the 'person offended by the crime'.

Article 90-*bis* CPC has widened the victims' right to receive information from the first contact with competent authorities and during the proceedings, in order to be able to make informed decision about their participation (Allegrezza 2012: 1). It substantially reflects the provisions set out in Articles 4 and 6 of the Directive and creates a general right to information.

According to the Decree No. 93/2013, the Prosecutor is now required to inform the person offended by violent crimes about the conclusion of the preliminary investigations and about the request for the dismissal of the proceedings (please note that such rights to information are ordinarily assured only when the person offended has previously asked the Prosecution to be informed).

As a matter of fact, the risk is that Article 90-*bis* will not meet the real expectations created by the Directive for the recognition of a substantial right to understand and to be understood, but will rather result in formal paperwork.

Article 90-*ter* implements Article 6 paragraph 5 of the Directive, recognising the right to be informed in case of escape or release from detention in connection with violent crimes against the person. The text leaves some uncertainties, for Italian practitioners, about the interpretation of the term 'release' (*scarcerazione*), as underlined by the Supreme *Corte di Cassazione*.<sup>8</sup>

Article 90-*quater* is of fundamental importance for our purpose, since it announces the *Leitmotiv* inspiring the core body of innovation introduced by the Leg. Decree No. 212: 'the condition of particular vulnerability' of the victim. The particular vulnerability shall be deduced by the age, the mental

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<sup>7</sup> It is the first time the term 'mediation' enters the Italian Code of Criminal Procedure.

<sup>8</sup> *cf* Corte suprema di Cassazione, Report of 2 February 2016, *Novità legislative: d.lgs. 15 dicembre 2015, n. 212*, p. 11-17.

conditions, the type and circumstances of the crime; the assessment shall take into account, in particular, if the crime is committed with violence to the person or racial hate or discriminatory motives, if it is related to organised crime, domestic or international terrorism, human traffic, or if the victim is sentimentally, psychologically or economically dependent on the offender. Nonetheless, these requirements seem quite indefinite as well as the identification of who will make the assessment. Since it is unspecified, likely the task will be assigned to the judge, or the prosecutor, without any involvement of social care services. Such a provision also fails to meet the standards set by Article 23 Directive at the level of particular attention to the *concrete* dimension of the victim's specific needs.

On the basis of article 90-*quater*, the following procedural rules have been added/amended in order to ensure particularly vulnerable victims a special protection during and from the proceedings, in particular from the risk of 'repeated victimisation': Article 134 paragraph 4 CPC now postulates that video recording of the interview of a particular vulnerable victim is *always* permitted, even if it is not absolutely indispensable; and Article 190-*bis* CPC has a new paragraph 1-*bis* stating that the repetition of the interview of a particular vulnerable victim during Court proceedings is admissible only with regard to different facts or circumstances from previous statements made during another hearing, in order to keep the number of interviews to a minimum; during investigative questioning of a particular vulnerable victim, the judicial police must be helped by an expert in psychology appointed by the Prosecution (Articles 351 paragraph 1-*ter* and 362 paragraph 1-*bis* CPC); in order to save the victim from the distress of trial, the Prosecution, pursuant to article 392 paragraph 1-*bis* CPC, can now anticipate the interview of the victim during a special evidentiary hearing (so called *incidente probatorio*), that may take place with protected modalities and outside the Court premises, for example within specialist support structures, if any, or at the house of the interviewed (Article 398 paragraph 5-*ter*); finally, during the examination and cross-examination of a particularly vulnerable victim, the judge can order the adoption of suitable protection measures.

With regard to the right to interpretation and translation (Article 7 Directive), the Leg. Decree No. 212/2015 has introduced within the CPC Article 143-*bis* that provides, free of charge and without prejudice to the rights of the defendant, interpretation - even via distance communication technologies, if possible - for the victim that cannot speak or understand the Italian language, and translation of information useful to the exercise of his/her rights (an oral translation or oral summary may be provided without prejudice to the victim's rights). Moreover, the new Article 107-*ter* impl. prov. CPC, ensures the victim who wish to make a complaint, to do so in a

language that he or she understands or by receiving linguistic assistance, and the right to receive the translation of the written acknowledgment in a language that he or she understand<sup>9</sup>, but only if the complaint is submitted before Prosecution offices. Article 108-*ter* impl. prov. CPC implements the indication of Article 17 paragraph 3 Directive and disciplines the transmission of the complaint between competent authorities. Practitioners might face some difficulties since the Decree does not discipline the procedural consequences resulting from the violation of the new provisions.

Even if the efforts progressively made by the Italian legislator, during the last years, to put in line our judicial criminal system with the supranational standards of protection and recognition of the role of victims in criminal proceedings<sup>10</sup> are commendable, it must be underlined that such efforts have always resulted in targeted intervention in connection with specific crimes<sup>11</sup>.

The Leg. Decree No. 212/2015, implementing the Directive 2012/29/EU which is widely considered as 'the Statute of victims' rights', has not introduced substantial changes into the Italian criminal justice system and was limited to few, scarcely significant, procedural amendments. The Italian legislator looks unwilling to welcome 'the full procedural emancipation of who holds the stakes offended by the crime, in open contrast with the European aspirations pointed out by the road maps' (Tavassi 2016). In fact, not even after this Directive the Italian law recognises to the victim him/herself the legal status as *party* to the proceedings<sup>12</sup>.

Thus, the Leg. Decree No. 212/2015 has essentially confirmed the original system.

Regrettably, not enough attention has been paid to the indications about restorative justice and the creation of adequate victims' support services. In so far in Italy, such offices or structures specifically addressed to the support of victims' needs have not been instituted yet. During the examination of the draft proposal, the Commission for Justice did suggest<sup>13</sup> to include a

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<sup>9</sup> In accordance with Art 5 para 2 and 3 Directive.

<sup>10</sup> Set by the Lanzarote for the protection of children victims, the Istanbul Convention on combating gender and domestic violence, the framework decision 2001/220/JHA on the standing of victims in criminal proceedings, the directive 2011/36/EU on human traffic, the directive 2011/92/EU on combating sexual abuse and sexual exploitation of children and child pornography, the directive 2011/99/EU on the European protection order.

<sup>11</sup> See Corte di Cassazione Report, cit., p. 3; De Martino 2013; Cassibba 2014.

<sup>12</sup> However, the Directive did not require such a conclusion.

<sup>13</sup> The opinion expressed by the II Commission for Justice on 27 October 2015 can be found here: [http://documenti.camera.it/leg17/resoconti/commissioni/bollettini/pdf/2015/10/27/leg.17\\_bol0529.data20151027.com02.pdf](http://documenti.camera.it/leg17/resoconti/commissioni/bollettini/pdf/2015/10/27/leg.17_bol0529.data20151027.com02.pdf).

provision aimed at creating, within every Court's premises, an 'help desk for victims of crime', directed by a magistrate in collaboration with social care services and victims' associations. But the suggestion was not welcomed by the Government because of its financial and bureaucratic impact.

We cannot definitely affirm that the Leg. Decree No. 212/2015 has effectively implemented all the goals set by the Directive 2012/29/EU. This fact could trigger disputes against the Italian State, especially by non-resident victims who cannot rely on the minimum standards of protection offered by the Directive or granted to them in their Member State of residence.

Does Italy lay itself open to a new infringement procedure?<sup>14</sup>

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<sup>14</sup> In October, 2014, the European Commission has already referred Italy to the ECJ for the alleged failure to implement directive 2004/80/EC relating to compensation to crime victims.

## II.4.

### Victims in International Law: an Overview

*Gabriele Della Morte*

#### *Introduction*

It is true that 'Victims rights have received over the years limited attention in International Law' (Van Boven 2015)<sup>1</sup>. This is principally because international law is primarily direct to the relation among States, not individual<sup>2</sup>.

Nonetheless, there are instruments from which it is possible to detect the elements that allow to recognise a victim under international law.

We are referring to two instruments, in particular: first, the 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', adopted by United Nations General Assembly Resolution 40/34 of 29 November 1985; and second, the 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of *Gross* Violations of International Human Rights Law and *Serious* Violation of International Humanitarian Law', adopted by the General Assembly on 16 December 2005 (*emphasis added*)<sup>3</sup>.

#### *The definition of victim (under international law)*

From a comparative analysis of these two documents, we can deduce that the term 'victims' means, first of all: 'persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their

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<sup>1</sup> For an introduction to the subject, see generally: Clapham 2006; de Greiff 2006; Droedge, 2006; Shelton 2005; Stoitchkova 2010.

<sup>2</sup> Traditionally, since States were the original actors of the international scene, individuals were regarded as a kind of 'object' mediated by the States. Nowadays, this perception is changing along with the international law, as it has been duly noted by Simone Gorski: 'There is no definition of the term 'individuals' in international treaties' (Gorski 2015: para 2).

<sup>3</sup> It is worth to be mentioned that 'serious violations' are different from 'grave breaches' in international law. In fact, the first terms indicate a violation that could constitute a crime under international law, irrespective of the national or international context of armed conflict. On the other hand, the expression 'grave breaches' is referred to severe violations of humanitarian law accomplished in a context of international armed conflict.

fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power<sup>4</sup>. Under this definition, a person may be considered a victim 'regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the Victim'<sup>5</sup>. Moreover this provision includes, if appropriate, 'the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation'<sup>6</sup>. Additionally these definitions shall be relevant to 'all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability'<sup>7</sup>.

Different components could be gathered by these principles.

- i) A person is a victim because he or she suffered physical or mental injury, or even an emotional suffering or an economic loss or a substantial impairment of their fundamental rights;
- ii) There are direct victims as well as indirect victims (such as family members or dependant of the victims);
- iii) A person could be victim individually as well as collectively;
- iv) There are different kinds of harm or loss (that could be caused by an act as well as by an omission).

Moreover, even though neither of those two instruments is referred to legal person or entities, this possibility is not excluded in some specific areas (the so-called *regimes* of international law). It is worth mentioning the regime of international criminal law, since the Rule 85 of Procedure and Evidence of the International Criminal Court clearly stated that victims may also include organisations or institutions that have sustained harm to some of their properties dedicated to religion, education, art, etc.<sup>8</sup>

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<sup>4</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (hereafter: General Assembly Resolution 40/34 of 29 November 1985), para A.1.

<sup>5</sup> *Ibid*, para A.2.

<sup>6</sup> *Ibid*, para A.2.

<sup>7</sup> *Ibid*, para A.3

<sup>8</sup> See International Criminal Court, Rules of Procedure and Evidence, Section III ('Victims and witnesses'), Subsection 1 ('Definition and general principle relating to victims'), Rule 85 ('Definition of victims'): 'For the purposes of the Statute and the Rules of Procedure and Evidence: (a) "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes'.

*The procedural and substantial dimension of victims under international law*

The rights of victims in international law are encompassed in two different spheres: procedural and substantial.

*A) The procedural dimension*

Starting from the procedural dimension, it is worth to be noted that articles from 4 to 7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) as well as articles from 12 to 14 of the Basic Principles and Guidelines (2005) specifies the content of the equal access of justice to obtain effective remedies. The subject is well known in international law as it has been explored in a large number of international conventions and declarations adopted at universal level<sup>9</sup> as well as at regional one<sup>10</sup>.

To summarize, what a victim can do is entitled in the section of the documents dedicated to the 'Access to justice'.

First of all, victims have to be treated with 'compassion and respect'<sup>11</sup>. They are entitled 'to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have

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<sup>9</sup> See, eg, Article 3 of the The Hague Convention concerning the Laws and Custom of War on Land (1907); article 8 of the Universal Declaration of Human Rights (1948); Art 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1, 1977); Art 2 of the International Covenant on Civil and Political Rights (1966); Art 6 of the International Convention on the Elimination of all Forms of Racial Discrimination (1965); Art 14 of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984); Art 39 of the Convention on the Rights of the Child (1989).

The definitions contained in these instruments are quite large. Hence, the General Comment adopted by the Human Rights Committee on 29 March 2004, specifies that: 'The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party' (see General Comment No. 31: 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant'). Moreover, the Convention on the Rights of the Child states that (always as example): 'States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child'.

<sup>10</sup> See, eg, Art 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); Art 25 of the American Convention of Human Rights (1969); Art 7 of the African Charter on Human and People's Rights (1981).

<sup>11</sup> Art 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

suffered'<sup>12</sup>. These 'mechanisms', that are as judicial as administrative, should be established 'where necessary' to obtain redress<sup>13</sup>, and include formal and informal process<sup>14</sup>. This process should be facilitated by: '(a) Informing victims of their role and the scope, timing and progress of the proceedings ...; (b) Allowing the views and concerns of victims to be presented ...; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims; and (e) Avoiding unnecessary delay ...'<sup>15</sup>.

Furthermore, the Basic Principles and Guidelines (2005) provide that, in case of gross violation of international human rights law or of a serious violation of international humanitarian law, '[o]bligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws'<sup>16</sup>. For that end, States should undertake 'procedures to allow groups of victims to present claims for reparation'<sup>17</sup>, and it is highlighted that an 'adequate, effective and prompt remedy for gross violations [...] should include all available and appropriate international processes in which a person may have legal standing'<sup>18</sup>.

#### *B) The substantial dimension*

With regard to the duty to provide redress, the topic of reparation is articulated into different categories that include: (a) restitution, (b) compensation, (c) rehabilitation, (d) satisfaction and, if that is the case, (e) guarantee of non-repetition.

Starting from (a) restitution, this includes a fair 'return of property or payment for the harm or loss suffered' by 'victims, their families or dependants'<sup>19</sup>. States are required to 'review their practices, regulations and laws to consider restitution as an available sentencing option in criminal

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<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*, Art 5.

<sup>14</sup> Like mediation, arbitration and customary justice or indigenous practices. *ibid* Art 7.

<sup>15</sup> *Ibid*, Art 6.

<sup>16</sup> Basic Principles and Guidelines (2005), Art 12. Consequently, States should: '(a) Disseminate [...] information about all available remedies [...]; (b) Take measures to minimize the inconvenience to victims and their representatives [...] (c) Provide proper assistance to victims seeking access to justice; (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy [...]'.  
<sup>17</sup> Basic Principles and Guidelines (2005), Art 13.

<sup>18</sup> Basic Principles and Guidelines (2005), Art 14.

<sup>19</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985),

Art 8.



cases<sup>20</sup>. In addition, 'in cases of substantial harm to the environment', restitution consists of into 'restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation'<sup>21</sup>. Finally, if the harm is caused by an agent 'acting in an official or quasi-official capacity' the victims will be entitled to receive restitution directly from the State<sup>22</sup>.

The principle concerning the (b) compensation, states that the above-mentioned principle should be provided 'for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case'<sup>23</sup>. If compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to some groups of victims in particular. These groups include: '(i) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimisation'<sup>24</sup>. Finally, for that purpose, 'national funds for compensation to victims' are encouraged<sup>25</sup>.

Concerning the (c) rehabilitation, this 'should include medical and psychological care as well as legal and social services'<sup>26</sup>.

Regarding the (d) satisfaction, this takes into account a large amount of hypothesis, from the 'Effective measures aimed at the cessation of continuing violations'<sup>27</sup> to the 'Verification of the facts and full and public disclosure of the truth'<sup>28</sup>; from the search of the disappeared<sup>29</sup>, to the official declaration or a judicial decision restoring the reputation of the victim<sup>30</sup>; from the 'public apology'<sup>31</sup> to the '[j]udicial and administrative sanctions against persons liable for the violations'<sup>32</sup>; from the

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<sup>20</sup> 'In addition to other criminal sanctions', *ibid*, Art 9.

<sup>21</sup> '[W]henever such harm results in the dislocation of a community', *ibid*, Art 10.

<sup>22</sup> *Ibid*, Art 11.

<sup>23</sup> Basic Principles and Guidelines (2005), Art 20. In case of gross violations of international human rights law and serious violations of international humanitarian law, compensation should be provided in cases of: '(a) Physical or mental harm; b) Lost opportunities, including employment, education and social benefits; c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services'.

<sup>24</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), Art 12.

<sup>25</sup> *Ibid*, Art 13.

<sup>26</sup> Basic Principles and Guidelines (2005), Art 21.

<sup>27</sup> *Ibid*, (2005), Art 22(a).

<sup>28</sup> *Ibid*, Art 22(b).

<sup>29</sup> *Ibid*, Art 22(c).

<sup>30</sup> *Ibid*, Art 22(d).

<sup>31</sup> *Ibid*, Art 22(e).

<sup>32</sup> *Ibid*, Art 22(f).

'[c]ommemorations and tributes to the victims'<sup>33</sup>, until the '[i]nclusion of an accurate account of the violations ... training and in educational material at all levels'<sup>34</sup>.

Lastly, the (e) guarantee of non-repetition are expressly provided – 'where applicable' – in the Basic Principles and Guidelines (2005)<sup>35</sup>. The measures include: ensuring civilian control of military forces<sup>36</sup>; ensuring international standards of due process<sup>37</sup>; strengthening the independence of the judiciary<sup>38</sup>; protecting in particular some categories such as legal, medical or media, and human rights defenders<sup>39</sup>; consolidating human rights and international humanitarian law education in all sectors of society<sup>40</sup>; endorsing the observance of codes of conduct and promoting mechanisms for preventing and monitoring social conflicts and their resolution<sup>41</sup>; and strengthening for legislative reform that can contribute to fight against gross violations of international human rights law and serious violations of international humanitarian law<sup>42</sup>.

### *The right to redress and reparation*

In general terms, a large number of human rights bodies, as well judicial as quasi-judicial, envisage the possibility for the victim to make a claim. It is sufficient to recall the Human Rights Committee<sup>43</sup>, the Committee on the Elimination of Racial Discrimination<sup>44</sup>, the Committee against Torture<sup>45</sup>, the Committee on the Elimination of Discrimination against Women<sup>46</sup>.

In any case, the most important contribution to the progress of the definition of the concept of 'victims' – apart from the European Union Directive on Victim, which is the subject of the present research – derive

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<sup>33</sup> *Ibid*, Art 22(g).

<sup>34</sup> *Ibid*, Art 22(h).

<sup>35</sup> *Ibid*, Art 23.

<sup>36</sup> *Ibid*, Art 23(a).

<sup>37</sup> *Ibid*, Art 23(b).

<sup>38</sup> *Ibid*, Art 23(c).

<sup>39</sup> *Ibid*, Art 23(d).

<sup>40</sup> *Ibid*, Art 23(e).

<sup>41</sup> *Ibid*, Art 23(f-g).

<sup>42</sup> *Ibid*, Art 23(h).

<sup>43</sup> Under the First Optional Protocol of the International Covenant on Civil and Political Rights (1966).

<sup>44</sup> Is the body of 18 independent experts that monitor the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (1965).

<sup>45</sup> Is the body of 10 independent experts that monitor the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

<sup>46</sup> Is the body of 23 independent experts that monitor the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979).

from the experience of the regional courts of human rights. We are referring first of all to the European Court of Human Rights, secondly to other courts or organs as such as Inter-American Court of Human Rights and finally to the African Commission of Human Rights.

Starting with the European Court of Human Rights, the definition of 'victim' elaborated by the judges sitting in Strasbourg has recognized several stages of evolution that will be examined in the following steps of the present project. One of the topics directly connected to the subject of the research is, for example, the attitude of the European Court of Human Rights on patients who had been contaminated through blood transfusions. We are referring, eg, to *G. N. and others v Italy*, a judgement delivered by the Court on 1 December 2009<sup>47</sup>. The case, concerning the discriminatory treatment in contaminated cases, concerns Italian nationals that have been sick by viruses – such as HIV – because of the transfusion of infected blood during medical treatment. Moreover, there is a rich jurisprudence of the European Court of Human Rights on the environmental risk taken by the States<sup>48</sup>. A large number of these cases concerns the responsibility of the State to have allowed the establishment of some companies on their territories. These companies did not pay attention to the environment, as they should have. As a consequence, they caused health trouble to the local population and the European Court condemned States that had lacked vigilance or that had not provided effective remedies.

The Inter-American system of protection of Human Rights, as well the Commission as the Court have developed an interesting and rich practice on the subject, especially in relation to the rights of the indigenous people<sup>49</sup>.

Finally, it is to be noted that also in the African system of protection of human rights there is a growing attention to this kind of problems. It is sufficient to quote – as an example – a case in which the African Commission on Human and Peoples' Rights found that the Nigerian military government had exploited oil reserves through its relationship with Shell Petroleum Development Corporation with no regard for the health or environment of

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<sup>47</sup> *G. N. and others v Italy* (App No 43134/05) ECHR 1 December 2009.

<sup>48</sup> See, as an example, *Guerra v Italy* (App No 14967/89) ECHR 19 February 1998. The case regards the effect of toxic emissions on applicants and their right to respect their private and family life; more specifically, it regards the failure to provide the local population with information about the risk and how to proceed in case of accidents nearby the chemical factory. The Court holds that Italy did not fulfil its obligation to secure the applicants' right to respect their private and family life, in breach of Article 8 of the Convention, and there has been a violation of that provision.

<sup>49</sup> Moreover, in 1990 the Commission has established a special *Rapporteur* on the Rights of Indigenous Peoples with the mandate to coordinate the actions in this regard.

the *Ogoni* People<sup>50</sup>.

With respect to the international criminal law regime, the Rome Statute of the International Criminal Court grants victims the right to stand in judicial proceedings by presenting their own views and concerns before the Court.

The participation scheme includes various modalities. In particular, the Statute of the International Criminal Court expressly provides the judges' power to order a convicted person to pay compensation at the end of the trial. The victims that will take advantage of this compensation could be individual or collective, depending on the Court. Reparations may include both monetary compensation and non monetary (such as return of property, or symbolic measures like public apologies). Furthermore, in order to collect the funds essential to comply with the obligation of the reparation, in the case that the convicted person does not have sufficient resource to do so, States Parties to the ICC Treaty have established a special fund (the: 'Trust Fund for Victims'<sup>51</sup>).

### ***Conclusion***

As it is stated into the Preamble of the Basic Principles and Guidelines adopted by the General Assembly on 16 December 2005, 'in honouring the victims' right ... the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field'.

Today, we are observing an increasing recognition of the rights of victims in international law. This increasing recognition is represented by the approach of the human rights judicial, and quasi-judicial body, that are enlarging the protection offered to the victims, especially in the field of gross violation of human rights and in the field of the serious violation of humanitarian law. Moreover, even if the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and the Basic Principles and Guidelines (2005) represent soft law instruments that are not formally binding for the

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<sup>50</sup> See *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*. In a decision on the merits, the Commission has stated that Nigeria had violated the African Charter on Human and Peoples' Rights and called to cease The Nigeria attacks against Ogoni people. See African Commission on Human & People Rights (ACHPR/COMM/A044/1 *Communication* 155/96) 27 May 2002.

<sup>51</sup> Under Art 79, para 1, of the Statute of the International Criminal Court: 'A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims'. Under para 2: 'The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund'. This is the first experience of this kind in the global struggle to end impunity for the most serious crimes.

States, the principle enhanced in those instruments are orienting the practice of the States.

## II.5.

### The 'Business and Human Rights' Perspective

*Marc Engelhart*

In recent years, the perception of victims of criminal acts has changed. Victims are usually considered to be a small part of the criminal justice system, but they become the main focus if one views them from a human rights perspective. Among possible human rights violations, the ones due to criminal acts are considered particularly serious, especially if they have severe consequences for the victims. Special attention is being paid to the victims of corporate wrongdoing and has led to various measures being taken mainly on the international level. This development has several grounds:

The first reason is the far-reaching recognition of human rights since WWII. Human rights are now considered to be universal and to provide a person with an inherent right because he is a human being. Insofar, this inherent right is independent of recognition by a state and also applies in circumstances in which a state is not able or willing to enforce human rights. It follows that human rights must nonetheless be respected by other countries than that of the person's origin, regardless of the situation at hand. The types of human rights recognized by international law are not undisputed. Those that are well recognized are the rights of the first generation (civil and political rights) developed from the time of Enlightenment, including the main rights against state power. More disputed are the rights of the second generation that include economic, social, and cultural rights (right to subsistence) and those of the third generation that include solidarity rights (right to peace, right to a clean environment). The rights of the second and third generations are very important in the context of economic activities and are the driving factor behind the development of holding corporations responsible (see below).

Whereas the above-mentioned rights as such are of universal nature, the mechanisms to enforce them are not. Especially the possibility for affected individuals to claim a violation in court or in a similar proceeding very much depends on where the person lives, whether the respective state is party to an enforcement mechanism (eg, the European Convention of Human Rights with the European Court of Human Rights), and last but not least on the

right in question. International law, which traditionally only considered states to be possible addressees, is still developing with regard to granting rights to individuals as well as creating obligations for them.

The second reason is the increasing importance of corporations and their transnational activities. Globalization has made transnational trade and business activities in foreign countries commonplace. Multinational companies with enormous economic power and employing large numbers of people in different jurisdictions dominate many markets. Some of these companies have budgets exceeding entire state budgets in smaller and not so developed countries. Insofar, transnational business activities have become the main feature of the world economy.

The third reason, ultimately, is the growing awareness of the consequences if companies make use of the possibility to produce cost-effectively in states where wages are lower than those in the state of origin. This is not problematic per se but becomes a problem if working conditions and the legal environment are weaker than the standards of the state of origin and if the companies exploit these conditions for their profit. A special problem that is no less serious concerns investments, manufacturing, and business connections in areas of conflict (eg, mining in civil war regions). Very often, the conflict is between companies from industrialized nations doing business in developing countries. The major abuse of corporate power is in the area of human rights violations, eg, with regard to labor law, environmental protection, and health.

These developments led to a movement to prevent corporate harm that began primarily in the 1970s. It was influenced by economic developments like the 'New International Economic Order' improving the terms of trade between industrialized and developing countries,<sup>1</sup> but also by the emerging discussion on business ethics and compliance. The latter two had a great influence on the establishment of preventive measures by companies and led increasingly to legal requirements for companies to take up compliance measures in recent years.

In the beginning, the improvement process was ambitious but only partly successful. The Draft United Nations Code of Conduct on Transnational Corporations was never officially passed.<sup>2</sup> This was not only due to the opposition of many industrialized countries fearing restrictions on foreign investments as well as to that of developing countries fearing the loss of sovereignty over natural resources. It was also due the fact that the Code provided for mandatory requirements as well as voluntary guidelines. The binding nature for companies was not seen as a proportionate measure

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<sup>1</sup> See, eg, the Declaration for the Establishment of a New International Economic Order by the United Nations General Assembly (1 May 1974, UN Doc. A/RES/S-6/3201)

<sup>2</sup> U.N. Code of Conduct on Transnational Corporations, 23 I.L.M. 626 (1984).

fitting into international law and was instead regarded as being too 'tough' on corporations.

Pure soft law measures were more successful as they merely provided guidelines for companies as to what rights to respect and how to behave ethically. In the 1970s, the Organisation for Economic Cooperation and Development (OECD) adopted the Guidelines for Multinational Enterprises (21 June 1976). Several revisions have taken place, most recently in 2000. It includes a general obligation on multinational enterprises to 'respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.' It also provides for a supervisory mechanism if states promote the implementation of the guidelines. This mechanism is of no binding nature but nonetheless helpful in creating public awareness and a certain amount of pressure. Also in the 1970s and similar in nature, the International Labor Organisation adopted a non-binding instrument, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.<sup>3</sup>

It was not until the end of the 1990s that the question was posed in light of the far-reaching effects of economic globalization as to whether some more binding mechanism were needed in order to promote the human rights accountability of transnational corporations. At the 1999 Davos World Economic Forum, UN Secretary General Kofi Annan initiated the Global Compact Initiative in the areas of human rights, labor, the environment (and, since 2004, corruption). The ten principles included are based on the Universal Declaration of Human Rights, the International Labour Organization's declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. Participation is voluntary, but positive publicity is part of the concept and has led to a multitude of state and corporate actions.

The UN did not stop at this point, but kept the topic on its agenda in order to develop further compliance mechanisms. In 2003, the UN Sub-Commission for the Promotion and Protection of Human Rights (within the UN Commission on Human Rights) adopted a resolution on the 'Norms on the Human Rights Responsibilities of Transnational Corporations and other Business Enterprises.'<sup>4</sup> Although received with some scepticism, the topic was on the official agenda and, in 2005, the UN Secretary General, on the suggestion of the UN Commission on Human Rights, appointed John Ruggie as its Special Representative on the issue of human rights and transnational corporations. After in-depth research and consultations with many

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<sup>3</sup> Adopted by the Governing Body of the International Labour organisation at its 204th Session (November 1977), it was revised at the 279th Session (November 2000).

<sup>4</sup> Resolution 2003/16 (14 August 2003), U.N. Doc. E/CN.4/Sub.2/2003/L.11 at 52 (2003).



stakeholders, John Ruggie presented a new approach that did not build on the 'norms.' He relied instead on a three-tier strategy for business and human rights: protect (responsibility of states), respect (responsibility of companies), and remedy (effective possibilities to remedy damages, etc. suffered by victims of human rights violations).<sup>5</sup> The Human Rights Council unanimously welcomed this framework in 2008 and provided the first authoritative recognition of it.<sup>6</sup> It also extended the mandate of John Ruggie to further develop the framework. In 2011, John Ruggie presented his final concept.<sup>7</sup> The Human Rights Council adopted the framework in June 2011 and established a Working Group on the issue of human rights and transnational corporations and other business enterprises.<sup>8</sup> The Council also decided to create a multi-stakeholder Forum on Business and Human Rights, to be held annually under the guidance of the Working Group.<sup>9</sup> Part of the concept is to promote and implement the principles with national action plans.<sup>10</sup> National action plans include information, stakeholder consultation, assessments and evaluations, all with the aim of improving state and corporate activities with regard to the protection of human rights. One aspect, eg, is supply chain management: how can companies in Europe prevent human rights violations by their contractors in foreign (especially developing) countries?

With the currently existing UN framework, the issues of human rights, business activities, and preventive measures (such as compliance concepts) have been merged. The main responsibility rests with the states, especially in creating new legal obligations. The framework does not generate new legal obligations for companies. Yet, with the states tasked to care for and implement human rights protection measures, the pressure is now very much also on the companies. Evaluations, enhanced scrutiny, and public

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<sup>5</sup> See 'Protect, Respect and Remedy: a Framework for Business and Human Rights Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, U.N. Doc. A/HRC/8/5 (7 April 2008).

<sup>6</sup> Human Rights Council, Resolution 8/7 (18 June 2008).

<sup>7</sup> Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie - Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, U.N. Doc. A/HRC/17/31 (21 March 2011).

<sup>8</sup> Resolution of 16 June 2011, U.N. Doc. A/HRC/Res/17/4 (6 July 2011). For the Working Group see <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>.

<sup>9</sup> See the website of the forum <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>.

<sup>10</sup> For an overview, see <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

attention provide enough incentives for companies to take up action. For the victims, this development not only shifts the focus to their individual rights and the violations of such rights by companies but also combines it with the question of adequate remedies. This is a major incentive for legal systems to critically analyze their existing measures, eg, for victims of corporate violence.

## **PART II**

# **VICTIMS OF CORPORATE VIOLENCE**

## Chapter III

### Corporate Violence's Impact on Victims: the State of the Art

#### III.1.

#### An Overview of Criminological and Victimological Literature on Harms and Needs

*Arianna Visconti\**

##### *Corporate violence: a challenge*

The fact that 'managers murder and corporations kill' (Punch 2000) has been acknowledged by criminological literature for several decades. The term 'corporate violence' has come to be used to refer to that 'specific subset of corporate deviance' (Punch 2000: 243) that causes deaths, injuries or illnesses to physical persons through illegal or harmful behaviours that occur in the course of the legitimate business activity of such economic organizations, basically through violations of health and safety regulations and the consequent harm to workers, the production and marketing of unsafe products, and the pollution of air, water and soil by industrial productions or waste disposal (Clinard 1990; Punch 1996; Stretesky and Lynch 1999; Friedrichs 2007; Tombs 2010). Thus, 'corporate violence' can be defined, in short, as any crime committed by a corporation in the course of its legitimate activity, which results in harms to natural persons' health, physical integrity, or life.

Such definition, albeit apparently simple, conceals a wide range of problems which have affected and still affect attempts at studying, methodically and in depth, such phenomenon, as well as its human costs, and which also account for the scarcity of victimological data that also our

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\* Marta Lamanuzzi, PhD, and Eliana Greco, PhD student, have contributed to the bibliographical research.

project had to deal with. This paragraph will therefore be devoted to briefly acknowledging and discussing such difficulties, in order to better understand the scope and meaning of available information.

The first element that contributes to explaining why social scientists have devoted, on the whole, very little attention to victims of corporate crime – and more specifically of corporate violence – is strictly related to the ambiguity about the very ‘criminal’ status of such behaviours, on one hand, as well as about their fitness to be qualified as ‘true’ violence, on the other. With the exception of the few ‘extreme or ‘monster’ cases of corporate crime and harm that gain visibility’ in the media and the public debate, the usual ‘pulverisation’ of corporate crimes and corporate harms, their basic ‘everyday incidence’ in less apparent forms (Tombs and Whyte 2015: 37) contributes to an ambiguity which also affects, as we will see, the social perception of the victims of such crimes as ‘proper’ victims, as well as their own self-perception as such, with important consequences on report rates, data availability, attitudes towards law enforcement, and psychological impact on the affected people.

While criminologists are nowadays well acquainted with definitions of ‘crime’ which do not just reflect what specific legal systems set as ‘criminal offences’, and which are therefore conceived to include a wider range of illegal, deviant, or harmful behaviours (Brown, Esbensen and Geis 2010), it is nonetheless true that social perception of crime is still strictly related to what the law frames as such. And when it comes to white-collar and corporate ‘crimes’, many of these harmful behaviours, even when illegal under the law (which does not always happen), are often qualified as mere administrative or civil offences, or, if criminal, as misdemeanours, or are drafted as *mala quia prohibita* (i.e. ‘artificial’, ‘regulatory’ offences) very complex to understand for the general public, or have been criminalized just recently, or are not uniformly criminalized under different national legislations, or – in many cases – are not actually enforced and thus non-existent to all practical purposes. All these occurrences contribute to a widespread social perception that corporate crime is not ‘true crime’ and that its victims are, therefore, not ‘true victims’ (Sutherland 1949; Moore and Mills 1990; Stitt and Giacomassi 1993; Croall 2001; Tombs and Whyte 2006; Friedrichs 2007; Croall 2009; Hall 2013; Skinnider 2013; Tombs and Whyte 2015; Hall 2016).

This is even more true for corporate violence, which, albeit defined as such due to the specific kind of harms – to life, health, and physical integrity – that it causes, does not match the requisites of what is generally – and socially – understood as ‘violence’: that is, basically, direct interpersonal violence, which, in turn, is commonly associated with conventional predatory offences, voluntary homicide, organized crime and terrorism

(Stretesky and Lynch 1999; Punch 2000; Friedrichs 2007; Tombs 2007; Bisschop and Vande Walle 2013; Pemberton 2014; Walters 2014; Lynch and Barrett 2015). This is basically due to the structural traits of this specific kind of violence. Firstly, it is generally indirect, as it does not result from interpersonal aggressions, but, instead, from complex organizational policies, decisions and actions, undertaken on behalf of the corporation and in the course of its legitimate business activity, which just indirectly result in the exposure of people to harmful consequences. This also means that such harmful consequences are quite often removed in time (and, in some cases, this temporal distance can amount to years or even decades, as it is the case with long-latent illnesses) from the actual corporate decision or action that triggered the chain of events that ultimately led to people being injured or killed. Another implication of this feature is related to frequent difficulties in understanding, and/or demonstrating, the causal relationship between the corporate action and its harmful effects – a difficulty which is in some cases so insuperable that it leads to the failure, or even the abandon, of criminal prosecutions. This same organizational origin of corporate violence also accounts for its basically involuntary nature, which in turn sets it apart from what is generally conceived as ‘violence’: corporate actions leading to harm to people are basically motivated by the desire to increase corporate profits and/or ensure corporate survival, and the ‘violence’ is a consequence, rather than a specifically intended outcome, of such decisions. Decisions which, as said, arise from complex corporate hierarchies and procedures that also often make almost impossible to attach responsibility to just one or few clearly identifiable individuals, as it is instead the rule with ‘common’ violence. A complexity and opacity that can be even more greatly increased by the ever growing globalization of production and distribution, where complex inter-organizational relationships are now the rule, leading for instance to long and transnational supply chains where pressures from the top corporate actors to keep costs low impose ever tighter margins down the chain itself, thus at the same time increasing criminogenic pushes on actors lower in the chain and passing down blame and responsibilities in case of ‘accidents’ (Tombs and Whyte 2015).

All these features explain why ‘corporate violence’ is not generally framed as ‘violence’ either by scholars or by the general public, and thus also contribute to accounting for the scarcity of empirical data and scientific literature on the subject. On one hand, some of the ‘structural’ traits of these crimes also affect their reporting and thus the availability of official statistics, as well as reliable data about the scope of their harmful consequences. As our knowledge of crime largely depends on reports by the affected people, when – as it happens in these cases – they are generally unable to perceive the harm for very long periods (or at all), or to put it in

relationship with its causes, or to recognize its relevance under criminal law (when provided for), any attempt at studying the phenomenon will be severely affected by a huge dark figure. This, in turn, contributes to accounting for the comparatively scarce criminological and victimological literature that was available to us, for the purposes of extracting useful data on victims' needs with specific respect to corporate violence. Finally, the lack of public understanding of this form of violence as 'proper' violence has repercussions on the way this class of victims is perceived, both by public institutions and society at large, and by themselves – which, in turn, affects propensity to report and, as we will see, the scope and features of the suffered harms and of the victims' consequent needs.

### *Corporate violence harmful effects*

Harms arising from corporate violence can be basically connected with three main fields of corporate activity, and can be classified under three different typologies according to the consequences of such activities – consequences which, in turn, can take different forms for different kinds of corporate violence.

Firstly, we have harms connected to unsafe environmental practices. It is likely that the various forms of pollution originating from such practices constitute the most common and most far-reaching form of corporate violence (Donohoe 2003; Tombs and Hillyard 2004; Friedrichs 2007; Rosoff, Pontell and Tillman 2007; Hall 2013; Skinnider 2013; Walters 2014; Lynch and Barrett, 2015; Tombs and Whyte 2015). Of course, environmental harm does not arise only from corporate actions (individual behaviours, small farming, State-run facilities, etc., also account for a fair share of global pollution), nor does it encompass only harms to humans. However, for the purposes of our project, we are interested in all (and only) harmful consequences to humans that can be related to environmental crimes committed by corporations, which, in turn, may involve illegal disposal of dangerous waste, toxic emissions in the air, contamination of waters and/or of soil.

The main common feature of the harms related to these offences rests on their particularly large extent and duration. Such contaminations, both when due to long-term industrial activities (such as in the asbestos cases mentioned further on in this report; see also Clinard 1990; Rosoff, Pontell and Tillman 2007), and when due to sudden and devastating 'accidents' (such as the notorious Bophal disaster or Macondo oil spill: see also Punch 1996; Pearce and Tombs 1998; Croall 2010; Garrett 2014; Steinzor 2015), generally possess a particularly high diffusivity, both directly and indirectly.

Directly, the pollution (particularly air and water pollution) usually spreads over large territorial areas and thus affects large populations; indirectly, the contamination has a tendency to enter the food chain and thus spread further, also thanks to the widening of global markets. Toxic chemicals thus released and disseminated may then produce both immediate (as is the rule with 'accidents') and, even more frequently, deferred effects, as they generally affect human health through accumulation and/or combination, and many of the resulting illnesses have long latency periods (as it happens, for instance, with asbestos-related mesotheliomas), or may even present themselves in further generations, as with increased miscarriage rates or foetal deformity rates related to exposure to certain substances (Lynch and Stretesky 2001; Friedrichs 2007; Rosoff, Pontell and Tillman 2007). All of which, of course, in many cases makes even more difficult to relate specific corporate and individual actors to specific responsibilities for specific harms to individuals and communities, thus contributing to the general opacity already mentioned as a common feature in the study, prevention and repression of corporate violence.

Secondly, dangerous industrial and commercial practices can lead to the marketing of unsafe products, with negative consequences on the health and safety of consumers (Clinard 1990; Croall 2001; Friedrichs 2007; Rosoff, Pontell and Tillman 2007; Croall 2008; Croall 2009; Croall 2012; Steinzor 2015; Tombs and Whyte 2015). Almost any kind of product can be affected, from motor vehicles (as with the notorious Ford Pinto case: Becker, Jipson and Bruce 2000; Rosoff, Pontell and Tillman 2007) to children toys, from household products to cosmetics, etc.; for the reasons already stated in the Introduction, we will mainly focus on food products as well as drugs and medical devices.

Illegal practices related to food manipulation and commercialization do not always imply risks for human health, of course: many criminal (or civil, or administrative) offences in this field are related to frauds on the origin, quality or quantity of the product, without safety implications, and therefore, even if the related economic harm to consumers may be huge, they fall outside the scope of the present work; also, even if they are related to harmful consequences to people's wellbeing, we will not take specifically into account the marketing of foods and drinks rich in fats, sugars and the like, made more pleasing (and even addicting) for consumers and often deceptively advertised (Croall 2009; Croall 2012). Food contamination with dangerous substances is therefore the main focus of our attention: it may arise from the abuse of chemicals and/or drugs in farming, which then seep into processed foods and drinks (thus in some instances overlapping with the environmental crimes just described), lacking adequate controls on the respect of legal limits for each dangerous substance, or it may stem from



intentional adulteration with the purpose of rising profits through an increase in production volumes, food durability, or the like, or it may be the result of unsanitary conditions in the processing, transport and conservation of the aliments.

The harmful effects of such practices (Clinard 1990; Croall 2001; Friedrichs 2007; Rosoff, Pontell and Tillman 2007; Croall 2008; Croall 2009; Steinzor 2015; Tombs and Whyte 2015), besides generally involving a plurality of consumers, can be both immediate, as it is generally the case with severe food poisoning due to bacteria or other very toxic contaminants, and deferred, as it is more common with chemicals and some biological elements (such as, for instance, mycotoxins: Wild and Gong 2010), sometimes requiring accumulation and/or combination with further substances to produce perceivable harms to health. Such effects may also largely vary in their severity, ranging from bland and transitory illnesses to fatal occurrences, particularly when the exposed person presents other vulnerability factors (such as very young or very old age, previous illnesses, etc.).

When referring to pharmaceutical products and devices (Clinard 1990; Punch 1996; Croall 2001; Friedrichs 2007; Rosoff, Pontell and Tillman 2007; Dodge 2009; Steinzor 2015; Tombs and Whyte 2015), harms to patients' health can originate, once again, from unsafe production procedures (such as in the case of haemoderivative drugs discussed further on in this report), as well as from concealment or downplaying of dangerous side effects or flaws (such as in the notorious Thalidomide and mechanic heart valves cases: Clinard 1990; Punch 1996; Rosoff, Pontell and Tillman 2007), and even, in some cases, from downright fraud (such as in the notorious and recent case of breast implants filled with industrial silicone instead than approved medical one: Sage, Huet and Rosnoble 2012; Tombs and Whyte 2015). While in some occurrences the deadly or health-threatening consequences make their appearance in a short time, once again cases of long-delayed – and, often, of long-lasting – harms are frequent, occasionally (as in the aforementioned Thalidomide case, where the drug produced severe foetal deformities) even affecting further generations. Thus, also in these cases, problems of causality arise, which in turn can lead to a lack of personal and/or social perception of the offence, as well as to the impossibility to achieve a declaration of criminal responsibility by any court of law.

Finally, harms to life and health of workers (in the form of both accidents and work-related illnesses), as a consequence of corporate policies, often result from violations of health and safety regulations on the workplace, due to negligence on the employer's part and/or cost-cutting policies (Clinard 1990; Croall 2001; Friedrichs 2007; Rosoff, Pontell and Tillman 2007; Tombs

2007; Croall 2008; Snell and Tombs 2011; Bisschop and Vande Walle 2013; Tombs 2014; Steinzor 2015; Tombs and Whyte 2015; Matthews, Bohle, Quinlan, Kimber, Ngo, Finney Lamb and Mok 2016). Even if this specific branch of corporate violence is not a direct object of our study (due to the absence of EU legislation on the subject), criminological literature on victims of unsafe working conditions has also been taken into account, as many of the physical, economical and psychological consequences suffered by these victims share common features with those suffered by victims of corporate violence in general.

With respect to the different kinds of harmful consequences experienced by victims of corporate violence, the first and most obvious typology – the one which qualifies them as ‘violence’ – of course relates to physical ‘costs’, i.e. personal injuries, illnesses, and loss of life (Clinard 1990; Poveda 1994; Punch 1996; Punch 2000; Croall 2001; Lynch and Stretesky 2001; Donohoe 2003; Friedrichs 2007; Rosoff, Pontell and Tillman 2007; Tombs 2007; Croall 2008; Croall 2009; Dodge 2009; Tombs and Whyte 2009; Croall 2010; Snell and Tombs 2011; Bisschop and Vande Walle 2013; Hall 2013; Tombs 2014; Lynch and Barrett 2015; Steinzor 2015; Tombs and Whyte 2015). As already stated, these physical harms can vary in magnitude from transient, mild, short-term illnesses to life-long, often disabling, diseases and life-threatening (and ultimately lethal) conditions, and may even affect future generations, in the form of negative effects on human fertility, teratogenic effects on foetuses, or transmission of toxic substances to infants through mother’s milk.

Any attempt at measuring the scope of physical costs related to corporate violence is undermined by the aforementioned dark figure, as well as by the underlying problems in reconstructing causal relations between specific actions and specific harms. For instance, it has been estimated that as many as 800.000 premature deaths per year can globally be attributed to air pollution, with at least 24.000 premature deceases yearly due to the same cause in the UK only (Tombs and Whyte 2009; Croall 2010), and an estimate of from 13.200 up to 34.000 yearly premature deaths due (just) to coal fired power plants small particle in the US (Lynch and Barrett 2015); yet it is all but impossible to precisely calculate how many of these deaths can be related to violations of environmental law by private corporations (and, from a criminal law viewpoint, it is generally not possible to demonstrate a specific causal connection between a single death and the actions of a single corporation or of a single individual). With respect to environmental disasters, it can be slightly easier to get a reliable account of the physical harms (or, at least, of the direct and immediate ones): for instance, the already mentioned industrial ‘accident’ of Bhopal, which occurred on December 3<sup>rd</sup> 1984, caused, through the release of a toxic cloud of metyl

isocyanate, between 3.000 and 5.000 deaths and at least 200.000 recorded injuries and illnesses (Punch 1996; Pearce and Tombs 1998; Croall 2010). Similarly, bouts of food poisoning resulting in illnesses severe enough to require medical care are generally recorded, even if lesser (and, likely, more frequent) intoxications generally fail to be reported to the authorities, and/or to be connected to hazardous corporate behaviours (Croall 2010; Tombs and Whyte 2015). Work-related deaths, injuries and illnesses are generally recorded, at least for social security purposes; but, once again, it is often difficult to discern between actual fatalities and harms which are instead the result of health and safety law violations. A comparison provided by Poveda (1994) between work days lost in the USA, in the year 1990, due to non-fatal injuries related to 'street' crime, and work days lost, in the same nation and time, due to non-fatal work-related injuries and illnesses, shows a result of 5,9 million lost days, for the former, against 60,4 million lost days, for the latter. Once again, it is all but impossible to extract from such data the exact amount of harms to health ascribable to corporate offences; but, on the whole, it can be safely assumed that this kind of corporate violence, while greatly underestimated in official statistics (Tombs and Whyte 2015), causes a far larger amount of deaths, injuries and illnesses than common crime (Tombs 2007).

But, of course, the kind of harm most intuitively related to corporate crime in general is economic in nature (Poveda 1994; Shover, Fox and Mills 1994; Levi 2001; Friedrichs 2007; Croall 2008; Croall 2009; Croall 2010; Snell and Tombs 2011; Hall 2013; Tombs 2014; Matthews, Bohle, Quinlan, Kimber, Ngo, Finney Lamb and Mok 2016). Such economic harms are in no way easier to measure than physical ones, both because they are not generally accounted for in corporate balance sheets, being usually conceptualized as 'externalities' (Tombs and Whyte 2015), and because they encompass both direct and indirect costs (Friedrichs 2007). The former are typically defined in terms of the victims' monetary losses, and are usually reckoned in relation with frauds, financial crimes, antitrust violations, tax evasion, and the like. Even if, also with respect to this kind of harms, precise estimations are hard to achieve, it can be safely assumed that the overall economic losses due to corporate crime dwarf those related to common crime: another comparison provided by Poveda (1994) give us an example of such disproportion, by matching the five billion dollar losses due to conventional crime in the USA in the year 1990, against the 200 billion dollar losses due to the (sole) Savings & Loans scandal in the same period (Punch 1996; Rosoff, Pontell and Tillman 2007). Direct economic losses may, however, also stem from episodes of corporate violence: consider the case of people forced to relocate from a highly polluted area, or losing their jobs (and therefore incomes) due to work-related accidents or diseases or, more generally, to

injuries or illnesses resulting from any of the violations reviewed above, or having to pay expensive therapies for these same injuries or illnesses. Indirect economic costs are even harder to estimate, as they include a wide range of negative collective effects, such as higher insurance rates, higher law enforcement costs, higher public healthcare expenditures, loss of investors' confidence and consequent decline in stock values or increase in bond interest rates, costs for soil or water clearances that are ultimately shouldered by the citizenry, higher taxes, etc. According to the most recent European Environment Agency report, for instance, air pollution and greenhouse gases from industry cost Europe between €59 and €189 billion in 2012 (while over the period 2008-2012 the estimated cost was of at least €329 billion and possibly of up to €1.053 billion), comprehensive of the negative economic impact of a number of harmful air pollution consequences which include premature deaths, hospital costs, lost work days, health problems, damage to buildings and reduced agricultural yields (EEA 2014). Once again, to distinguish between costs related to actual law violations by corporations and costs related to air pollution in general is all but impossible; yet even if the former did amount to one tenth of such costs, its impact would dwarf that of all indirect costs of street crime.

Finally, psychological costs of corporate violence should also be taken into account (Ganzini, McFarland and Bloom 1990; Shover, Fox and Mills 1994; Croall 2001; Levi 2001; Friedrichs 2007; Rosoff, Pontell and Tillman 2007; Croall 2008; Snell and Tombs 2011; Arrigo and Lynch 2015; Matthews, Bohle, Quinlan, Kimber, Ngo, Finney Lamb and Mok 2016). Literature is particularly scarce with respect to such, and the majority of it focuses besides on victims of frauds, instead than of corporate violence (with some exceptions for victims of workplace offences and for residents of highly polluted areas). Yet we assume that some of the data collected in relation to economic crime might also apply, at least to some extent, to corporate violence. As the analysis of its psychological impact brings us more directly within the perspective of the individual victim, however, we will discuss this topic in the following section.

### *Corporate violence victims*

As we have already observed, the existing (and per se scarce) literature on corporate violence mainly focuses on the study of its harmful consequences as a social phenomenon (which they certainly are), to be analyzed in its general traits and measured, or at least estimated, as precisely as possible in its overall dimension. This means that even more rare are studies and researches that instead focus on the individual perspective of the single victim, with their specific losses, sufferings, fears, needs, etc. – exactly the

perspective which is most directly relevant in view of an effective implementation of Directive 2012/29/EU. Nonetheless, some useful information can be collected through a review of the pertinent literature, particularly thanks to case studies and a few victimisation studies based on individual interviews.

A first trait common to all white-collar and corporate crimes is related to an element of 'violation of implied or delegated trust' that they share due, basically, to the great asymmetry of information – and, more generally, power – that exists between those (individuals or corporations) that run a business and all the stakeholders (consumers, workers, stockholders, creditors, public agencies, local communities, etc.) potentially affected by its negative – and in some case criminal – outcomes (Sutherland 1940: 3; Sutherland 1949; Reiss and Biderman 1980; Shapiro 1990; Nelken 1994). This means that any form of corporate crime – and thus, for our purposes, of corporate violence – also implies a breach of (at least implicit) trust against the victim – an element which is certainly absent in the majority of conventional crimes, and which is, instead, immediately apparent in cases of product safety violations (imagine for instance a person suffering from an illness that requires the administration of a specific drug, who have no choice but to literally place their health and life in the hands of the manufacturer of that drug), or of violations of health and safety regulations on the workplace by the employer, but that can also be traced in environmental crimes: for instance, residents in an area potentially interested by the emissions of an industrial plant have basically no choice but to trust in the respect of environmental laws on the corporation's part. Thus, it can be expected that, once that a victim of corporate crime becomes aware of the offence they suffered, feelings of betrayal, rage, resentment, frustration and mistrust arise.

This expectation actually receives confirmation by those studies (admittedly few) that are based on interviews to victims of corporate crime (albeit, basically, of financial frauds), in order to analyze the psychological impact of this kind of victimisation (Shover, Fox and Mills 1994; Ganzini, McFarland and Bloom 1990; Levi 2001; Spalek 2001). Such sentiments of mistrust and resentment can also grow to engulf all like economic and financial organizations and, especially when a failure to act was perceived on the part of public regulatory agencies or, following the reporting of the crime, on the part of law enforcement agencies and/or the judiciary, victims may develop a wider feeling of abandonment, insecurity and distrust against public institutions and the law. Such sentiments may be further fuelled by several specific problems that the victims of corporate crime may face while dealing with law enforcement agencies: from a basic difficulty in picking the right one in a maze of public bodies with overlapping competences, to a

generally bureaucratic and indifferent attitude of public officers towards them; from a lack of effective support programs, to a general – institutional as well as public – perception of them as less ‘deserving’ public sympathy, less vulnerable and, on the whole, less harmed than victims of common crime; and so on (Moore and Mills 1990; Arrigo and Lynch 2015).

All in all, victims of corporate crimes and corporate violence may experience secondary victimisation at the hands of the legal system, due to a general feeling of being ‘second-rate’ victims or just ‘bureaucratic files’, abandoned by the public institutions that should protect and ‘avenge’ them, and often crushed under the powerful – and sometimes quite aggressive – defence strategies that corporate actors can display against them (Clinard 1990; Shover, Fox and Mills 1994; Snell and Tombs 2011; Arrigo and Lynch 2015). Evidence that inadequate assistance by public agencies (by way of failures in providing information, support, counselling, and legal ‘closure’ ) greatly contributes to the victims’ distress and appears associated with increased likelihood of developing a mental health condition by the affected persons has emerged from a recent survey of bereaved family members of workers killed on the job in Australia (Matthews, Bohle, Quinlan, Kimber, Ngo, Finney Lamb and Mok 2016).

Sentiments of shame, guilt and self-blame are also reported, particularly by victims of frauds (according to the common perception that they, at least to some extent, ‘contributed to’ or at least ‘precipitated’ the crime), in many way similar to those experienced by victims of rape (Levi 2001), with whom victims of frauds appear also to share higher rates of major depressive episodes and generalized anxiety disorders after the crime (Ganzini, McFarland and Bloom 1990). It is probably not too far-fetched to assume that similar feelings might be developed also by (at least some) victims of corporate violence, particularly when a shared public narrative exists, which places at least part of the blame on them, as it is often the case with work-related accidents (because that job was, after all, a ‘choice’ of the employee, or because the ‘accident’ was ‘victim precipitated’) and illnesses or harms suffered by consumers (*caveat emptor!*) (Tombs 2007; Croall 2008; Bisschop and Vande Walle 2013). Actually, bereaved family members of people victim of work-related deaths appear to display rates of post-traumatic stress disorder (PTSD), prolonged grief disorder (PGD) and depressive disorder (MDD) even higher than family members of victims of homicide or fatal accidents, as well as high levels of anxiety, feelings of isolation, mood swings, fear and guilt (Matthews, Bohle, Quinlan, Kimber, Ngo, Finney Lamb and Mok 2016).

The quality of life of victims of corporate violence can obviously also be severely affected by a set of more immediate and practical negative consequences (Shover, Fox and Mills 1994; Croall 2001; Levi 2001; Friedrichs

2007; Rosoff, Pontell and Tillman 2007; Croall 2010; Snell and Tombs 2011; Matthews, Bohle, Quinlan, Kimber, Ngo, Finney Lamb and Mok 2016): suffered harms to health and/or physical integrity may imply the need for complex therapies that may disrupt a person's – and often their family's – economic and psychological wellbeing, cause the loss of jobs and incomes, place a strain on social and affective relationships. The death of a loved one, besides often depriving the family of its 'breadwinner' or, anyway, affecting its incomes, is a traumatic event for their relatives, which can be further exacerbated by the failure to get the 'truth' about causes and responsibilities, which is an all too common occurrence in cases of corporate violence (Snell and Tombs 2011; Matthews, Bohle, Quinlan, Kimber, Ngo, Finney Lamb and Mok 2016), as already noted above. In some severe cases of environmental pollution, individuals or whole communities may even be forced to relocate, with a severe disruption of their social bonds and identity (Arrigo and Lynch 2015; Rosoff, Pontell and Tillman 2007, with specific reference to the examples of the Love Canal dumping site and of the Times Beach case: 142-189).

For those unable to take such extreme measures, however, repeated victimisation is a concrete risk (Friedrichs 2007; Croall 2008; Croall 2009): people working in unsafe establishments who cannot find other jobs in a safer environment, residents unable to leave a polluted territory, etc., will thus remain exposed to those same elements that caused harm to themselves or their relatives and friends; an occurrence which is particularly likely when multiple vulnerability factors happen to add to each other, as it is the case, for instance, with the documented tendency to find the most polluting factories or the largest waste dumping sites in the proximity of the poorest communities (Stretesky and Lynch 1999; Croall 2001; Lynch and Stretesky 2001; Rosoff, Pontell and Tillman 2007; Croall 2008; Croall 2010; Bisschop and Vande Walle 2013; Hall 2013; Walters 2014; Arrigo and Lynch 2015; Tombs and Whyte 2015). But the intertwining of vulnerability factors may occur also with respect to other social groups, as it happens, for instance, with the marketing of unsafe drugs or medical devices specifically targeted at women (Friedrichs 2007; Dodge 2009; Croall 2009), or with the already mentioned increased risks for the very young and very old, as well as for the already ill, when exposed to adulterated food (Croall 2009; Steinzor 2015).

On the whole, these preliminary data drawn from criminological and victimological literature hint at a series of needs of corporate crime and corporate violence victims (Croall 2008; Matthews, Bohle, Quinlan, Kimber, Ngo, Finney Lamb and Mok 2016) which an effective implementation of Directive 2012/29/EU should provide for: a need for specific psychological and emotional support that is in no way lesser than the one experienced by

victims of 'common' crimes and 'true' violence; an increased need for information and legal support, to deal with the greater legal and regulatory complexities implicit in these offences, as well as with the great disproportion of resources that opposes victims and offenders in this area; a need for specialized medical and social support, especially in all cases of long-term and/or disabling diseases, as well as in all cases of exposure to the risk of contracting long-latent illnesses, with a specific need for preventive screening; a general need for research and advocacy with respect to a typology of crimes that remain opaque and underestimated for both the general population and public institutions. Finally, it does not appear too far-fetched to suppose that these victims, whom society and institutions often fail to recognize and treat as such, may experience on occasions an even greater need of recognition of their 'victim status' and of the wrongs they suffered, than many victims of 'common' crimes, thus placing an (even) greater value on 'moral' redress (including a reasonable assurance that no further offences, and therefore, no further victimisations, will happen) than on instrumental outcomes (Garrett 2014; Hall 2016).



### III.2.

## Vulnerability and Needs of Crime victims in General and of Corporate Violence Victims in Particular

*Katrien Lauwaert*

### *Vulnerability*

In victim related research, practice and policy, it is common to dedicate specific attention to certain groups of victims which are deemed 'vulnerable'. In what follows we explore the different meanings of vulnerability and how this concept relates to victims of corporate violence. Vulnerability is first of all linked to the notion of *'the ideal victim'*. This phenomenon has been described in various ways (Christie 1986; Fattah 1991). In essence, however, ideal victims are 'weak persons of flawless behaviour and character' (Strobl 2010: 11). According to Whyte (2007: 447) 'the ideal victims is weak; the victim is carrying out a respectable project; the victim is in a place where she could not possibly be blamed for being; the offender is identified, physically dominant and bad; the offender is unknown to the victim; and finally, the victim needs to be unopposed by counter powers strong enough to silence the victim'. Groups who correspond to the profile of the 'ideal victim' obtain public sympathy easily and they attract media attention. They are seen as vulnerable groups and are therefore more likely to receive extra attention and protection. Since the development of the concept of ideal victim we have certainly moved beyond the stereotype of 'the little old lady being robbed by a stranger'. Victimological research has uncovered (many) other vulnerable groups in society, such as victims of hate crime or homophobic crime (Rock 2007). Nevertheless, victim hierarchies still prevail. The profile of victims of corporate crime rarely matches unambiguously the ideal victim and this is probably one of the reasons why they are not 'most readily given the complete and legitimate status of being a victim' (Whyte 2007: 447).

In victimological literature we encounter vulnerability also in the sense of victimisation proneness, which is people's *risk* or likelihood of becoming victimised. Vulnerable people run a higher risk of becoming a victim. A lot of

empirical research has been conducted to identify factors related to a higher risk of victimisation. Lifestyle and routine activities theory have been developed in this vein of research. Gradually more sophisticated versions have been elaborated such as the dynamic multi-contextual criminal opportunity theory which combines the examination of the presence of motivated offenders, the attractiveness of the target and the protection of the target, both at the micro and macro level, to explain risks of victimisation (Goodey 2005, Wittebrood 2007; Green 2007).

Elsewhere victimologists speak of vulnerability as the level of *harm* people suffer when victimisation occurs, for example because of physical or mental weakness or low income. The greater the consequences of the victimisation, the more vulnerable a person is. Pemberton reports that specifically in clinical psychological research the term vulnerability is mainly focused on the risk of developing mental health problems as a consequence of primary victimisation (Biffi et al 2016). Although it is not possible to make general statements about the vulnerability of victims of corporate violence in this sense, the literature indicates that the impact of corporate environmental crimes affect disproportionately the weak, the poor and the powerless (Hall 2016).

The EU Victims Directive, on the other hand, links vulnerability to *the risk of becoming a victim of secondary or repeat victimisation*. It requires that 'victims receive a timely and individual assessment (...) to identify specific protection needs (...) due to their particular vulnerability to secondary and repeat victimisation, to intimidation and retaliation' (Art 22, al 1)

Secondary victimisation refers to the victim not feeling accepted, understood and/or supported by others. In other words, people's reaction and attitude provoke victimisation for a second time, and cause feelings of rejection and isolation on the part of the victim. Secondary victimisation is often highlighted in relation to criminal justice officials, such as police officers, the public prosecutor or judges. It has much to do with attitude and poor investment in tasks which are now obligations named in the Directive: a respectful treatment of victims, not using jargon in oral and written communication with victims, providing information and focusing on more than just the one aspect of the victim's situation which constitutes the professional's business. The same kind of problems nevertheless also occur in contacts with other professionals such as lawyers, doctors, insurance companies, the media and even in contacts with social services (Aertsen 2002; Wemmers 2003; Condry 2010).

Repeat victimisation refers to the well-established finding that previous victimisation increases the risk of renewed victimisation. This is true for offences which tend to be repetitive, such as stalking or domestic violence, but also for offences that may seem just bad luck. Victimisation research has

not only demonstrated that after a first victimisation the risk of being victimized again increases. We also know that a relatively small group of victims accounts for a major part of victimisations, as they accumulate causes of vulnerability. Additionally, victims of one type of crime are also more likely to be victims of other types (Biffi et al 2016; Farrell and Pease 2014).

The goal of the Directive is to promote the identification of people who are more at risk of being victimised again or to be victimised by the attitude of the professionals who treat their case. This should be done through an individual assessment, meaning 'a personalised evaluation taking specifically into account the personal characteristics of the victim, the type or nature of the crime and its circumstances'. This assessment should also establish which specific protection these vulnerable victims would need. The Directive presumes child victims to be vulnerable for repeat and secondary victimisation and names other groups to which particular attention should be paid when assessing vulnerability. Amongst them are victims who have suffered considerable harm due to the severity of the crime and victims whose relationship to and dependence on the offender make them particularly vulnerable. Although they are not explicitly mentioned, certain victims of corporate violence certainly belong to these groups.

### *Needs of victims of crime*

The concept of victims' needs must be approached with due caution. It would be erroneous to just present a list of established victims needs and assume that these are applicable to each victim of crime. The reason is simple: victims' needs are not uniform and they (often) change over time. Moreover, needs are not always expressed and may thus stay invisible if not actively explored. Therefore it is indicated to actively offer services and to assess in a proactive manner with the victim what kind of support he/she wants, so that the offer can be tailored to the individual victim's needs. It might be necessary to repeat this in a later phase. Also, it is key to keep in mind and respect that not all victims want external support. From research we know that between 30 and 40% of victims desire some form of support (Aertsen 2002).

Crime has a different impact on different people and each victim deals with this impact in his or her own way. What people need to overcome victimisation is thus extremely *diverse*. Victims' needs depend first of all on the *nature and circumstances of the offence*. The impact of sexual offences, for example, tends to be more serious than the impact of other types of violence. Victims of violent offences for their part, suffer generally more

coping problems than victims of property crimes. Victims' needs are moreover influenced by *personal characteristics*. Gender, age, ethnicity, disability and sexuality may make a difference. The victim's *personal circumstances before and after the offence* will also play a role. Previous traumatic events in general and previous victimisation can worsen the psychological impact of a crime. People with a high level of income will bear more easily the cost of material damage or medical treatment. All these elements play a role in how people experience and cope with victimisation. They determine people's physical, mental and social power to overcome adverse events (Goodey 2005; Aertsen 2002).

Dealing with victimisation is also a *dynamic process*. Victims' needs (can) change over *time* (Daly 2014). Practical help will especially be appreciated in moments of crisis, shortly after the victimisation. The need for information about insurances and possibilities for legal support, for example, may come up later. Someone who appears to react in a calm and rational way at first, is not always shielded from developing severe psychological problems later on for which he/she will need professional help (Aertsen 2002). Not only time, but also the reactions of the victims' *environment* play a considerable role in the dynamic process of coping with crime. The immediate reaction of bystanders, even if expressed in small gestures of help, contributes to a restoration of trust in the surrounding world and influences coping processes positively. Also being well surrounded after the crime by family and friends who lend a listening ear may considerably support a fast recovery. Professionals and institutions providing services to victims are also part of the 'environment'. Inadequate reactions on their behalf may cause secondary victimisation as we have explained before.

It is finally also important to understand that victims have commonly a rather *passive attitude*. Even if they do need and expect support, they will not explicitly ask for help or take action themselves, or some of their needs may stay unexpressed. This can be explained by the humiliating experience of being harmed intentionally by the wrongdoing and by the impact of the violation of personal integrity. It puts people up with a disturbed self-perception, a loss of trust in the world surrounding them and feelings of shame, all of which translate into hesitation to reach out for help (Aertsen 2002).

Keeping in mind these caveats concerning the diversity of victims' needs, we can nevertheless assert that there is a set of *needs which are frequently expressed* by victims, or at least by victims of conventional crime, who are the focal point of most victimological research. Frequently expressed needs concern receiving recognition and information, safety and protection from repeat victimisation and future harm, participation in the reaction on the

offence, obtaining financial compensation or redress, practical and emotional support and legal assistance. These categories of needs are complementary and to a certain extent overlapping. Practical support in terms of changing locks after a burglary will for example support people's safety and prevent re-victimisation. Giving recognition is very much linked to providing emotional support.

The need for *recognition* is probably the most fundamental of victims' needs. Recognition is about taking victims seriously, acknowledging the event(s) and its (their) consequences. It involves listening to and hearing their message, and if possible, acting upon it. In the work of professionals a key element for recognition is the so-called presumption of victimhood. This principle mirrors the presumption of innocence attributed to offenders and underscores that it is in the interest of the victim to be treated right away as if the crime indeed took place. Later the court or another instance will determine whether indeed this was the case. Until that moment, an alleged victim should be treated as a victim (Groenhuijsen and Kwakman 2002, Pemberton and Vanfraechem 2015). Recognition and acknowledgement go hand in hand with being treated with dignity and respect.

How to understand that recognition is a key need for victims of crime? People lead their lives built on basic cognitive beliefs. We somehow take for granted personal invulnerability, have a positive self-perception and we build our day-to-day lives on the assumption that the world is meaningful and comprehensible. Victimisation often implies the scattering of these cognitive meanings. People feel they lose control and have a destroyed belief in an orderly world (Spalek 2006). The event upsets the predictability of everyday life and the trust in other people and may lead to an increased sense of vulnerability and insecurity. Intentional wrongdoing sends a symbolic message of degradation. It attacks people's sense of self-worth and self-respect. Redress of basic trust in one-self and the world around us is fundamental for victims to be able to turn the page and fully put the offence behind them. Braithwaite and Pettit (1990) call this the restoration of the victim's sense of dominion. Giving recognition is a key element for regaining trust. This can be achieved effectively by the victim's family, close friends, colleagues or neighbours, but also professionals can play a crucial role (Aertsen 2002). They will restore trust through symbolic and tangible acts to show the victim that she is a valuable person and that her dominion is worthy of respect (Aertsen 2002; Strang 2002; Spalek 2006).

Creating *safety* refers to immediate action needed to bring change in a dangerous situation. We can think of rescuing victims from a site after an explosion, or removing an abusive partner from the house. Safety can also necessitate a prolonged protection, for example throughout the criminal trial and even after sentencing execution. This will be particularly the case in

situations of continuing and repetitive victimisation and in cases with a high risk of retaliation. Examples of such situations are stalking, chronic forms of domestic and sexual violence and human trafficking. Also situations of organised or state crime require intensified protection, especially when the victims are the sole witnesses against the perpetrators (Pemberton and Vanfraechem 2015).

Victims want *information* about practicalities, possibilities for support and about their legal case. This is a key need. Lack of sufficient information can cause important distress (Pemberton and Vanfraechem 2015). It can be important to inform victims about stress and coping in order to help them understand their own (sometimes unexpected) reactions and to support recovery. Moreover, information about possibilities for practical and emotional support might be extremely relevant. Many victims also want to be kept informed about their case once they filed a complaint, and, importantly, they want to stay informed throughout the various stages of their cases (Strang 2002). Spalek and Strang refer to different studies showing that victims were initially happy with the treatment by the police. Subsequently the satisfaction started to decline due to a large extent to a lack of information about the progress of their cases. Also, when the victim was not needed for the criminal investigation, for example when the offender pleaded guilty, the victim was considered as redundant and information provision about the progress and outcome of the case to the victim was not organised (Spalek 2006; Strang 2002). For Spalek these examples explain how victims' rights are not necessarily implemented for the sake of victims' needs, but because the criminal justice system is dependent of the victim's participation for reporting and investigation of cases and as providers of evidence in court. The system tries to satisfy victims as a strategy in the pursuit of the system's own, wider goals: making the system function efficiently and raising public confidence in criminal justice. The risk then is that the system will let the victims down as soon as their utility for the system's goals decreases (Spalek 2006). Providing and receiving information only make sense if victims are able to understand the information. This may require translation to a language the victim can understand, but also the use of accessible wording and the assistance of a professional who can explain what is going on in legal proceedings. Finally, also the right not to receive any further information should be respected. Some victims want to leave the criminal event behind and they do not want be reminded of it, because it was either not a major event for them or it continues to be too painful to deal with it (Pemberton and Vanfraechem 2015).

*Practical assistance* can refer to very different actions. Victims may need to arrange for immediate reparation work, they may need urgent or longer

term medical help, they may need support to do administrative paper work (insurances, renew identity papers...), they may need transport to get home or a translator to understand and be understood. Although these may seem rather minor services, they can play a key role in restoring trust shortly after the victimisation.

*Emotional support* relates to the process of dealing psychologically with the crime. Victims need a good first reception in which recognition is a key factor. Besides that, needs for emotional support vary considerably. One person can be relatively unaffected by a crime, while another person, victim of a similar crime can be overwhelmed by what happened and suffer from fear and depression over an extended period of time. This means that a first reception of good quality or a short term support can be sufficient for some, while long term specialized support will be needed for others. It is furthermore important to keep in mind that devastating emotional or psychological effects can be caused by severe crimes, but even by minor crimes which are experienced regularly or repeatedly. Also, severe emotional effects such as post-traumatic stress disorder may only become visible a long time after the offence has been committed (Aertsen 2002). Even when the emotional effects of the crime are clear, people do not always want support to deal with these effects. Some do, others do not. In order to deal with what happened, some also want to confront the offender with the harmful effects of his behaviour, while others want to avoid contact with the offender by all means.

Emotional support and practical assistance can be provided by relatives and friends, community support services (public or non-governmental) and to some extent by the judicial authorities, in particular by the police shortly after the event or the complaint.

Victims, but certainly not all victims, desire *material or financial compensation* for the harm done. This need is not always limited to immediate and acute damage, for example linked to people suffering immediate physical damage or when the fulfilment of their basic needs is involved (housing e.g.). Also more long lasting damage, such as long term medical costs, immaterial damage or loss of the ability to work may need compensation. Payment by the offender himself is often preferred above compensation paid by the state or compensation schemes, even if this implies receiving a lower sum. Payment by the offender has, besides the material aspect, also a symbolic function. It is symbolic payback to the victim (Strang 2002; Pemberton and Vanfraechem, 2015).

Victims want to be involved in some way in society's reaction to the crime. Being well informed about their case is one, quite limited form of *participation*. Some victims appreciate a more active involvement, for example by acting as civil party in the court case, by telling their story in an

oral or a written victim impact statement (Erez 1999) or by confronting the offender directly in restorative justice processes. Being able to have your say as a victim is known to provide a sense of justice. Procedural justice research shows that this does not imply that people want to decide over the outcome of judicial decisions. Participation in itself leads to higher satisfaction, even if the outcome does not reflect what the victim had hoped for (Van Camp and De Mesmaecker 2014; Tyler 1990; Strang 2002).

*Legal assistance* helps victims to understand what is going on in the judicial handling of their case and supports them in taking (strategic) decisions. This is needed as criminal proceedings are often complex, choices that can be made unclear, and technical jargon used in oral and written communication incomprehensible for lay men.

A strand of victimological research explores specifically *victims' justice needs or interests*. The central question then is what victims are looking for in justice responses, what gives them a sense of justice. Drawing from the criminal justice and from the transitional justice literature, Daly (2014) identifies five main justice needs or interests. In other words, a justice mechanism which is doing justice to victims should, according to her, be able to address one or more of the following needs: participation, voice, validation, vindication and offender accountability.

*Participation* refers to 'being informed of options and developments in one's case, including different types of justice mechanisms available; discussing ways to address offending and victimisation in meetings with admitted offenders and others; and asking questions and receiving information about crimes' (Daly 2014: 388). *Voice* refers to victims being provided with the possibility to tell their story and its impact in a setting where public recognition and acknowledgement can be given. Voice can be linked to participation by speaking or by another type of presence in the justice process. *Validation* is about acknowledgement that the offending happened and that the victim was harmed, without blaming the victim and without sending the message that the situation was somehow deserved. *Vindication* requires actions of other people (the significant others, the community or legal officials) to show that the acts committed were wrong. This can be done by censoring an act, by symbolic or material forms of reparation (apologies, financial compensation, memorialisation...) or by standard punishment through the criminal justice system. *Offender accountability* demands that offenders take responsibility. This can be done in an active way, for example through sincere apologies and concrete acts of reparation, but also by accepting censure and/or a sanction. These justice needs can be tested on the traditional criminal justice mechanisms, but also to newer, alternative forms of sanctioning and even on justice mechanisms



in civil society, outside of the law context strictly speaking. The justice needs summed up above can be distinguished, according to Daly, from survival or coping needs (related to safety, counselling and basic needs such as food) and from service needs (such as needs for information and support). Depending on the particular victimisation some of these needs will need greater priority than others (Daly 2014).

The Directive picks up many of the possible needs of victims presented above, sometimes as fundamental principles, sometimes in a limited and concise way. Adequate implementation of the Victims' Directive will therefore certainly contribute to improve the plight of victims of crime in criminal justice settings. We should not forget however, that many victims needs can be met fastest and most efficiently in other societal spheres. Huge social capital for dealing with the aftermath of crime is present in the circle of family, friends and colleagues. Moreover there are numerous other professionals and institutions dealing with victims who can all contribute substantially: insurance companies, family doctors, hospitals, local administrative services to name a few.

### *Needs of victims of corporate violence*

In this third and last section we address the specific needs of victims of corporate violence. Victims of corporate violence is one group of victims which has stayed largely under the radar of mainstream victimological inquiry. As Spalek contents, victimological research has focused mostly on conventional crimes and less is known about the experience of victimisation by non-conventional crimes such as white collar crime. 'The individual impact of white-collar violations has been seldomly addressed' (Spalek 2006: 59). Specifically for victims of environmental crime Hall (2016: 104) points out that 'at present we are faced with an almost total lack of empirical research investigating the needs of victims of environmental crime, and what such victims might actually want from a criminal justice (or other) process'. These shortcomings in victimological research do have an impact on policy and practice as many victimological studies are geared towards acquiring knowledge of victimisation in order to support effective responses to victims' needs (Spalek 2006; Skinnider 2011; Pemberton 2016). What follows is therefore inevitably exploratory and at least partly hypothetical in nature. General victims needs (as described above) can provide a basis to start from. Comparisons with victims of other situations of collective victimisation can also contribute to the reflection. Moreover the typical

characteristics of the corporate violence victimisation, will provide further elements of particular attention.

A preliminary issue which needs to be addressed is the *identification* of those who have been harmed by corporate violence *as victims of crime*, both by themselves and by society. Intrinsic qualities of corporate violence hinder understanding it as a crime. People are not always aware that they have been victimised, or the victimisation appears a long time after the acts causing it, so that the link with the harmful behaviour is not always apparent. Additionally, the source of the harm can be unclear as well as who is responsible. It is also a typical characteristic of corporate violence that the harm done is not interpersonal or direct, but rather indirect and the consequence of decisions – actions or omissions – taken by complex organisations. These are often taken not to harm wilfully, but to make profit. It is therefore common that victims are unaware of the fact that the harmful behaviour is criminal behaviour. Especially when the exposure to the harm was voluntary, for example due to lifestyle or occupation, people will not easily self-define as victims of crime (White 2008; Skinnider 2011; Pemberton 2016).

The same kind of obstacles will hinder the *recognition* by others in and outside criminal justice. Convincing authorities of the harm and the wrongdoing may need expert opinion. Nevertheless, this recognition is especially needed as self-respect and self-worth may be seriously damaged by the violation of trust of the perpetrator(s) and by sentiments of shame and self-blame in the situations where the victim has actively contributed to the harm, for example by purchasing damaging products or by continuing to work in the plant which produces the harm.

Receiving *information* is a pressing need in case of corporate violence. The etiology of the harm itself may be hard to understand, and big corporations have the means and the support of legal counsel to prevent people from knowing that they are victimised, to hide information about the facts, to conceal their responsibility and to set up complicated defence strategies once they are under legal scrutiny (Skinnider 2011). The asymmetry of information is huge.

When health issues are at stake, *short and long term financial and practical support* can be vital for victims of corporate violence, as well as prevention strategies to avoid re-victimisation and future victimisation of others.

Whether the *participation of victims in criminal trials* effectively meets the needs of victims of corporate violence is a more debated question. From restorative justice research (see e.g. Shapland, Robinson and Sorsby 2011) we know that a major reason for victims to participate more actively and personally in the reaction to their victimisation, is the wish to prevent the

wrongdoing from happening again, the wish to stop the harmful behaviour. The struggle they have to go through, can in this way at least serve the good cause of protecting other people of having to suffer a similar plight. What needs to be changed is most often translated in terms of behavioural changes on the part of the offender: getting rid of drug addiction, finding a job, following an aggression reduction therapy... In case of corporate violence, what is needed to prevent repeated offending often transcends however the situation of the individual offender and involves more structural or systemic changes. The criminal justice system is badly equipped to initiate those changes. Problems are individualised. Official and state supported victim services equally tend to follow this individual approach. If it takes more systemic changes to prevent further victimisation, so-called unofficial victims movements, such as self-help associations, tend to take the lead. They give victims a voice and press for wider changes. In short, the individualised approach which is dominant in criminal justice should not blur the more structural issues present in the needs of victimisation of corporate violence. Real solutions will then require (large scale) action and structural or cultural changes at the level of businesses and/or legislation. Without these the context may be insufficiently changed as to prevent repeat victimisation.

Other typical characteristics of corporate violence raise further doubts about the extent to which *criminal proceedings* can meet victims' needs. Corporate violence often affects large groups of victims and are complex cases with shared responsibility. Criminal trials are poorly suited to accommodate large groups of victims. This has also become clear in the context of international criminal justice. Because the cases are complex the procedures are long and complicated with victims having to wait for compensation while many of their needs are urgent. Such procedures are also costly and draw money to proving the guilt of a few, while the money available for victims is often limited and/or insufficient. Although the harm done is clear and extensive it is often difficult to proof guilt of individual perpetrators as it is hard to attach responsibility to just one or a few persons, with a high failure rate as a consequence (Hall 2016; Pemberton 2016; Letschert and Parmentier 2014).

This is not to say that criminal proceedings may not meet victims of corporate violence's needs at all. Criminal prosecution may still have an important symbolic function: 'showing that crime eventually does not pay and repairing citizens' shattered believe in a just world' (Pemberton 2016). The social disapproval conveyed through a sentence may also raise awareness about the dangerousness of the acts and the social harm they engender. Additionally, if obtained, a trial may lead to financial compensation (Hall 2016).

The question then is which other avenues in dealing with corporate crime exist which can replace or at least complement criminal justice so that justice can be done better from a victim's point of view. Staying in the justice sphere victims can turn to *civil proceedings*. These can lead to financial compensation, but present also difficulties. The high cost of these procedures is on victims or victims groups. Class action suits, if allowed, may offer a solution to this problem as they allow large groups of victims to sue a corporation in a joint action. Because of complexity and shared responsibility, establishing causal relations between acts and harms may be difficult and the culpability of specific individuals may be hard to prove. In many European countries victims of crime can also turn to *state funded compensation schemes*. Access to these administrative systems is however often restricted to victims suffering physical injury as a result of violent crime, although there are considerable differences in their scope of application (Hall 2010; Miers 2007; Miers 2014). *Restorative justice* processes is another alternative route. White collar crime has remained relatively untouched in the area of restorative justice (Chiste 2008; Luedtke 2014). Information on the use of it in case of corporate violence is scarce, but there are examples of such cases in New Zealand and Australia (Skinnider 2011; Braithwaite 2016). A specific area of practice and research is environmental alternative dispute resolution (ADR). Much could be learnt from that field, while keeping in mind that it is not focused on criminal cases and that its philosophy and practice may in fact differ significantly from actual restorative justice. Hall (2016) mentions for example that victims themselves get little attention in the literature on environmental ADR. Restorative justice may have much to offer in the field of corporate violence, although there are definitely also many challenges to address (Gabbay 2007; Spalding 2015). As restorative justice processes are fluid and flexible, they can overcome some of the problems which obstruct the more classical avenues: the complex web of responsibilities, causality, and the fact that large number of people and local communities are victimised. The outcomes of circle discussions, for example, can be tailored to concrete needs and incorporate a reaction to the harm done as well as measures to prevent further harm to the same and new victims in the nearby future or to future generations.

Applying the general principle of a tailored approach, central in the Victims Directive, and taking into account the characteristics of many corporate violence cases, it would make much sense to provide (long-term) support and restoration packages tailored to the needs of a specific community of victims, be it a geographical community or not (Lee 2009). In case of geographically concentrated pollution Lee suggests personal

interviews with victims as an appropriate basis to grasp the social welfare needs of the affected community before formulating appropriate strategies to develop sustainable programmes to deal with the environmental injustice. A holistic approach could be used to elaborate such packages, or at least to gradually develop different actions in view of meeting victims' needs. Besides legal avenues a broad scope of other possibilities should be envisaged. Examples could be drawn from the field of memorialisation. Structural issues could be addressed via parliamentary commissions or other official initiatives for 'digging up the truth' and making recommendations for the future. Inspiration could be drawn from 'responsive regulation' strategies (Braithwaite 2002), which propose gradual interventions going from persuasion of the corporations to make changes, to warnings, civil and criminal penalties and finally licence suspensions and revocations. In such a more holistic approach it is clear that not only criminal justice professionals and victims themselves are to take action. Also local and national authorities have a role to play.

### *Conclusion*

If those who have been harmed by corporate violence are identified both by themselves and by society as victims of crime, they could benefit greatly from a firm implementation of different aspects of the Victims Directive. This is particularly true for issues pertaining to recognition, information and special protection needs due to accumulated vulnerabilities. The lack of self-identification as victims of crime, which is often observed, calls for making proactive offers of support to this particular group of victims. There are doubts about the extent to which participation in a criminal procedure is a preferable strategy for them, due to the particularities of corporate violence victimisation. A more holistic approach is proposed, through which the main focus broadens from individual suffering and criminal justice solutions to also include a collective harm perspective and a broad spectrum of strategies for addressing victims of corporate violence's needs.

## Chapter IV

# Implementing the Directive 2012/29/EU with Victims of Corporate Crime and Corporate Violence: First Findings

*Claudia Mazzucato*

### *Building bridges*

Borrowing some thoughts from literature concerning victims of international crimes, we too wonder whether until now victims of corporate violence 'have received "second class" treatment' (de Casadevante Romani 2012: 4). And in case they did, we wonder if this is because of the complex forms of their victimisation and the many obstacles they find when accessing justice, or because of corporate violence being one of the 'crimes of the powerful' (Rothe and Kauzlarich 2016; Leonard 2015: 61).

Significant attention has been recently paid by the United Nations and the EU to the violations of human rights in business conduct in the framework of the so-called 'Business and Human Rights'<sup>1</sup>, be those violations criminal offences *or not*. Business and Human Rights is a very interesting field for developing policies and practices (including judiciary practices), and a far-reaching field of research. This topic is briefly presented by Engelhart in Chapter I.5.<sup>2</sup>

Victims of corporate crime and corporate violence, as such, though, are not – not yet, at least – formally recognised as belonging to a 'vulnerable group' in neither international nor European (soft or hard) legal sources, despite the studies now available about the specificity of corporate victimisation (*supra* Chapter III) and the many cases occurring worldwide. Nor are these victims quoted among the *examples* of vulnerable ones, as are

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<sup>1</sup> See also the updated OECD (2011) *OECD Guidelines for Multinational Enterprises* (OECD Publishing), available at <http://dx.doi.org/10.1787/9789264115415-en> (last accessed on 15 December 2016).

<sup>2</sup> Section D) of the Appendix collects the major legal sources related to this subject.

the cases, instead, of the elderly or of the victims of organised crime or other categories (see *supra* Chapters I, II.1, III.2).

If each victim matters to the European Union (as discussed in Chapters I and II.1), yet victims of corporate violence *per se* do not seem to ever be mentioned in official documents of the EU regarding victims and victims' rights. The Stockholm Programme<sup>3</sup>, for example, is rich in references to victims of crime and to several vulnerable groups, and it also makes direct reference to *economic crime*, mainly intended as financial crime, but *not* to the *victims* of it. Similarly, the European Internal Security Strategy (ISS)<sup>4</sup> refers to economic crime as one of the 'main crime-related risks and threats facing Europe today', but when it come to victims, corporate victims are not expressly highlighted. The ISS recalls, among the European principles and values that inspired its drafting, the 'protection of all citizens, especially the most vulnerable, *with the focus on victims of crimes*' (emphasis added): yet, other groups of victims are made object of an explicit reference (ie, 'victims of crimes such as trafficking in human beings or gender violence, including victims of terrorism who also need special attention, support and social recognition'). Corporate violence, however, seems to perfectly fit within the majority of the 'main challenges for the internal security of the EU' listed in the ISS. The list, in fact, comprises the following: 'economic crime', as said, which is included in the item dedicated to 'serious crime'; 'cross border crime'; 'violence itself'; 'man-made disasters'. Moreover, connections between corporate violence and typical areas of crime of EU concern may easily exist, as it is the case, for instance, of corporations involved in human trafficking within the broader context of labour exploitation (see, eg, in US literature Rothe and Kauzlarich 2016: 91). It truly seems that corporate violence is 'silent' and 'invisible', and many are still the misconceptions in its regard that appear to perpetuate this situation (Leonard 2016: 62).

There is of course a significant EU commitment in various areas, such as corporate governance and sustainability,<sup>5</sup> disclosure of non-financial

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<sup>3</sup> European Council, The Stockholm Programme – *An open and secure Europe serving and protecting citizens* (2010/C 115/01).

<sup>4</sup> European Council, *Internal Security Strategy for the European Union. Towards a European Security Model*, Doc. 7120/10 CO EUR-PREP 8 JAI 182, March 2010; European Commission, Communication from the Commission to the European Parliament and the Council - *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe* (COM(2010) 673 final of 22.11.2010. A renewed ISS

<sup>5</sup> See, eg, the overview presented in the European Commission's webpage dedicated to 'Company Law and Corporate Governance': [http://ec.europa.eu/justice/civil/company-law/index\\_en.htm](http://ec.europa.eu/justice/civil/company-law/index_en.htm) (last accessed on 15 December 2016). See in particular the *2012 Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies* (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM/2012/0740 final).

information,<sup>6</sup> consumers' protection<sup>7</sup>, and others. Additionally, there are many important legal instruments in the fields, for instance, of product safety and of environmental protection, as further described by Manacorda in Chapter V. But there appears to be no connection – or no explicit connection – between European law of victims and European legal instruments in the afore-mentioned corporate-sensitive areas. Briefly, there seems to be a sort of gap between the system of rights set out for victims in the European Union and other sectors of EU legal intervention, which are significantly oriented to risk assessment, crime prevention, criminalisation, but apparently *not* addressed to victims' *direct* protection. Those sectorial European laws appear focused more on *potential* victims than actual victims. Hence, until now only the 2012/29/EU Directive deals with of the entire protection of *actual* victims of corporate crime and corporate violence.

A 'dialogue', we think, is needed not only between European Courts: a normative dialogue is perhaps necessary among European legal sources too. Worth exploring are ways to bridge the 'horizontal', general, EU provisions (and their national transpositions) concerning victims' rights and the 'vertical' EU provisions (and their national transpositions) regarding consumers' protection, product safety, environmental protection, disclosure of non-financial information etc. The interaction between existing EU legal instruments appears to be important in terms of an effective protection of actual victims throughout the European Union. These legal 'bridges' and normative 'dialogue' among European legal sources (and their national transpositions) fit into the *comprehensive* approach to victims' protection

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<sup>6</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU *as regards disclosure of non-financial and diversity information by certain large undertakings and groups*. The Directive is of utmost importance for the topics of this research. In fact, 2012/95/EU Directives, as summarised in the Eur-lex portal, 'requires certain large companies to disclose relevant non-financial information to provide investors and other stakeholders with a more complete picture of their development, performance and position and of the impact of their activity. (...) Such companies are required to give a review of policies, principal risks and outcomes, including on: environmental matters; social and employees aspects; respect for human rights; anti-corruption and bribery issues; diversity on boards of directors. (...) If companies do not have a policy on one of these areas, the non-financial statement should explain why not. (...) Companies are given the freedom to disclose this information in the way they find useful or in a separate report. In preparing their statements, companies may use national, European or international guidelines such as the UN Global Compact. The European Commission will produce non-binding guidelines on how to report non-financial information by December 2016' (available at <http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32014L0095>, last accessed on 15 December 2016).

<sup>7</sup> For a brief overview of actions and legal tools in the EU, see, eg, the European Commission webpage dedicated to 'Consumers' (consumers' safety; consumers' rights and law): <http://ec.europa.eu/consumers/> (last accessed on 15 December 2016).



that is at the heart of the Directive 2012/29/EU, and may contribute to better implement it. Moreover, creating legal synergies may even help overcoming other types of gaps that greatly affect a successful protection of corporate victims, such as the immense problem of scientific uncertainty (for instance uncertainty about the harmful or hazardous nature of a certain chemical substance). Finally, legal interconnections among the diverse relevant European instruments and their national transpositions may help in the process of harmonisation and trust building within the EU judicial cooperation in criminal matters.

In building those bridges, a few warnings are necessary. The 'fundamental' and constitutional stability – and righteousness – of those legal connections rests on the firm commitment by those in charge of implementing the law to taking the rights and the interests of *all* the subjects involved seriously. And especially the commitment to take victims' rights and victims' protection needs in due consideration, together with an equal, or fair, consideration for the rights and the interests of the counterparts, and especially of corporate individual suspects, accused persons and offenders.

We know far too well how hard to accomplish this task is. We have also learnt from research how corporate violence is an intricate jungle of problems and, sometimes, an inextricable enigma. Caution and wisdom are required when exploring this field and offering proposals.

Dilemmas on how to respond to corporate violence, in order to better protect its victims, do not seem to find their answers in 'conventional' forms of (criminal) justice: this is one of the first findings from this project so far. The selection of cases of corporate victimisation presented in Chapter VI offers some examples in this respect. Punishment-oriented criminal proceedings and corporate criminal liability-related proceedings often appear ineffective in ascertaining offences, in holding corporations and corporate offenders responsible, and in preventing further negative consequences for citizens and communities as a whole, and end up being costly also in terms of secondary victimisation. Out-of-court settlements and non-prosecution agreements, where admissible within national legal systems, present other problems and difficulties, and may too cause secondary victimisation or entail a lack of recognition of the victims of corporate violence with indirect adverse consequences in victims' access to support and welfare/medical services. Probably, in order to implement the Victims Directive in the field of corporate violence a new strategy has to be developed: very provisionally, in fact, it seems that responsive regulation (Ayres Braithwaite 1992; Braithwaite 2002) – which is compliance focused – and similar forms of preventive-restorative dynamism in justice systems (Braithwaite 2016; Nieto Martín 2016) offer responses that are certainly

worth a deeper scientific investigation and perhaps are also worth experimenting in the European Union.

### *Revealing common features to better assess/address special needs*

The Directive 2012/29/EU imposes a personalised and tailored approach to each single victim by assessing their individual protection needs, and taking the consequent protective countermeasures. In some ways, as often repeated, the Victims Directive partly abandons abstract categories of vulnerability in favour of an actual, concrete, analysis of the single person's exposure to risks of repeat victimisation, retaliation, and secondary victimisation. From burglary to sexual assault, from financial fraud to manslaughter, from pickpocketing to domestic violence: every victim falling into the definition of Article 2 of the Directive deserves, and must receive, the proper consideration together with an individualised assessment of his/her 'special protection needs' as provided by Article 22. If this task is properly and fully accomplished, then one may argue that there is no real necessity to focus on *another category* – or group – of victims.

When scrutinised further, though, the system of support-protection-rights of victims resulting from European law combines the consideration for three relevant elements, identifiable as the following: needs that are *common* to *all* victims of crime; needs that are *specific* to *some groups* of victims; *special* needs that are specific to the *individual* victim. Looking at the EU legal context, in fact, the system set out by the European legislator now comprises:

- a) a set of *common* minimum standards established by the Directive 2012/29/EU;
- b) the obligation by Member States to ensure 'a timely and *individual* assessment' of (personal) 'specific protection needs', as envisaged by Art 22 (1) of the Victims Directive;
- c) a series of 'satellite Directives' concerning '*specific* situations' of vulnerability or of victimisation (trafficking in human beings<sup>8</sup>, sexual offences against children<sup>9</sup>, terrorism<sup>10</sup>) (see Chapter II.1).

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<sup>8</sup> 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, and replacing Council Framework Decision 2002/629/JHA*.

<sup>9</sup> Directive 2011/92/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, and replacing Council Framework Decision 2004/68/JHA*.

According to Article 22 of the Victims Directive, in particular, the *individual* assessment of specific protection needs is carried out by taking into account, besides the *unique* 'personal characteristics of the victim' (Art 22(2) letter a) and the 'circumstances of the crime' (letter c), 'the *type* and *nature* of the crime' (letter b) (emphasis added). Hence, the Directive's step towards an actual case-by-case assessment of protection needs does not exclude the importance of learning from the phenomenology of corporate victimisation(s), in order to focus on relevant *common* features ('type and nature') which are *specific* to the sectors of corporate crime and corporate violence, therefore enhancing the correct implementation of the Directive in those particular fields in favour of the *individual* corporate victim.

The knowledge of the criminological and victimological features of corporate crime and corporate violence described in Chapter III enables policy makers and practitioners to at least rely on epistemological 'hints' resumed from experience. By building on these broad characteristics – we may call them 'schemes' – of corporate victimisation, the personal condition and the individual needs of the actual victim may be more easily identified and better assessed. In addition to needs that are 'common to all categories of victims', in fact, there are needs 'specifically connected to some particular categories of victims' (de Casadevante Romani 2012: 7). Knowledge of common features of the particular corporate victimisation is therefore helpful to put the 'general' Victims Directive *in practice*.

### ***A closer look at the Directive 2012/29/EU with the lenses of corporate violence victimisation***

In Chapter II (II.1, II.2, II.3) a brief overview of the provisions of the Directive 2012/29/EU is provided. Our lenses in examining the Directive now change: our interest will be focused on its implementation in the very field of corporate crime and corporate violence. In brief, we will now read through the Directive again, bearing in mind the criminological and the victimological features of corporate crime and corporate violence and the needs of corporate victims described in the previous Chapter (*supra* Visconti and Lauwaert). We will briefly point out (only) those provisions of the Victims Directive that most directly pertain to the scope of our research and of our project. We will select only a few major aspects of the many issues emerging

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<sup>10</sup> Proposal for a Directive of the European Parliament and of the Council *on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism*, COM(2015) 625 final, Brussels, 2.12.2015.

from the perspective of implementing the Directive 2012/29/EU in cases of corporate (violence) victimisation.

Our analysis is based on the following:

- European Commission DG Justice *Guidance Document related to the transposition and implementation of Directive 2012/29/EU*, December 2013;
- desk research about corporate victimisation (*cf* list of references);
- first findings emerging from the interviews and focus groups which are presently being carried out in the frame of the empirical research of this project and which concern the individual assessment of victims' needs. Interviews and focus groups involve victims of corporate violence, victims associations and professionals having supported victims of corporate violence;<sup>11</sup>
- findings from the study of some 'leading cases', as further described and analysed in Chapter VI;
- the contributions to our reflection stemming from the project's International Conference that took place in Milan in October 2016. During the conference international keynote speakers, practitioners, corporate representatives and victims associations' representatives were given the floor in plenary sessions and separate workshops.<sup>12</sup>

Since the empirical side of the research focus of this project is still on going, this analysis is to be considered a 'work in progress', presenting the project's 'first findings' which await further validation and/or enrichment. Several of the topics treated here lead to more questions and problems than answers and solutions. Hard as it may be, yet problems and open issues do not (and must not) prevent from trying to best (and immediately) implement the Victims Directive in the ground-breaking and far-reaching field of corporate violent crimes. Of course, in so doing, a sound respect for both the rights of corporate victims and the rights of the defendants, from corporate legal entities to individual persons having acted in the interest of the corporation, or both, must be constantly sought.

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<sup>11</sup> The project's second publication (forthcoming) will presents the results of the empirical research. The report will be made available on the project's website ([www.victimsandcorporation.eu](http://www.victimsandcorporation.eu)).

<sup>12</sup> The programme of the International Conference is available at the project website (<http://www.victimsandcorporations.eu/events/international-conference-13-14-october-2016/>).

### *The scope of the Directive*

As stated in Recital 13, the Victims Directive (only)

applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union.

For the Directive to be applied, and therefore for a person claiming to be a 'victim' to see it implemented in his/her situation, it is necessary first for the act committed to be a *criminal offence* envisaged by the *national law*. From the very beginning of the criminological analysis about white-collar crimes, one of the major problems with these crimes is precisely their being or not being 'crimes' – ie, criminal offences – in the strict legal meaning of the term (Sutherland 1949). The topic is immensely discussed in the criminological literature and is summarised in Chapter III. It will suffice here to recall that, despite their harmful consequences on physical persons, conducts related to the notion of corporate violence may not always be considered criminal offences by national laws, which excludes the applicability of the Directive. Not all types of breach of law by a corporation is a '*proscribed breach of the criminal law*' (Hall 2013: 58). This is especially true in certain economic sectors that are regulated more by civil or administrative provisions than by criminal law. In the context of Business and Human Rights, instead, international legal documents refer to the broader notion of 'violations of human rights'. The United Nations have coined the notion of 'victim of abuse of power' (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985) to refer to persons who suffered the consequences of 'acts or omissions that *do not* constitute violation of national criminal law but of internationally recognized norms relating to human rights' (point 18) (de Casadevante Romani: 43). In both cases, these victims of human-rights violations are not included in the system set out by the Directive 2012/29/EU, unless those violations are actually criminal offences under national law. As stated by Matthew Hall with specific regards to environmental victims, 'That the Directive should exclude victims in this way is somewhat puzzling, given the pedigree of this instrument' (Hall 2013: 59).

A second condition for the Directive to find application is that the criminal offences must be committed in the EU *or* that criminal proceedings take place in the European Union, irrespective, though, of the nationality or residence status of the potential victims. Article 1(2) and Recitals 9 and 10, in fact, affirm that the rights set out in the Directive do not depend on the victim's residence status, citizenship or nationality, and furthermore stress that these latter are not to be made conditions for benefiting from the rights attributed by the Directive.

It is needless to say how great and complex the cross-border dimension of corporate crime may be, especially in cases of multinational corporations or of enterprises that rely on international and transnational supply chains or of firms that sell their products all over the EU. It can also be very complex to determine *where* a certain corporate offense has taken place and which, consequently, are the applicable law and the Country where the criminal proceeding has to take place.

### *The notion of victim and their recognition*

Provided there actually *is* a national law establishing a criminal offence, the path that victims of corporate violence must take to secure support, protection, and justice is still a long and difficult one.

This topic is particularly dense of philosophical, juridical and practical implications, and we cannot here but sketch a few aspects. *Who* are corporate victims, according to the Directive 2012/29/EU? When do they become victims? Who is actually entitled to access the system of rights set forth by the Directive? From when? And on the basis of which conditions?

Some of these questions find answers in both the Directive provisions and the CJEU case law (Gialuz 2015: 22; Mitsilegas 2015: 320; Venturoli 2015: 99; Savy 2013: 11). Others do not.

The definition of victim as stated in Article 2(1) of the Directive has enriched the Framework Decision 2001/220/JHA regarding this topic. Article 2(1) provides quite a clear definition, although advocates of victims rights stigmatize it as being too narrow, and even more advocates of corporate victims do so (Hall 2013: 58). The UN 1985 *Basic Principles* provide, for instance, a wider notion which includes 'persons' who 'individually or *collectively*' (emphasis added) have suffered harm resulting from a criminal offence. Although crime victims are of course sheltered by the protection system designed by the Directive 2012/29/EU as a community of *individuals*, to underline the collective dimension of certain forms of corporate violence can be important when assessing protection needs and implementing protection measures.

Under the Directive 2012/29/EU (and the 2001 Framework Decision), 'victims' are only 'natural persons' (Article 2(1 a)). Ruling about the Third Pillar Victims' Framework Decision, the Court of Justice of the European Union has excluded in the past that legal persons fall under the notion of 'victim of crime' (Case C-205/09 *Eredics – Sári* 21 October 2010; Case C-467/05 *Dell'Orto* 28 June 2007). The reasons for this exclusion lie in the intimate bond that links the 'victim' to the *human* experience of suffering from a harm. In brief: corporations are not to be considered victims under the Directive 2012/29. Natural persons being victims of illicit conducts

carried out by corporations, instead, are. Yet the Court of Justice in *Giovanardi* (Case C-79/11 *Giovanardi* 12 July 2012) ruled that persons 'harmed as a result of an administrative offence committed by a legal person ... cannot be regarded ... as the victims of a criminal act who are entitled to obtain a decision, in criminal proceedings, on compensation by that legal person', because of the *administrative* nature, in the particular legal system under consideration (Italy), of the liability of legal persons. Corporate legal bodies, on the other hand, may fall under the purview of the broader notion of 'victim' for the (different) purposes of the Directive 2004/80/EC (*Dell'Orto* [58]).

The notion of 'victim of crime' poses other relevant questions that challenge juridical and judicial logics. Oddly, though, there is little analysis about the 'relational' nature of the concept of 'victim of crime'. No crime, no victim. Yet *crime* is a strange entity: it depends on a criminal law envisaging it as an offence; it tries to remain hidden; it takes place in the moment it is committed, but it is declared so only following a conviction beyond any reasonable doubt. For a victim of crime to exist, there must have been a crime in the first place. But for a victim of crime a full recognition of his/her victimisation depends on the fact that the crime is not only committed, but it is discovered and the illicit facts are ascertained in their criminal relevance. And this is the task of criminal justice.

Very interestingly and importantly, Recital 19 of the Directive clearly states that 'A person should be considered to be a victim *regardless of whether an offender is identified, apprehended, prosecuted or convicted*' (emphasis added). There seems to be a sort of *presumption of victimisation*: to be entitled to information and support, and – *to some extent* – to be entitled to protection and to participation in criminal proceedings, it is sufficient that a (natural) person claims to be a victim. This sort of presumption counterbalances perhaps the presumption of innocence on the part of the defendant. Yet, there also appears to be a duty of attention (and of care) on the part of the 'competent authorities' (ie, police, prosecutors, judges, support services etc): according to Recital 37, in fact, 'support should be available from the moment the competent authorities are *aware of the victim*' (emphasis added). Among the noblest provisions of the Directive 2012/29/EU are those dedicated to the *recognition* of victims. The Directive insists on the importance for the victim to be recognised: Recital 9, Article 1(2), Chapter 4 stress that victims of crime and their protection needs should be recognised.

These articles and recitals of the Directive are very relevant in respect to victims of corporate violence. Corporate violence, in fact, is hard to prosecute because of its criminological specificity, and because of many other 'technical' reasons that range from rules of evidence, to proof of

causation, to time limitations, to the inner complexity which is related to the organisational and structural nature of a corporation (Leonard 2016: 71; Boggio 2012).

In addition, scientific uncertainty, scientific controversies and controversial science cast a further shadow on the relationship that *victims* of corporate violence have with *crime* and *justice*. Their recognition is frequently at stake: is this substance really toxic? Is this very illness caused by that very exposure to that substance? Within the boundaries of this shadow, victims of corporate violence may become, or remain, invisible: the harm they suffer may be manifest, but its illicit and criminal nature may on the contrary be unknown or unseen. It is worth pointing out that, following Recital 19, recognition of the victim does *not* – and should not – require *per se* the activation of criminal justice, convictions and punishments. Recognition as a victim *of crime*, though, is essential to access to relevant information, victim support and, when needed, to protection measures.

Awareness of competent authorities, as a part of the duty to recognise victims in order to offer support and address their need, raises nonetheless the issue of reporting and proactive enforcement. Victims of corporate violence may not realise they have been victimised. Since corporate crime occurs, by definition, during the *legitimate* activity of a corporation, it is often difficult – if not impossible – for a single person to ‘uncover’ it, except when it is too late. Protection from repeated or increased victimisation necessarily implies a proactive role of enforcement agencies: such is the case of food frauds, selling of defective drugs or food, exposure to toxic substances, exposure to polluted areas. In the case of corporate violence, delays in reporting criminal offences may depend on the common reasons recalled in Recital n. 25 of the Victims Directive – ie, fear of retaliation or stigmatisation –, especially when the victims is the employee and the corporation is the employer. But delays in reporting may also depend on more complex reasons, such as scientific uncertainty and/or long latency periods before the actual physical harm is manifest itself.

### *The right to information*

Within the system designed by the Directive 2012/29/EU, information to victims is of the utmost importance. This right of the victim (and the correspondent duty of various authorities and services) is in fact central and strategic, being so strictly connected, in the abstract provisions and in practice, to access to support, to justice, and to protection (Chapter 2 of the Directive, but in fact other provisions too envisage this right). Victims should be afforded the right to receive information from the ‘first contact’ with ‘any competent authority’. The content of the information to which the victim is



entitled is ample and broadly covers nearly all the (other) rights attributed by the Directive. As stated in Recital 26 (and again in Recital 46 in relation to restorative justice) information is necessary for the victim to 'make informed decisions' and 'informed choice(s)'.

The right to information is furthermore crucial in the field of corporate victimisation where it has specific and proper facets. Corporate victims, in fact, need not only the 'procedural' and/or 'legal' information necessary to 'make informed decisions about their participation in proceedings' or in restorative justice programmes (Recitals 26, 46)), but beforehand, and furthermore, they need access to the information necessary to 'discover' and/or become aware of their victimisation. As mentioned above, these pieces of information are intimately interwoven with access to justice, and in fact they are truly a *condition* for access to justice: without this information, the actual possibility to file a report, to make a complaint, to decide whether or not to participate in a criminal proceedings, to accept or not an out-of-court settlement, and so on, may be at stake.

This particular aspect of the right to information of corporate victims is unique, and it is strictly linked to another of the main purposes of the Directive, that is the protection of victims from repeat victimisation.

Yet, as often recalled in this publication, transparent and correct information may not be easy to access, because of the imbalance in the informative power of corporations, on the one hand, and because of scientific uncertainty or controversial scientific information, on the other hand.

Corporate victims' right to information intersects other relevant areas where the 'right to know' is recognised and protected in the European Union:<sup>13</sup> information to consumers (see, eg, Directive 2001/95/EC), access to environmental information (Århus Convention and related Directives), disclosure of non-financial information (Directive 2014/95/EU), to name a few. By matching these different facets, a stronger meaning to the right to information due to victims as individual persons, as citizens and as consumers, is formed.

When implementing the 2012/29/EU Directive to cases of corporate violence, some adjustments to certain provisions are necessary. If is the case, for instance, of the provisions of Article 6(5) (and Recital 32) regarding information about the release (or the escape) of the offender 'at least in cases where there might be *a danger or an identified risk of harm to the victims* (emphasis added). The notion of 'identified risk of harm' is very different when dealing with a stalker, a violent partner, a serial thief, or a corporation carrying on activities resulting in criminal offences to life, health, physical integrity, etc.

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<sup>13</sup> Cf *infra* Chapter V. Official links to the legal resources quoted are available in the Appendix to this publication (*European and International Selected Legal Resources and Case Law*).

More important than the information of whether the corporate offender has been released (whose detention is not so frequent), is the information about on-going, resumed, or new activities that may again expose the actual or/and potential victims to the same or a novel risk of harm.

*The dependence on the offender*

Article 22(3) of the Victims Directive attracts the attention on the relationship between the victim and the offender 'in the context of the individual assessment' required to 'identify specific protection needs'. This relationship, in fact, can cause the victim to become particularly vulnerable when it entails a 'dependence on the offender'. This provision is of the utmost importance for recognising corporate victims, and therefore correctly assessing their protection needs. Criminal breaches of health/safety regulations in the workplace or of medical devices and drug safety regulations, in fact, almost invariably occur under various forms of dependence of the victim on the (corporate) offender. It can be an economic dependence, as it is the case of the workers, or it can be an even more threatening technological or medical dependence from a device or a drug that, if properly produced, could be life saving.

*Crime as a violation of individual rights*

The Directive 2012/29/EU sees the crime as a 'wrong against society as well as a violation of the individual rights of victims' (Recital 9). Recital 66 provides a list of some of the fundamental rights and principles recognised by the Charter of the European Union that become relevant for victims of crime: 'right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial'.

Because of its complexity and the many fields where it takes place, in addition to the list of rights quoted in Recital n. 66, corporate violence may entail the violation or infringement of other fundamental rights and/or principles recognised by the Charter of Fundamental Rights of the European Union. The following are worth mentioning as particular examples:

- Article 11, Freedom of expression and information: right to receive information;
- Article 27, Workers' right to information and consultation;
- Article 31, Fair and just working conditions: respect for health, safety and dignity;
- Article 34, Social security and social assistance: entitlement to social security benefits and social services providing protection in cases such as, among others, illness or industrial accidents;
- Article 35, Health care: high level of human health protection;
- Article 37, Environmental protection: high level of environment protection; principle of sustainable development;
- Article 38, Consumer protection: high level of consumer protection;

The precautionary principle, as outlined by article 191 TFEU in relation to the protection of both the environment and human health, is also of paramount importance when dealing with corporate crimes in these fields.

### *Open issues*

In the previous paragraph, we have reflected on how knowledge of common features of corporate victimisation may help in putting the Victims Directive *in practice*.

As of *theory*, a provisional set of issues emerge by necessity, although deserving further sustained reflection and being subject to review, due to their complexity and multi-faceted implications:

- a) The search for interactions and synergies between the Victims Directive and the wider context of EU legislation in the fields, for instance, of environment protection, food and drug safety and consumers' protection (see Chapter V) allows a change of perspective. On one hand, this perspective enables to focus on the possible extent of the *actual* mutual enrichment of EU legal resources and, on the other, it provides an interesting overview of possible lacking aspects, or weaknesses, for further legal developments.
- b) Corporate violence shows a very peculiar capability of affecting – and attracting – nearly the whole set of European fundamental rights, values and principles, challenging in a unique way the necessity *inter alia* 'to strengthen the protection of fundamental rights in the light of (...) scientific and technological developments', as described in the Preamble of the Charter of Fundamental Rights. The 'comprehensive' negative

nature of corporate violence may be seen as further evidence of the relevance of this topic for the European Union.

- c) The EU priority of the protection of victims of crime raises the question whether, *having regard to Article 82(2) TFEU* and the scope of its provisions, the establishment of *ad hoc* minimum rules concerning the rights, the support and the protection of victims of criminal offences comprised under the phenomenology of corporate violence is needed, having these particular victims specific needs that might require a more targeted and integrated support than that granted by the sole Directive 2012/29/EU.
- d) Another question raised by the research conducted under this project is whether the phenomena related to corporate violence, and their ensuing forms of victimisation, may fall under the provisions and scope of *Article 83 (1) TFEU*. That is, if corporate violence has 'developed' as one of those 'other areas of crime' meeting the criteria set out in Article 83(1) TFEU, and therefore:
- being 'particularly serious', and
  - having a 'cross-border dimension',
  - 'resulting from the *nature or impact of offences* or from a special need to combat them on a common basis' (emphasis added).

If this were the case, offences related to corporate violence could potentially become the object of a Council decision and of a new 'vertical' directive, having regard to Article 82(2) *and* Article 83(1). This imaginary directive would be similar, as far as nature and broad contents, to the existing Directives concerning human trafficking and the sexual exploitation of children. It could therefore combine criminalisation of offences of corporate violence, envisaging corporate criminal liability, crime prevention strategies (including corporate governance, corporate social responsibility, compliance programmes, etc), and victims' protection, within an integrated, yet 'specific', *ad hoc* system. This system of course should be designed in close and careful coordination with already existing legal instruments in relevant fields (environment, food safety, product safety, safety in the workplace etc). Innovative responses to corporate violent offences, including reparation measures and other types of redress and compensation, would have to be drafted, taking into account, on one hand, the particular features of corporate crimes and of corporate victimisation and, on the other, the promising experience of responsive regulation and restorative justice. The role of Member States in preventing corporate violence and their obligations in setting up the proper measures to avoid victimisation and the violations of fundamental

rights in the first place, and to protect victims from on going risks and repeat victimisation could also be addressed. This issue still requires thorough analysis and further study in order to better address its exact legal basis. Yet, provisionally, a combined reading of the TFEU provisions may offer some hints towards a possible path in the harmonisation of the rights of victims of criminal offences falling under the criminological and victimological notion of 'corporate violence'.

The political and social implications of these issues, and especially of the last questions, are great. The issues raised are thorny and controversial. There are *pros* and *cons*. Fundamental rights of European citizens and interests of corporations in the EU are involved. The constitutional and European legal basis for such actions are to be carefully assessed. We leave these very delicate questions open, waiting for further discussion stimulated by the analysis stemming from the on-going empirical research<sup>14</sup> and other activities connected to this project.

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<sup>14</sup> A research for which we here acknowledge the great and thoughtful contribution of the many persons generously taking part in it, and especially the many victims of corporate crime we are interviewing.

## Chapter V

# Synergies and Complementarities between the Directive 2012/29/EU and Other EU Legislation in the Fields of Environment Protection, Food Safety and Drugs Safety

*Stefano Manacorda\**

### *Introduction*

Following the EU Directive on the protection of victims<sup>1</sup>, 'victim' means: (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death (Article 2 - Definitions, para 1.a).

Recital n. 38 adds that: 'Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection.'

No direct reference is made to the victims of corporate crimes, nor in general neither in the following specific sectors: Environment protection, Food safety and Drugs safety. The need then arises to verify if and to which extent they are taken into account in other legal tools by looking at the EU legislation in these areas.

The following paragraphs identify for each of the three sectors the fundamental principles as enshrined in the Treaties and described in the EU policy before examining the relevant EU secondary legislation. The research is mainly focused on the analysis of the protection granted to basic values of

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\* Irene Gasparini, PhD student, has contributed to the research.

<sup>1</sup> 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, and replacing Council Framework Decision 2001/220/JHA.

individuals, namely human life and health, which can actually (by harm) or potentially (by risk) be affected by illicit conducts of corporations.

This research is conducted by keeping in mind that the EU Charter of Fundamental Rights of the European Union endorses the right to life under Art 2<sup>2</sup>, and prescribes that all Union's policies and activities ensure a 'high level of human health protection' under Art 35<sup>3</sup>.

Due to the high complexity of the domains at stake, the following notes are not intended to represent an exhaustive compilation of the EU legislation in the three sectors and their analysis is subject to further review.

### *Environment protection*

#### *The protection of the human being within the EU primary sources.*

The pillar objectives of EU Environmental Law are set forth in numerous provisions of the Treaty on the European Union ('TEU') and of the Treaty on the Functioning of the European Union ('TFEU'), which embrace *in a broad concept of environment* not only natural resources but also *human beings*.

The EU *Charter of Fundamental Rights of the European Union*, apart from Art 2 and Art 35 mentioned above, prescribes at Art 37 that a 'high level of environmental protection and the improvement of the quality of the environment' be integrated in the Union policies in accordance with the principle of sustainable development<sup>4</sup>.

Among the primary sources, it is *Art 3 TEU* that sets among the Union's aims the one to promote 'the *well-being of its peoples*' (para 1) and, namely, a 'high level of protection and improvement of the quality of the environment' (para 3)<sup>5</sup>. Moreover, under *Art 11 TFEU* 'environmental protection requirements' must be integrated into the Union's policies and activities.

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<sup>2</sup> Art 2(1): 'Everyone has the right to life'.

<sup>3</sup> Art 35: 'Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities'.

<sup>4</sup> Art 37: 'A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development'.

<sup>5</sup> Art 3(1): 'The Union's aim is to promote peace, its values and the well-being of its peoples'; [...] (3) 'The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance'.

Among the objectives to be pursued by the EU environmental policy, *Art 191(1)*<sup>6</sup> *TFEU* explicitly mentions, in addition to the one of 'preserving, protecting and improving the quality of the environment' and others, the *protection of human health*. Namely, as further specified under para 2 the Union policy on environment (based on the precautionary principle that preventive action should be taken, that environmental damage should be rectified at source and that the polluter should pay) aims at a '*high level of protection*' of human health.

In line with such principles, the *7th Environment Action Programme* was adopted with Decision 1386/2013/EU on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', which singled out '*health and quality of life*' among the four priority areas of the EU environmental strategy.

#### *The lack of reference to victims in Directives 2008/99/EC and 2009/123/EC*

Since the European Court of Justice with its landmark judgment in 2005 paved the way for enforcement of environmental justice through criminal law<sup>7</sup>, at least *two main legal documents providing for criminal penalties for infringements of environmental law* have been adopted. These are the 2008 Directive on the protection of the environment through criminal law (Directive 2008/99/EC, or 'Environmental Crime Directive') and the 2009 Directive on ship-source pollution and the introduction of penalties for infringements (Directive 2009/123/EC, amending Directive 2005/35/EC). The adoption of criminal law in response to breaches of environmental legislation is certainly indicative of the progressive strengthening of the policy of the Union. Nevertheless, both Directives appear to have scarcely paid attention to the status, position and substantive/procedural rights of victims of environmental crime.

The *2008 Directive on the protection of the environment through criminal law* targets unlawful conducts that cause or are likely to cause death or

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<sup>6</sup> Art 191(1): '1. Union policy on the environment shall contribute to pursuit of the following objectives: preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change'; (2): 'Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay [...]'

<sup>7</sup> Case 176-03, *Commission of the European Communities v. Council of the European Union*, Judgment, 13.9.2005.



injury, thereby expressly punishing the *endangering or harm to human life and health*. However, despite dealing directly with the impact of environmental criminal offences on individuals, not only does a *definition of 'victim' totally lack* (not to mention, eg, the absence of specific concern for particularly vulnerable categories of individuals and the protection against secondary and repeat victimisation), but also the core protected values to which individuals are entitled are not defined in detail throughout the Directive.

*Also in the 2009 Directive on ship-source pollution the notion of 'victim' is completely absent.* The only (indirect) mention can be found in the 2005 Directive that the first one amends, whereby it is prescribed that penalties for discharge of polluting substances should not limit the *'efficient compensation of victims of pollution incidents'* (Recital 9). Reference to *'human health'* is also made in the description of polluting substances under Annex II, a residual indication that doesn't aim to provide any substantial protection or set of rights to human beings harmed by ship-source pollution.

*The reference to protected values inherent to corporate victims in Directive 2008/99/EC*

The absence of a notion of *'victim of environmental crime'* in the current criminal EU legislation has led the present research to expand its initial inquiry into EU secondary law that deals in general – *i.e.* not necessarily through criminal law – with environmental damage affecting human beings. Namely the search has targeted the *identification of certain core protected legal values* in the environmental legislation that are of primary importance for individuals actually or potentially affected by illegal behaviours related to environment.

Such an expansion of the inquiry has proven particularly relevant, given that *Art 2 (a)* of the *2008 Environmental Crime Directive* expressly refers – among others – to an extensive *list of EU secondary legislation* (in *Annex A and B* to the Directive) dealing (not necessarily through criminal sanctions) with environmental matters in order to define an unlawful conduct. Such an unlawful conduct may amount to a *'criminal offence'* under *Art 3 (a), (b), (d)* and *(e)* if committed intentionally or with at least serious negligence and actually or potentially causing – among others – the death or serious injury of a person. Therefore, the analysis of the recalled EU legislative documents on environmental protection (although not necessarily *'criminal'*) is indirectly very relevant also to the criminal safeguard as they give specific content to the *'unlawfulness'* prerequisite and identify certain underlying values worth of protection.

Two recurring core values are expressly made object of safeguard and are strictly intertwined with the protection of the environment: *'human life'* and *'human health'*. At times they are valued independently and parallel to the protection of the environment; other times the definition and remedy of *'environmental damage'* itself is anchored to the presence and subsequent removal of a threat/damage also to human life and health.

The protective strategy addressing these values across the EU environmental legislation could be framed according to *two levels* that will be analysed in detail in the following paragraphs. Both well founded on the precautionary principle and a risk-centred protection, a first set of instruments adopted within the EU legislation places a general focus on the *collective dimension* of the protected core values of life and public health, whereas the second strategy consists in a direct safeguard of life and health in their *individual dimension*.

*'Collective values': public health and the prevention or minimization of a risk*

The analysis of relevant EU secondary law has allowed to identify a first group of legislative texts dealing with the safeguard of human life and health from illicit conducts that may result in environmental damage. Even though such illicit conducts do not specifically qualify as *'criminal'* and do not trigger criminal sanctions in the examined legal tools, they provide useful insight into the *core values* on which the EU focuses when dealing with the environmental impact of occupational/industrial activities on human beings.

The protection of the human being at this level is mostly worded in terms of protection of a *'collective'*, public dimension of human life and health. Those values must be shielded from actual or potential *risks*, in accordance with the precautionary principle. In other words, the examined legislation does not focus on the individual as such but on the individual as a member of a community, which should be protected against diffused threats to public health.

The recalled Decision 1386/2013/EU adopting the *7<sup>th</sup> Environment Action Programme* significantly stresses on the minimization, prevention and reduction of significant adverse risks and impacts of certain industrial activities or of waste management on human health and well-being (Recitals 15, 16, 17, 25, 26), bearing in mind the (potential) impact of environmental degradation also on future generations.

a) A first instance of this first-level approach is represented by *Directive 2002/49/EC* on reduction of *'environmental noise'* caused, *inter alia*, by air traffic and industrial activity. The Directive aims at preventing and reducing

environmental noise *'particularly where exposure levels can induce harmful effects on human health'* (Art 1(1)c). In particular, the scope expands to the protection of humans exposed in built-up areas, public parks, hospitals and schools (Art 2(1)), thereby – at least in the last two cases – shielding also vulnerable individuals (patients and kids).

b) A leading example of this risk-based approach is then provided by *Directive 2004/35/CE ('Environmental Liability Directive')* on environmental liability, which is aimed at preventing and remedying environmental damage caused by the operator of an occupational activity under the principle of strict or fault-based liability. The overarching concept of *'environmental damage'* in the Directive is specified as including damage to protected species and natural habitats, contamination of waters and land damage. It must be noted that environmental damage caused by a list of potentially dangerous activities is relevant – thus recoverable – if it causes a *'potential or actual risk for human health and the environment'* (Recitals 8 and 9).

With specific regard to soil pollution, the Directive defines *'land damage'* as *'any land contamination that creates a significant risk for human health being adversely affected as a result of the direct or indirect introduction in, on, or under land of any substances, preparations, organisms or micro-organisms'* (Art 2 (1) c), thereby anchoring a specific type of environmental damage to a possible negative impact on a human health. Additionally, the Directive encourages land damage assessments to include the extent to which *'human health is likely to be adversely affected'* (Recital 7).

c) Another important legal tool is represented by the so-called *'REACH' Regulation (EC) No. 1907/2006 on the production and use of chemicals*. The Regulation prescribes that *'industry should manufacture, import or use substances or place them on the market with such responsibility and care as may be required to ensure that, under reasonably foreseeable conditions, human health and the environment are not adversely affected'* (Recital 16). Human health is therefore protected through a risk-assessment strategy (entailing information on chemical substances, identification of hazardous properties and risk through the supply chains) based on *'careful attention'* to substances of high concern, according to the precautionary principle (Art 1(3)). The aim of the legislation is to prevent and *'minimize the likelihood of adverse effects'* deriving from the exposure to substances caused by discharges, emissions and losses (Recital 70). The Regulation further recurs to the notion of *'unacceptable risk to human health'* caused by the manufacture, use or placing on the market of a certain substance, providing for the substitution of that substance with suitable safer alternatives (Recital 73 and Art 68).

The 'REACH' Regulation singles out among the targets of its protective strategy those human beings (collectively) identified as '*vulnerable*'. If, on the one hand, such a 'vulnerability-parameter' is not well defined (children and pregnant women are the only categories mentioned in Annex I, section on Human Health Hazard Assessment), the Regulation clearly stresses on the importance to ensure a high level of protection for human health, having regard to '*relevant human population groups and possibly to certain vulnerable sub-populations*' (Recital 69).

d) A coherent risk-based perspective is also adopted by the EU as regards the illicit treatment, use, management and shipment of *hazardous waste* produced by all sorts of industrial activities (eg, mining residues, residues of industrial processes, oil field slops, as well as agricultural, commercial and shop discards<sup>8</sup>). *Directive 2006/12/EC* sets its aim as the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste (Recital 2) by directing Member States to take all necessary measures to ensure that waste recovery and disposal is carried out '*without endangering human health*' (Art 4).

e) On the same line, *Regulation (EC) No. 1013/2006* provides for an 'environmentally sound management' of *waste*, meaning that all practicable steps should be taken in order to ensure that 'waste is operated in a manner that will *protect human health*' by *avoiding to endanger it*<sup>9</sup> (Art 2(8) and Art 49).

f) A similar approach is also adopted by *Directive 2006/11/EC* aimed at reducing pollution caused by the discharge of certain dangerous substances into the *aquatic environment*, whereby 'pollution' itself is defined as the discharge (by man) of substances or energies in the aquatic environment that 'are such as to cause [among others] *hazards to human health*' (Art 2(e)). The Directive further targets among the listed substances under Annex I those that have a 'deleterious effect on the taste and/or smell of the products for human consumption'.

g) In line with the examined legal documents, the 2008 '*Waste Framework Directive*' (2008/98/EC) states that the main object of any *waste policy* is 'to *minimize the [negative] effects* of the generation and management of waste *on human health* and the environment'. In a clearly preventive framework,

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<sup>8</sup> See the list in Annexes to the 'Waste Framework Directive' 2006/12/EC (namely Annex I).

<sup>9</sup> Case C-487/14, Court of Justice (7<sup>th</sup> chamber), Judgment of November 16<sup>th</sup> 2015.

the producer and the holder should manage waste and by-products in such a way that does *not endanger human health* (Art 3).

*'Individual values': harm and risk to human life and health*

By examining the *Directive on the protection of the environment through criminal law (Directive 2008/99/EC)* the analysis is shifted to a second level of protection of individuals who are negatively affected by environmental impact. Rather than on public health the focus here is on the *direct harm or injury* caused to values such as *human life and health*. Therefore, a harm that is suffered by the human being not merely as a member of an affected community/collective entity but directly as a *single individual*. It is *Art 3* of the Directive that defines environmental criminal offence as the unlawful conduct, committed with intention or at least serious negligence, which, *inter alia*, 'causes or is likely to cause death or serious injury to any person'. The *direct harm to life and health* is clearly targeted in the description of the criminal event – death/injury –, and it is precisely what triggers criminal jurisdiction over certain unlawful and intentional/negligent conducts (such as discharging materials or ionizing radiations into air, soil or water; collecting, transporting, recovering and disposing of waste; conducting a dangerous activity or storing/using dangerous substances in the operation of a plant).

However, the wording 'causes or likely to cause' opens to the punishment not only of concrete harm to the individual but *also of its risk*, this way encompassing in the scope of the Directive *abstract endangerment crimes*.

*Measures, compensations and sanctions*

The terms in which protection of human life and health is worded in the EU legal framework necessarily determines the type of remedies and restoration measures that should be granted to these protected values when an environmental damage has occurred.

When environmental damage is conceived as *collectively* posing a risk to human health measures to be taken mainly imply: *a) reduction/elimination of significant risks* and *b) prevention of further damage to public health*.

**a)** Accordingly, the remedy of any environmental damage (to habitats and endangered species, water and soil) that has already occurred according to *Directive 2004/35/EC* expressly includes the *removal of any significant risk of adversely affecting* human health (Art 2(15) and Annex II, para 1). The provisions on remedial actions (Art 6(1)a) further specify that where

environmental damage has occurred, the operator should immediately take all practicable measures to *limit or prevent further* environmental damage and *adverse effects on human health*. Furthermore, in the choice of remedial measures (Art 7) the public authority should always take into account the risks to human health, bearing in mind that damage with a proven effect on human health must be classified as 'significant damage' (see Annex I).

**b)** In the field of waste management, for instance, *Directive 2012/19* on waste electrical and electronic equipment states that protection of human health and the environment should be ensured by (preventing and) '*reducing adverse impacts*' of such waste on the environment and *human health* (Art 1).

**c)** Another example of this remedial approach, focused on the elimination and further prevention of risks, can be found in the *Directive 2012/18/EC on industrial accidents*. Despite specifically encompassing 'death' and 'injury' in the definition of major industrial accident (Annex VI), the focus of the Directive is explicitly on risk-reduction measures and on the *minimization/limitation of the consequences* of major accidents for human health (Art 13).

**d)** On a sharply different note, under *Regulation (EC) No. 1907/2006* on use and management of chemicals, Member States should set up 'an appropriate framework for penalties with a view to imposing *effective, proportionate and dissuasive penalties for non-compliance*, as non-compliance *can result in damage to human health and the environment*' (Recital 122). Despite the focus on public health and its collective dimension, the Regulation does not limit the protective strategy to the reduction and elimination of risk but it introduces penalties, placing the remedies on a similar standpoint as the one provided with reference to individuals exposed to harm or risk.

As a matter of fact, when environmental damage is conceived as *individually* posing a risk to human health, measures to be taken mainly imply the recourse to *criminal law and criminal sanctions* being the 2008 Directive focused on the prescription of '*effective, proportionate and dissuasive criminal penalties*' for *liable legal persons* under Art 5. Surprisingly, when individual life and health are at stake, *individuals* are not provided with specific remedies or restoration measures.

### *Access to justice*

In addition to individual/collective protective approaches, the EU legal framework also provides victims with specific rights to *standing in criminal proceedings* and *access to justice*. The imposition of standards aimed at *protecting public health* in the examined domains (of air quality, water pollution and waste management) creates *subjective rights* that individuals are entitled to rely on before national jurisdictions<sup>10</sup>, although not necessarily in criminal proceedings. The 2001 EU Framework Decision on the Standing of Victims in Criminal Proceedings also plays an important role, despite the absence in it of any specific reference to 'environmental victims'.

What follows is, on one hand, i) a *general right to standing* of victims of crime, though not specifically inclusive of 'environmental crime victims'; on the other hand, ii) the *protection of human beings against environmental harm* and their right to standing, however not necessarily in criminal proceedings.

Within the EU secondary legislation, a stark difference arises in terms of access to justice when juxtaposing the Environmental Liability Directive (2004/35/EC) and the Environmental Crime Directive (2008/99/EC).

As a matter of fact, on the one hand, the *2004 Environmental Liability Directive* provides for a broad safeguard of the position of the individuals actually or potentially affected by environmental damage. Namely, it grants them with: a) access to information on environmental matters; b) right to public participation in decision-making and judicial review of public/private projects/decisions which might have an impact on human health and the environment; and c) right to have their interests represented by public interest groups (such as NGOs for the protection of the environment) in *administrative/civil proceedings*.

As *Art 12 (1)* of the Directive prescribes, 'natural or legal persons: (a) affected or likely to be affected by environmental damage or (b) having a sufficient interest in environmental decision making relating to the damage or, alternatively, (c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition, shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent

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<sup>10</sup> Case C-361/88, *Commission v. Federal Republic of Germany*, Judgment, 30.5.1991. See also the Opinion of the Advocate General in the same case (6.2.1991): 'It may be seen from the preambles to the contested directives that, in addition to protecting the environment, they are intended to protect human health and to improve the quality of life. The obligations in the Member States to ensure that the concentrations in the air of the substances in question do not exceed the levels deemed permissible has, as its corollary, the rights of individuals to rely on those quality standards when they are infringed, either in fact or by the measures adopted by the public authorities'.

threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive'. In this regard, the interest of any non-governmental organization promoting environmental protection is deemed to have rights under Art 12 (1)(b) and (c). The Directive provides that such persons and non-governmental organizations shall have 'access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive' (*Art 13(1)*). In addition, public interest groups also have the right to submit observations regarding the restorative measures to be taken under Art 7(4)(2) of the Directive.

In respect with the participation of groups and NGO's, the 2004 Directive seems to have welcomed the main contents of 1998 UNECE *Aarhus Convention* on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (implemented through Directive 2003/4/EC on public access to environmental information, Directive 2003/35/EC on public participation to plans and programmes related to the environment and Regulation (EC) No. 1367/2006 or 'the Aarhus Regulation'). Moreover has been taken into account the *1998 Council of Europe 'Convention on the Protection of Environment through Criminal Law'* (not yet entered into force) providing for States to grant groups and associations/NGOs involved in the protection of the environment (therefore not individuals) the right to participate in criminal proceedings (Art 11).

On the contrary, the *2008 Environmental Crime Directive* does not show any sign of having accepted the contents of the 1998 Council of Europe Convention<sup>11</sup> *lacking any reference to access to justice and participation* of those who have suffered environmental harm in criminal proceedings, also through representative public interest groups/NGOs.

### ***Food safety***

The second selected sector, due to the potential involvement of corporate responsibility for harm and risk to human health and life, is the one of food safety.

Contrary to environmental regulation, the protective channel of *criminal law is here absent at the EU level*. The safeguard of human *life and health, primarily in their collective dimension, is provided mainly through preventive measures*, in line with the precautionary principle. The legal framework is focused on the notion of risk rather than harm, and it entails penalties for violations of sector regulations as well as a residual regime of civil liability for

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<sup>11</sup> 'That the 2008 Directive does not contain similar language [...] is both unfortunate and somewhat surprising, given the previous willingness to follow the Council of Europe's lead in the 2004 Environmental Liability Directive': Cardwell, French and Hall 2011: 113.



the producer. Such preventive measures and penalties *do not prevent, in any case, Member States from adopting (also) a criminal liability regime.*

The general underpinning principles in the field of consumer protection are found mainly in *Art 114 (3)*<sup>12</sup> (which sets the protective base at a 'high level of protection'), and *Art 169(1)*<sup>13</sup> (on health, safety and economic interest of consumers) of the *TFEU*. Similarly, the EU Fundamental *Charter* provides for a high level of consumer protection in all Union policies under *Art 38*<sup>14</sup>.

At a Union policy level, the 1997 Green Paper on General Principles of Food Law in the EU (COM(97)176final) and the 2000 White Paper on Food Safety (COM(99)0719final) released by the Commission set the protection of consumer health as a 'key policy priority' (to be achieved – among others – through traceability of the product, food-chain monitoring and prevention of food-related health risks). Moreover, the 1997 Green Paper expressly provides that 'when a food business markets a foodstuff which does not conform to the safety requirements prescribed by Community or national law, that business may be liable to criminal or administrative penalties under the law of the Member state concerned' (p. 46). Since the adoption of such documents, *secondary legislative acts have been gradually adopted* in order to create a specific legal framework in this sector *and replace Directive 92/59/CEE*, which imposed only a general and horizontal obligation on manufacturers to produce and release on the market 'safe products'.

Today the EU legal framework regarding food safety does *not address the human being as a 'victim'* in case of products being placed on the market by corporations and potentially or actually causing cause harm to consumers' health.

Moreover, the liability regime for the manufacturer in such cases is not framed as strictly criminal, however the relevant legal documents impose on Member States the adoption of *effective, proportionate and dissuasive penalties* in domestic legislations.

Also, specific provisions regarding consumers *right to redress/remedy and access to justice appear to be entirely absent*, as the EU legal framework in

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<sup>12</sup> Art 114(3): 'The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective'.

<sup>13</sup> Art 169(1): 'In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests'.

<sup>14</sup> Art 38: 'Union policies shall ensure a high level of consumer protection'.

this sector is primarily focused on *prevention, reduction and elimination of risk* for consumers' health.

The following legal documents deal with issues related to food safety and protection of consumers' health in general. On the one hand, the regime on food safety (1) aims at ensuring a high level of protection of human health through preventive measures and sanctions. The same approach is adopted also in relation to legal tools specifically related to Genetically Modified Organisms ('GMO') and pesticides (2). On the other hand, the residual/complementary civil liability regime applies to the manufacturer (3) who has placed unsafe food products on the market.

*The legal framework on food safety: risk to human health, measures and sanctions.*

a) The main legal reference in this sector is *Regulation (EC) No. 178/2002*, which sets the *general principles on food safety*, and namely a *high level of protection of human health* and consumers' interest in relation to food (Art 1).

It also upholds the *prohibition to place unsafe food on the market* – where 'unsafe' means injurious to/having an adverse effect on human health – (Art 14 e 15) and the need to respond to food safety problems in order to protect human health (Recital 10).

As expressly stated in the Regulation, *food law is aimed at the reduction, elimination or avoidance of a risk to health*, and risk analysis - risk assessment, risk management, and risk communication - is able to contribute to the determination of effective, proportionate and targeted measures or other actions to protect health (Recital 17). 'Risk' is defined as a function of the *probability of an adverse health effect* and the severity of that effect, consequential to a hazard (Art 3).

In conformity with the precautionary principle, the Regulation provides that in order to ensure a high level of health protection *provisional risk management measures* (in scientific uncertainty) should be taken in case of possibility of harmful effects on health (Art 7). The Regulation also recalls past food safety incidents in order to prompt common measures (in the EU) able to counter serious risks to human health.

In this regard, *food business operators are responsible* for ensuring that foods satisfy safety requirements under food law at all stages of production, processing and distribution within the businesses under their control. In case unsafe foods are placed on the market, food business operators shall act immediately in order to prevent, reduce or eliminate connected risks (eg, withdrawal procedures, collaboration with competent authorities). The

general regime of civil liability of manufacturers who place unsafe products on the market is also recalled through an express reference to Directive 85/375/EEC (Art 21) (see *infra* in this Chapter).

In addition, in case of infringements of food law, Member States shall provide *effective, dissuasive and proportionate penalties* (Art 17 and 18).

**b)** *Regulation (EC) No. 882/2004 on official controls and compliance with food law* is aimed at protecting consumers' interests by *preventing, eliminating or reducing to acceptable levels risks to human health* (Art 1).

It deals with management crisis (contingency plans) in case food is found to pose serious *risks to human health* (Art 13), and with official controls aimed at preventing potential threats (Art 15).

A broad reference to criminal liability is made in the Regulation when stating that performance of official controls should be *without prejudice* to feed business operators' primary legal responsibility for ensuring feed and food safety, as laid down in Regulation (EC) No 178/2002, and *any civil or criminal liability* arising from the breach of their obligations (Art 1, para 4).

Moreover, under the Regulation, Member States shall provide for sanctions applicable to infringements of food law and shall take all measures necessary to ensure that they are implemented. The *sanctions* must be *effective, proportionate and dissuasive* (Art 55).

**c)** *Regulation (EC) No. 853/2004* (as well as Regulation 853/2004 and 854/2004) on *hygiene of foodstuffs* aims at a high level of protection of human life and health (Recital 1) and a high level of consumer protection with regard to food safety (Recital 7, 8). The Regulation expressly places the *primary responsibility to ensure safety all along the food chain on food business operators* (Art 1). In particular, at all stages of production, processing and distribution, food is to be protected against any contamination likely to render the food unfit for human consumption, injurious to health or contaminated in such a way that it would be unreasonable to expect it to be consumed in that state (Chapter IX, point 3).

**d)** *Regulation (EC) No. 1169/2011 on the provision of food information to consumers* aims at ensuring a high level of protection of consumers' health by regulating information on food products regarding risks of harmful effects for human health (Art 4).

*Legal tools regulating GMO and pesticides: risk to human health, measures and sanctions*

The following legal references are specifically related to *genetically modified organisms ('GMO')*.

a) *Directive 2001/18/EC* aims at controlling the risks deriving from the deliberate release into the environment and the placing on the market of GMO in order to protect human health (Recital 5 and Art 1). In this regard, direct or indirect, immediate, delayed or unforeseen *effects on human health should be traced* (Recital 43), *in addition to risk-assessments and risk-monitoring* for human health and safeguard procedures (including emergency response plans).

It is the responsibility of Member States to take all appropriate measures to *avoid adverse effects of GMO on human health* (Art 4).

In case of breach of provisions enshrined in the Directive - in particular, in case of negligence - Member States are encouraged to adopt *effective, proportionate and dissuasive penalties* (Art 33 and Recital 61).

b) *Regulation (EC) No. 1829/2003* on genetically modified food and feed prescribes that *GMOs for food use should not have adverse effects on human health* (Art 4). It also provides, in case of infringement of the Regulation, that Member States shall lay down *effective, proportionate and dissuasive penalties* as well as take all necessary measures to ensure their implementation (Art 45).

c) *Regulation (EC) No. 1946/2003* on *transboundary movements* of GMOs stresses the importance of controlling that such movements of importers/exporters also take into account risks to human health (Art 2). Under the Regulation, in case of infringements of the prescriptions therein, Member States shall lay down *effective, proportionate and dissuasive penalties* and ensure that they are implemented (Art 18).

An additional set of legal documents indirectly linked to this sector regards the placement on the market of *biocides and pesticides*.

a) *Regulation (EC) No. 1107/2009* on plant protection products aims at preventing that such products and their residues have immediate or delayed *harmful effects on human health* (Art 4(2)(a) and 4(3)(b)). In particular, special attention should be paid to the protection of *'vulnerable groups' of the population* (Recital 8), meaning *'persons needing specific consideration when assessing the acute and chronic health effects of plant protection*

*products. These include pregnant and nursing women, the unborn, infants and children, the elderly and workers and residents subject to high pesticide exposure over the long term* (Recital 14). In case of non-compliance with the provisions in the Regulation, Member States shall take *effective, proportionate and dissuasive penalties* (Art 72).

**b)** the *Framework Regulation No. 528/2012 on biocidal products* aims at providing a 'high level of protection of human health' (Recital 12) by preventing and reducing risks deriving from such products. Particular attention should be paid to the protection of '*vulnerable groups*' of the population (Recital 3 and Art 1(1)), defined as '*persons needing specific consideration when assessing the acute and chronic health effects of biocidal products. These include pregnant and nursing women, the unborn, infants and children, the elderly and, when subject to high exposure to biocidal products over the long term, workers and residents*'. Once again, Member States shall take *effective, proportionate and dissuasive penalties* for infringements of the provisions in the Regulation and ensure that they are implemented (Art 87).

*Product safety and civil liability of the producer: harm, measures and penalties*

The legal framework on product safety and civil liability of the manufacturer is also applicable to the food sector legislation, being the former a regime that generally applies in absence of specific sector regulation under EU law or as complementary to sector legislation. In addition, express reference to such a regime is made in certain legal documents (eg, Reg. 178/2002/EC).

**a)** In dealing with producer's liability for defectiveness of its products (Art 16), *Directive 85/374/EEC* includes in the definition of '*damage*' also damage caused by *death or by personal injuries* (Art 9), thereby entitling the damaged consumer to *compensation*.

**b)** *Directive 2001/95/CE* (amending *Directive 92/59/EEC*) on general product safety, which complements the provisions of sector legislation, recalls the general *obligation on economic operators/producers to place only safe products on the market* (Art 3).

To this regard, in order to ensure the effective enforcement of the obligations incumbent on producers and distributors, the Directive calls on Member States to establish authorities responsible for monitoring product safety and provided with powers to impose *effective, proportionate and*

*dissuasive penalties* in case of infringement of such obligations (Recital 22 and Art 7).

### *Drug safety*

The third examined sector where corporate responsibility for harm or risk to human health and life comes into play is the one related to unsafe or defective medical devices (1) and risks related to medicinal products for human use (2).

Similarly to the food safety sector (Section 2), the protective channel of criminal law is currently absent at the EU level. As a matter of fact, it should be noted that the EU *has not yet signed* the 2010 Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (*'MEDICRIME Convention'*, entered into force on 1.1.2016). Such binding international instrument aims at protecting public health through criminal law and specifically mentions among its aims the one of *'protecting the rights of victims'*<sup>15</sup> (Art 1). Such rights include access to information, assistance in physical/psychological/social recovery, compensation from the perpetrators (Art 19) as well as right to information, support, safety and (free) *access to justice at all stages of criminal investigations and proceedings*, also through representation by NGOs or other groups (Art 20).

Similarly to the sector legislation on food safety (Section 2), the safeguard of human life and health, primarily in their collective dimension, is here provided mainly through a preventive approach, in line with the precautionary principle, focused on the notion of risk rather than harm. The legal framework entails penalties for violations of normative prescriptions as well as a residual regime of civil liability for the manufacturer. Such preventive measures and penalties do not prevent, in any case, Member States from adopting (also) a criminal liability regime.

Human health is expressly stated as a *target of 'high level of protection'* at EU level in numerous provisions of the *TFEU*. Mentioned in *Art 4 (2)(k)*<sup>16</sup> among the subjects of shared competences between the EU and Member

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<sup>15</sup> 'Victim' under Art 4(k) of the Convention is defined as *'any natural person suffering adverse physical or psychological effects as a result of having used a counterfeit medical product or a medical product manufactured, supplied or placed on the market without authorisation or without being in compliance with the conformity requirements as described in Article 8'*.

<sup>16</sup> Art 4 (2)(k): *'Shared competence between the Union and the Member States applies in the following principal areas: [...]common safety concerns in public health matters, for the aspects defined in this Treaty'*.

States, it is endorsed under *Art 6 (a)*<sup>17</sup>, *Art 9*<sup>18</sup>, *Art 114*<sup>19</sup>, *Art 168*<sup>20</sup> dealing specifically with *quality and safety for medicinal products and devices for medical use* and *Art 169*<sup>21</sup> on the protection of *consumer's health and safety*.

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<sup>17</sup> Art 6 (a): 'The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health'.

<sup>18</sup> Art 9: 'In defining and implementing its policies and activities, the Union shall take into account [...] a high level of [...] protection of human health'.

<sup>19</sup> Art 114 para (3) 'The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective'; and para (8): 'When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council'.

<sup>20</sup> Art 168: '1. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities. Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health. The Union shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action. It shall in particular encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas. Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. By way of derogation from Article 2(5) and Article 6(a) and in accordance with Article 4(2)(k) the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting in order to meet common safety concerns: (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures; (b) measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health; (c) measures setting high standards of quality and safety for medicinal products and devices for medical use.

5. The European Parliament and the Council, acting in accordance with the ordinary

At a policy level, in the *EU 2020 'Strategy for smart, sustainable and inclusive growth'* (COM (2010) 2020 final), the Commission expressly mentions the need to provide present and future generations with a high-quality healthy life, reduce health inequalities, promote a healthy and active ageing population, adapt the workplace-related legislation to new health risks and ensuring citizens a better access to health care systems.

The current EU agenda on health protection is further described in detail in Regulation (EU) No. 282/2014 adopting the *3<sup>rd</sup> Programme for the Union's action in the field of health (2014-2020)* and setting four over-arching goals (a. Promoting health, preventing diseases and fostering supportive environments for healthy lifestyles taking into account the 'health in all policies' principle; b. Protecting Union citizens from serious cross-border health threats; c. Contributing to innovative, efficient and sustainable health systems; d. Facilitating access to better and safer healthcare for Union citizens).

Focusing specifically on medical devices and medicinal products for human use, the protection of patients' life and health in EU law appears to be composed of a double frame. On the one hand, legal tools regulating unsafe/defective devices and medicinal products, as well as their related risks (1), provide a preventive and precautionary safeguard of the collective values of human life and health (mainly related to *withdrawal* of defective products on the market and incident *reporting*). On the other hand, the residual/complementary regime on product safety (2) horizontally imposes *civil liability* for defective products on the manufacturer as well as *penalties*

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legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States.

6. The Council, on a proposal from the Commission, may also adopt recommendations for the purposes set out in this Article.

7. Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them. The measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood'.

<sup>21</sup> Art 169(1): 'In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests'.



for infringement of safety requirements, however without specifically addressing medical devices or medicinal products.

*Legal tools regulating unsafe or defective medical devices and medicinal products: risk and measures*

The EU legal documents specifically dealing with the safety of medical devices and medicinal products do *not qualify the human being as a 'victim'* of incidents caused by defective, malfunctioning or deteriorated devices and products placed on the market by corporations.

*Nor* do they provide that *liability of the manufacturer* in case of incident should be strictly *criminal* or entail *effective, proportionate and dissuasive penalties* in domestic legislations.

Also, specific provisions regarding *patients' right to redress/remedy and access to justice* appear to be entirely absent.

However, despite never referring to the concept of 'victim', criminal liability or access to justice, the relevant legal documents regulating products (A) and (B) uphold that both must provide patients, users and third parties with a *high level of protection*. Such an attention to the actual or potential adverse effects deriving from devices/products on the *life and health of patients* is demonstrated across the relevant legal tools as follows.

Under EU law, a *medical device* is defined by Art 1 of the Directive 90/385/EEC<sup>22</sup>. Medical devices are further classified in 4 ranking product classes (I, IIa, IIb and III<sup>23</sup>) on the basis of their potential risks for the human body (Directive 93/42/EEC, Annex IX).

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<sup>22</sup> 'An instrument, apparatus, appliance, software material or other article, whether used alone or in combination, together with any accessories, including the software intended by its manufacturer to be used specifically for diagnostic and/or therapeutic purposes and necessary for its proper application, intended by the manufacturer to be used for human beings for the purpose of diagnosis, prevention, monitoring, treatment or alleviation of disease; diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap; investigation, replacement or modification of the anatomy or of a physiological process, control of conception, and which does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, but which may be assisted in its function by such means'. The Court of Justice of the EU has further clarified and narrowed the notion of 'medical device' as excluding software that, despite being used in medical context is not precisely intended by the manufacturer for one or more specific medical purposes set out in such a definition of a medical device (Case C-219/11, Preliminary ruling, 22.11.2012).

<sup>23</sup> Examples of classified medical devices are: sterile plasters (Class I); hearing aids, powered wheelchairs (Class IIa); infusion pumps, surgical lasers (Class IIb); vascular and neurological implants, replacement heart valves, silicone gel-filled breast implants (Class III).

The core legal tools addressing safety issues related to medical devices are three Council Directives of the 1990s that have been supplemented since by several amendments.

a) *Council Directive 90/385/EEC on active implantable medical devices* (consolidated version, last amended with Directive 2007/47/EC) prescribes to Member States the *withdrawal, prohibition or restriction on the market* of medical devices that *may compromise the health and/or safety of patients, users or third persons* (Art 7 and Art 10c).

However, the wording of the Directive is not merely preventive, for it also takes into account the potential and actual *death of a patient or a deterioration of his state of health* in defining 'incidents' – directly or indirectly caused by *malfunction of or deterioration in the characteristics or performances of a device* placed on the market – that, once occurred, should be recorded and evaluated by competent authorities of Member States under Art 8. As a matter of fact, the manufacturer of the medical device is bound to immediately notify the authorities of any change in the characteristics or performances or inaccuracies in the instruction leaflets for a medical device that *has led or could lead to the death of a patient or a deterioration of his state of health*.

b) Similarly, *Council Directive 93/42/EEC on medical devices* (consolidated version, last amended with Directive 2011/100) refers to the same notion of *incident* as Directive 90/385/EEC (directly or indirectly causing *death of a patient or a deterioration of his state of health*), the same *interim measures* to be adopted by Member States in case of *device able to compromise health/safety of patients* (withdrawal, restriction, prohibition. Art 8) and the same obligation for the manufacturer to *report such incidents* to public authorities, which will centrally record them and evaluate them (Art 10). Moreover, by prescribing general technical requirements for medical devices under Annex I, the Directive aims at reducing as much as possible potential risks for patients, including the *risk of death of a patient or user and of serious deterioration in his state of health* (Annex I, para 12).

c) *Council Directive 98/79/EEC on in vitro diagnostic medical device* (consolidated version, last amended with Directive 2007/47/EC) upholds the same notion of '*incident*' as the previous Directives (adversely affecting *human life/health*. Art 8) and the same obligation for the manufacturer to immediately report such an incident to the competent national authorities (Art 11 and Annex III, para 5 (i)).

On 26 September 2012 the European Commission has adopted a *Proposal for a Regulation of the EU Parliament and the Council on medical devices and*

*in vitro* diagnostic medical devices. The on-going legislative procedure will revise existing legislation on medical devices and replace, once adopted, the three Directives (COM 2012(542)final). The Proposal aims at ensuring a *high level of protection of human health and safety*<sup>24</sup>. Coherently, *death, serious deterioration in health, permanent impairment of a body structure or function, life-threatening illness or injury* are essential components of the notions of '*serious adverse event*' and (partly) '*serious incident*' under the Proposal<sup>25</sup>.

However, also in the Proposal *no reference* is made *to penalties* for the manufacturer liable of placing on the market defective medical devices, access to justice or remedies to harmed individuals.

As far as '*medicinal product*' is concerned, given the definition provided for by Directive 2001/83/EC, Art 1 para 2<sup>26</sup>, the following texts apply.

a) *Directive 2001/83/EC* of the EU Parliament and the Council broadly focuses on the safeguard of public and individual health (eg, against adverse affects of medicinal products), and it prescribes that safety assessments in '*controlled clinical trials*' should take into consideration *death and health risks (especially) for vulnerable patients* (eg, children, pregnant women, frail elderly).

'*Risk*' under the Directive is '*any risk relating to the quality, safety or efficacy of the medicinal product as regards patients' health or public health*' (Art 1, para 28). The application to obtain the marketing authorization for a medicinal product should contain a *risk-management system* aimed at identifying, *characterising, preventing or minimising risks* related to medicinal products (Art 8, Art 1, para 28b).

The Directive does not specifically deal with the harm suffered by the individual due to a defective medicinal product, however it generally mentions the obligation of Member States to *control the production chain*

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<sup>24</sup> Among the '*lessons learned*' taken into account in the legislative revision, the Proposal expressly refers to the scandal of *Poly Implant Prothèse* (PIP), involving a French manufacturer that allegedly used industrial silicone instead of medical grade silicone for breast implants for several years (contrary to the specifications and approval of the Notified Body TÜV Rheinland) on hundreds of thousands of women around the world.

<sup>25</sup> The case has been referred on 9 April 2015 to the EU Court of Justice by Germany Federal Supreme Court in order to seek clarification on Notified Body liability for medical devices. Three Proceedings are also currently under way under French jurisdiction.

<sup>26</sup> '[A]ny substance or combination of substances presented as having properties for treating or preventing disease in human beings; or any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis'.

(in order to facilitate withdrawal of products) and it refers to the *Product Liability Directive (85/374/CEE)* regulating the liability of the manufacturer.

b) Other legal documents, such as *Regulation (EC) No. 726/2004* of the EU Parliament and the Council (followed by *Commission Implementing Regulation (EU) No. 520/2012* and *Commission Delegated Regulation (EU) No. 357/2014*) aim at achieving *high standards of public health protection* for all medicinal products (Art 53), however they do not specifically deal with harm to human life/health deriving from the placing on the market of unsafe or defective medicinal products, nor to related issues of manufacturer liability.

*Product safety and civil liability of the producer: harm, measures and penalties.*

On a wider scope, the legal framework on product safety is aimed at protecting the consumer against unsafe products, whose placement on the market is able to trigger a liability regime for the manufacturer, provided the obligation for Member States to lay down effective, dissuasive and proportionate penalties.

Such (residual) civil liability applies despite the lack of any specific mention of i) medical devices or medicinal products or ii) food across the relevant legal documents (*supra*, in this Chapter).

As mentioned, the applicability derives from the express reference to this regime made in certain legal tools dealing specifically with medical devices/medicinal products (eg, Directive 2001/83/EC).

## Chapter VI

### Cases of Corporate Violence Victimization

*Stefania Giavazzi*

#### *The data collection: a note on methodology*

The primary purpose of this chapter is to provide a general overview of the case law, as well as an analysis of some leading cases concerning victims of corporate violence in Italy, Germany and Belgium.

First, the research on case law represents a first *testing ground* to substantiate some project's assumptions: victims of corporate violence are not a minority, they are vulnerable, and there is a lack of awareness of their victimisation.

Secondly, the identification and analysis of some relevant cases contribute to reach two of the project expected results:

- The *assessment of the needs of victims of corporate violence*, in order to develop tailored strategies, methodologies and tools to deal specifically with this typology of victims in compliance with the aims and contents of the Directive. In particular, the information achieved from the *case law* favours a better understanding of the following aspects: the victims' specific needs in accessing justice; victims' status within the criminal proceeding; problems related to victims' participation in the criminal proceeding; information and support received by victims before and during the criminal proceeding or reasons why their needs have not been satisfied;
- The *identification of individual victims or other target groups* to be involved in focus groups and interviews.

With the aim to find common *selection criteria* and a *comparable field of investigation*, the research team has established to screen - in a first phase - *all possible relevant cases*, and to select - in a second phase - about ten

paramount ones (*leading cases*) according to the WS1 project's established criteria.

Therefore, the research was developed in accordance with two different rubrics:

i) *A preliminary general survey on all the potential relevant cases.*

This part of the research implements the idea of extending the range of the preliminary investigation in order to embrace victims' experiences and perspectives, regardless of the existence of a criminal judgment, the type of offences under scrutiny, and the placement of the proceeding in one of the three countries. The criteria that have been used for this first screening are, therefore, quite general and may be summarized in the following: the relevance of the case in one of the three criminal sectors (environment, food, drugs), the existence of a criminal investigation, the involvement of a corporation and several potential victims. A brief summary of the findings of this preliminary survey will be illustrated in the following paragraph;

ii) *Identification and analysis of the leading cases for the data collection output.*

According to the project description, the criteria for the identification of leading cases are the followings:

a) *severe cases having led to criminal proceedings for offences and having caused death or harm to health or other physical injury to individual victims;*

b) *fields of investigation:* environmental crimes as well as violations of laws on food and drugs safety. Criminal offences have been singled out precisely in these fields as they exemplify the problems related to corporate violence, the potential conflict between a corporation and a large number of victims, the seriousness and widespread of harms.

c) *place of proceedings:* Germany, Italy and Belgium, where the research units are located;

d) the *definition of victim* complies with Article 2 of Directive 2012/29/EU, which reads as follows: '(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death';

e) the definition of *criminal proceeding* complies with Recital (22) of Directive 2012/29/EU, which reads as follows: 'the moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings ex officio as a result of a criminal offence suffered by a victim'.

Data and information have been tracked through the *following sources*: desk research on databases of jurisprudence, direct contact with lawyers or other parties of criminal proceedings, and access to criminal proceedings files, when available (in particular, the complaint, the counts of the indictment, the claim of the civil party). Press reports or similar sources, when considered reliable, have been used to better frame the context of some cases and highlight their relevance, especially where no final judicial decision was available.

A *tailored template* has been developed to analyse the leading cases. The templates have been collected in the project's output *Data Collection on Leading cases*. For each case the template required to fill in the following entries:

- *Name of the case*;
- *Country* (the State where the case was prosecuted and whether the case has transnational features or deals with extra-judiciary procedures);
- *Project's field of research* (environment, food, drugs or medical devices);
- *Corporation(s) involved*;
- *Summary of the case*;
- *Accusation resulting from the counts of the indictment* (the offences charged to the corporation(s) or its/their representatives; the type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives);
- *Victims Involved* (the numbers of victims identified and involved in the criminal proceeding and the type of victims);
- *Stage of the criminal proceeding*;
- *Victims' participation in the Criminal Proceeding* (the template asked to specify, if known, the existence of a formal complaint reporting crimes made by victims, whether victims have the status of party to the criminal proceedings, numbers of victims having the status of party to the criminal proceeding, the level participation in the criminal proceedings);
- *Victims' requests to the judge*;

- *Decision/Outcome of criminal proceeding;*
- *Extra-Judicial agreements between victims and corporation (s) or attempts to find an agreement* (the type of agreement, the content of the agreement, whether the agreement implies the withdrawal of victims' rights to access to justice);
- *Existence of Associations, Civil Society Organisations, Victims Support Services* (the type of Victims Association or other service supporting victims' needs and rights before and during the Trial; whether the Victims Association itself has/had the status of party to the criminal proceeding);
- *Victims not participating in the criminal proceeding* (the template asked to specify, if known, whether the victims favoured a civil suit, whether the victims made claims or requests to non-criminal or non-judicial Authorities, whether the civil action was the only option provided by the national law, whether the victims filed a complaint but no criminal proceeding ever started, whether the victims were denied the status of party to the criminal proceeding, other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings);
- *Additional information on Victims' position* (the template asked to specify, if known, any other information to better frame the possible implementation of Directive prescriptions. In particular, information on: the media exposure of victims during the investigation or during the Trial, the level of conflict with corporation before or during the criminal proceeding, the evidence of secondary and repeat victimisation, intimidation or retaliation, the reasons why victims' request to the justice system were not met or completely satisfied, whether victims or victims Associations are still demanding for justice after the Trial).

### Remarks and results emerging from the preliminary survey on case-law

The selection process itself has offered hints/grounds to advance some remarks.

As for the *environmental field* of investigation, for example, the category of so-called *disasters* (a calamitous event that causes human, material, and economic or environmental severe losses) raised some questions in terms of compliance with the notion of corporate violence. As a matter of fact, corporate violence is concerned only when the disaster may be ascribed to corporate or *corporate representatives' criminal behaviours*. Another line of demarcation is provided by/drawn according to the *effects* caused by the



disasters. Therefore, only events that have *simultaneously* caused harms to *human life* and *environment* should be part of the research. This distinction, however, has proved quite difficult in practice. In fact, the double damage, when present, is not always charged in the count of indictment, and the accusation may indifferently charge criminal offences against human life/health, environmental or both of them. In addition, a disaster may have caused a significant impact/damage to the environment (public safety) despite the fact that no environmental crime is specifically charged; that is because the environmental offences may be absorbed in other more severe offences against human life. The final choice was to select only criminal proceedings where environmental damages were under consideration, or where at least public safety was concerned, even if not explicitly charged.

In the preliminary survey, some differences between the three countries under consideration have emerged. Concerning the environmental field, for example, a large sample of cases has been detected in Italy, while in Belgium and Germany the sample is less extensive, even in case of identical corporate behaviour and harms. One representative example relates to cases involving asbestos-related diseases. Italy counts several criminal proceedings in this regard: some already terminated, others still on-going. In Belgium, there have been civil proceedings and the issue has been addressed as a public health problem; similarly, to Germany, where no criminal cases have ever been started. These circumstances are quite important from the victim's perspective: in relation to the *same harm* suffered in a *similar context*, access to criminal justice system depends on the place where the victim lives. A different approach has been identified also with respect to the *role of associations* in the criminal proceeding. In Italy, victims' associations are largely admitted to participate as party in the criminal proceeding, while in Germany the participation is limited to victims as individuals. In Belgium and Germany victims may count on the victim support services, while in Italy such services do not exist yet. In addition, in Germany, victims' associations are supported both by federal and state funds, while in Italy no public funding is available to support similar associations or services.

In light of the general criteria highlighted above, the *first screening* has allowed to check approximately fifty cases concerning the three mentioned sectors. Some of these cases are particularly relevant in order to understand the context and frame of the notion of *corporate violence*, as well as *victims' vulnerability*, and *victims' needs*.

As for the *food safety field*, the research was able to trace very few cases that fitted the criteria. The reasons may be summarized as follows. First, the food sector seems to benefit, more than others, from the *precautionary approach*, which avoids the dissemination of diseases, as well as

contamination on a large scale. As a matter of fact, in this sector it's possible to trace many frauds against consumers related to rotten or unsafe food - like in the horsemeat scandal or the disseminated cases of salmonella in the European countries - the majority of which raise issues of *food quality*, while causing only rarely severe harms to victim's health. Secondly, almost all cases of potential interest present two permanent characteristics, which limit the area of the investigation:

- a) harms affect a *single individual victim* or a *small group of victims* (so that they may not be considered as a severe offence, hardly causing victimisation);
- b) victims are often dislocated in different places within the same Country (therefore, several criminal proceedings are opened in different regions against different actors);
- c) defendants are often farmers or other *small operators* (non incorporated) or small firms belonging to a long supply chain. It's well known that the food industry has a long supply chain, in which industrial corporations normally occupy the final place; this implies that it's quite difficult to find out in which phase the contamination or the poisoning of food occurred, not to mention the related liabilities;
- d) some examples could be mentioned in this respect: the case of **Mad Cow** (see below a brief summary), and the case of poisoned wine (**Methanol case**)<sup>1</sup> which occurred in Italy in the '90s and in the Czech Republic in 2012<sup>2</sup>.

#### **Mad Cow case**

The mad cow disease (BSE Bovine spongiform encephalopathy is the disease in cattle, while vCJD is the disease in people) was first discovered in the United Kingdom. From 1986 to 2001, a British outbreak affected about 180,000 cattle and devastated farming communities. In 1993 the BSE epidemic in Britain reached its peak with almost 1,000 new cases being reported per week. In May 1995, Stephen Churchill, 19 years old, became the first victim of a new version of Creutzfeldt-Jakob Disease (vCJD). By June 2014, 177 people in the United Kingdom, and 52 elsewhere, had

<sup>1</sup> See the Italian Supreme Court decision: Cassazione penale, 16 Aprile 2004, n. 4426.

<sup>2</sup> In 2012, 38 people in the Czech Republic and 4 people in Poland died as a result of methanol poisoning and many others were taken to hospital. The poisonings continued for several years after the main wave, as of April 2014, there were 51 dead and many others suffered permanent health damage. The Czech government banned the sale of liquors with more than 30% alcohol by volume at food stands for several days. On 24 September 2012, the police announced that the source of the methanol-contaminated alcohol had been identified. Two main suspects were arrested: a businessman of Slovak nationality, and a small Czech company owner. On 21 May 2014, the two were sentenced to life imprisonment.

fallen ill and died from the human counterpart to BSE. The BSE crisis led to the European Union banning exports of British beef with effect from March 1996; the ban lasted for 10 years before it was finally lifted on 1 May 2006.

In addition, it has to be noted that in other well-known food scandals, as the **Chinese milk scandal**<sup>3</sup> or the **sprouts with E. Coli in Germany**<sup>4</sup>, perpetrators were located outside Europe or facts were committed or prosecuted outside Europe.

A final remark concerns the food safety field. The *lack of information* about the *risks* caused by consuming unhealthy food for a long period of time or on the *effects* caused by chemical substances in raw materials or industrial food may be often the reason for not filing complaints or not seeking access to justice. On this point, the *imbalances of information* between corporations and victims and therefore the vulnerability of the latter are unquestionable. Even when a complaint is filed or an investigation opens, it often proves impossible to demonstrate, according to the principles required by criminal liability, the *link of causation* between the intake of a substance at-risk and the harm to human health. The lack of evidence may be mentioned, for example, with respect to the **Glycoside case**. The issue is highly disputed in politics, and the European Governments take the position to allow the use of glycoside in the EU for some more years<sup>5</sup>. To our knowledge, there are no proceedings of civil or criminal nature that are

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<sup>3</sup> The European Food Safety Authority warned that children who ate large amounts of confectionery and biscuits with high milk content could theoretically be consuming melamine at more than three times above prescribed EU safety limits (0.5 mg/kg of body weight).

<sup>4</sup> As far as the victims in this case are concerned, 3.950 people were affected and 53 died, 51 of whom were German. The sprouts were linked to a German farm. After investigation, an institute of the German Federal Ministry of Food, Agriculture and Consumer Protection, announced that seeds of organic fenugreek imported from Egypt were likely to be the source of the outbreak.

<sup>5</sup> In Germany almost 100 glyphosate-containing pesticides are permitted. The German Authority for risk assessment (Bundesinstitut für Risikobewertung) and its analysis of scientific studies sees no risk from the proper use of glycosate in agriculture to cause cancer. The found residues (eg. in German beer) are so low that they do not constitute a health threat. Insofar, no action needs to be taken according to this authority. Food is often tested on remains of glycosate by the authorities responsible for food safety. In about 4 percent of tested samples residues could be found in 2011, most of them not about the maximum level. The Federal Office of Consumer Protection and Food Safety (BVL) has set a limit on the use of glyphosate and glyphosate-containing products in May 2014. Within a calendar year glyphosate-containing pesticides may only be used twice with intervals of at least 90 days on the same surface; a maximum of 3.6 kg per hectare per year may not be exceeded. The late application on crops is limited to those areas in which weeds make harvesting impossible. The application for desiccation is only allowed if a harvesting without treatment is not possible (if cereals ripens unevenly); the use to control the harvest is prohibited.

based on glycoside and its causal relation to cancer or any other illnesses. With the present knowledge, the whole discussion still revolves around the possible risks or the threshold for accepting risks.

As regards the other two fields of investigation, it was instead possible to trace several cases in which corporations played a significant role. Some of them could not be selected as leading cases, despite the fact that they present a *high level of victimisation* and topic issues in *assessing the victims' needs*. Their exclusion from the Data Collection solely depends on the fact that a criminal proceeding never started, the criminal proceeding is at a very early stage, or the proceeding is not held in one of the countries of investigation.

The following cases may be singled out as examples of this category:

### **Thalidomide case**

Thalidomide was originally prescribed as a 'wonder drug' for morning sickness, headaches, coughs, insomnia and colds. Thalidomide was also used against nausea and to alleviate morning sickness in pregnant women. Shortly after the drug had been sold in West Germany, between 5,000 and 7,000 infants were born with phocomelia (a malformation of the limbs). Only 40% of these children survived. Throughout the world, about 10,000 cases were reported of infants with phocomelia due to thalidomide; only 50% of the 10,000 survived. Thalidomide was pulled from the market in 1961. Despite the historical relevance of this case and thousands of victims all over Europe, there is no evidence of criminal judgements against the corporations. Many victims have only recently received compensation. In 1968, a large criminal trial began in Germany, charging several Grünenthal representatives with negligent homicide and injury. After Grünenthal settled with the victims in April 1970, the trial ended in December 1970 with no finding of guilt. As part of the settlement, Grünenthal paid 100 million DM into a special foundation; the German government added 320 million DM. The German corporation Grünenthal, which developed the drug, has only compensated the German victims. Civil proceedings are ongoing all over the world and particularly in Australia. In Belgium, a complaint against the State (rejected in the first instance and followed by an appeal) has been filed, and a Parliamentary resolution adopted, in order to recognize the responsibility of the State and to partially grant compensation to victims. Almost the same process occurred in Italy, where the State provided funds for the compensation of victims. In the three Countries there is an association of victims, which is still active. In 2012, in a public event, the Grünenthal corporation partially recognized its liability, adding that 'Grünenthal has acted in accordance with the state of scientific knowledge and all industry standards for testing new drugs that were relevant and acknowledged in the 1950s and 1960s. We regret that the teratogenic [capacity to result in a malformation of an embryo] potential of thalidomide could not be detected by the tests that we and others carried out before it was marketed.' The corporation, then, apologized for having failed to reach out 'from person to person' to the victims and their mothers over the past 50 years. 'Instead, we have been silent and we are very sorry for that'.  
[http://web.archive.org/web/20120901184544/http://www.contergan.grunenthal.info/grtctg/GRT-CTG/Stellungnahme/Rede\\_anlaesslich\\_Einweihung\\_des\\_Contergan-Denkmal/224600963.jsp](http://web.archive.org/web/20120901184544/http://www.contergan.grunenthal.info/grtctg/GRT-CTG/Stellungnahme/Rede_anlaesslich_Einweihung_des_Contergan-Denkmal/224600963.jsp)

### **Terra dei Fuochi (The Land of Fires) case**

The case is one of the most significant environmental disasters in Europe. From a victims' prospective, it represents a topic case study of denegation of victims' needs and rights. It has been proven that for decades parts of Campania Region (the so called Triangle of death and, more recently, the Land of Fires) have been used for the illegal dumping, burning and disposal of toxic waste. The Italian environmental protection association, Legambiente, claimed in its 2014 Ecomafia Report that an estimated 11.6 million tons of waste, mainly residues from medical products, paints, used tyres, dioxin and allegedly even nuclear waste, was buried illegally in the region since the 1990s, all of which was coming from at least 440 businesses. An important part of the metropolitan area of Naples (a complex urban-rural system where more than 4 million inhabitants, agriculture, food production and industry coexist) was contaminated. Almost every day, still now, fired waste exposes population to smoke from burning garbage dumps. The connection between contamination and the arising of severe diseases (especially, cancer) remains contentious. In 2015 the Department of Public Health at Federico II University in Naples affirmed that: 'Further studies are needed to better define waste-related health effects, since updated data are still far from being conclusive.' (published in the International Journal of Environmental Research and Public Health). However, since 2004, previous studies led to different conclusions. On September 5th, 2004, an article entitled 'The Triangle of Death', published in *British medical journal Lancet Oncology*, showed a correlation between increasing cancer rates and the presence of landfill sites (both legal and illegal), and other polluted spots in the Campania region. It labelled this area 'the Triangle of Death' and depicted the Campania region as a poisoned environment with over 5,000 illegal waste sites and 28 breaches of European Union environmental laws. As for the period 2008 to 2011, a \$30 million study by the US Navy and Marine Corps Health Center concluded that US military and civilian staff living at US military bases in the area for more than 3.2 years would be exposed to serious health risks. More recently, the Italian National Health Institute has recorded a higher incidence of some types of cancer in the area when compared to the national average, specifically liver cancer, bladder cancer and cancer of the central nervous system. Other epidemiological studies show that birth defects here are 80 per cent above European average, and researchers have found that breast cancer rates in the region were 47 per cent above the national average.

As far as economic losses are concerned, the Italian General Confederation of Labour (CGIL) estimates that, in 2013 alone, four out of ten farmers in the region lost their job because of the media storm caused by the toxic waste scandal. The agro-economy of the region has been adversely affected by the allegations. In March 2008, dioxin was found in buffalo milk from farms in Caserta. Countries such as South Korea and Japan identified this pollution and subsequently banned imports of buffalo milk from the region. While only 2.8% of farms in Campania were affected, the sale of dairy products from Campania collapsed in both domestic and global markets.

Despite more than one hundred victims (as individuals or as Associations) have lodged complaints (the most of them for the smoking fires), and some investigations and criminal proceedings have been opened in the last two decades, an effective answer by the justice system is far from being obtained. Since 2001 there have been 33 investigations for organized activity of illegal waste trafficking conducted by the activity of the prosecutor of the two provinces. One of the criminal proceedings led the judges to issue 311 arrest warrants, with 448 people reported and 116 corporations involved. Luckily, some investigations have brought to light facts and crimes, but many processes end up with the statute of limitation. This is the mother of all investigations on trafficking of toxic waste, Cassiopeia, with 95 defendants,

including many entrepreneurs in Northern Italy: it ended in a no prosecution judgement.

The deputy prosecutor at the DDA in Naples, Alessandro Milita, therefore, declared: 'making a parallel between human body and environment, the situation can only be compared to infection with AIDS'; 25 years of records, 25 years of judicial investigations, 25 years of protests, and no one is responsible. Some new criminal proceedings are on-going.

No effective measure has been put in place by the State in order to restore the contaminated sites. Fires continue still nowadays, as mapped daily by the web-site <http://www.laterradeifuochi.it/>.

The incertitude and incoherence of epidemiological studies and scientific data, the lack of information, the absence of judgements and of effective access to criminal justice, in addition to the lack of compensation and remediation, are the concerns claimed by the victims in more than 20 years. The absence of information on the real risks as well as of effective answers from public Authorities increased the state of anxiety and fear within the population, and, therefore, the social conflict. In some periods, the social conflict became even quite violent. Over the years, diverse networks and alliances among local, national and international (zero-waste platform) activists formed. Popular Committees of neighbours, environmentalist groups and members of collectives of Social Centres engaged in sit-ins and numerous public assemblies, generating and disseminating information about the environmental problems caused by the waste treatment facilities. Victims are strengthening their relationships with local associations in a network and are starting to play an important role to reinforce their socio-political and judicial actions and to combat the illegal practices that can considerably affect their lives.

In June 2013, the European Commission decided to refer Italy back to the European Court of Justice for its long-running failure to manage waste adequately in the Campania region and implement sanctions. The European **Court of Justice** in July 2015 slapped Italy with another fine for failing to resolve waste management problems in the same region, ordering the country to pay 20 million Euros. The Court also imposed a daily fine of 120,000 Euros that Italy must pay for every day until the problems are adequately solved. In December 2014, the Court handed Italy a 40-million-euro fine for failing to combat illegal waste dumping in the area around Naples.

### **Poly Implant Prothèse (PIP) case**

This case is extremely relevant for the project, even if it could not be included in the Data collection of leading cases, because the criminal proceeding is on-going in France and the case files and data are not available. In summary, the Poly Implant Prothèse (PIP) corporation has produced defective breast implants and sold them to hundreds of women. The fraud remained undetected until 2010. In March 2010, PIP silicone implants were withdrawn from the European Union (EU) market following an observed increase in implant ruptures, and confirmation of the use of substandard silicone in the manufacture of the implants by French regulator AFSSAPS (Agence Française de Sécurité Sanitaire des Produits de Santé). Later, AFSSAPS also found that the gel containing non-approved silicone was irritant to tissue, and leaks could give rise to inflammation and pain. According to the information available, PIP had declared using silicone gel approved for medical use in the conformity assessments of its product carried out by a notified body. It is not clear at what moment and during which periods PIP started using industrial grade silicone instead of medical silicone. On 15 May 2014, the Scientific Committee

on Emerging and Newly Identified Health Risks (SCENIHR) concluded that there is currently no convincing medical, toxicological or other data to justify removal of intact PIP implants<sup>6</sup>. On 20 June 2014, the Employment, Social Policy, Health and Consumers Affairs (EPSCO) Council discussed a Commission Staff Working Document. This document contained a detailed analysis of the implementation of the joint actions taken by the Commission and EU countries, within the scope of the PIP Action Plan. It was estimated that up to 400 000 women received PIP silicone breast implants worldwide. These implants were available in nearly all European Union Member States - in particular they were widely used in the United Kingdom, France and Spain, where it was estimated that respectively around 40.000, 30.000 and 18.500 women were implanted with PIP silicone breast implants<sup>7</sup>. Implant removal in the absence of malfunction may be considered for women who are experiencing significant anxiety because they have a PIP breast implant. However, the decision to remove an intact PIP implant for this reason should be based, in the view of the Committee, on an individual assessment of the woman's condition by her surgeon or other treating physician after consultation.

At least, three criminal proceedings are on-going in France, while one is on-going in Germany against the certification authority (which is German)<sup>8</sup>. The Court of Appeals in Aix-en-Provence, with a judgment issued on 2 May 2016, confirmed the conviction of Jean-Claude Mas and four other individuals involved at PIP in the main criminal proceeding who took place in Marseille. About 5000 victims (200 foreign women) asked to participate into the criminal proceeding as civil party. The Tribunal of first instance found that the claimants were entitled to damages. As the five defendants were not able to pay, it may ultimately be up to the French State to pay the damages awarded by the Criminal Tribunal through specific indemnity funds.

The case has been used as an example of *failure and gaps in the existing regulatory European framework on medical devices* in the Proposal for amending the Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009<sup>9</sup>.

The European Consumers' Organisation (BEUC) said the PIP breast implant scandal highlights the continuing absence of a *collective judicial option for victims* in the EU to jointly claim damages in their resident jurisdiction. Victims had to bring the compensation claims to France, despite the inherent costs and burdens. Monique Goyens, director general of BEUC,

<sup>6</sup> Opinion on the safety of Poly Implant Prothèse (PIP) Silicone Breast Implants, February 2012, available on [http://ec.europa.eu/health/scientific\\_committees/emerging/opinions/index\\_en.html](http://ec.europa.eu/health/scientific_committees/emerging/opinions/index_en.html)

<sup>7</sup> Commission Staff Working Document, Implementation of the Joint Plan for Immediate Actions under the existing Medical Devices legislation, 13 June 2014, p. 4, <http://ec.europa.eu/transparency/regdoc/rep/10102/2014/EN/10102-2014-195-EN-F1-1.Pdf>

<sup>8</sup> In France, about 9000 victims had also suited a civil proceeding in Toulon against the French department of TUV certification authority. The Court of Appeal of Toulon has sentenced in 2015 that TUV has no liability in the affaire and, consequently, no compensation was accredited to victims. In Spain, a criminal proceeding had been opened before the Audiencia Nacional. Initially the Court dismissed the claims on the basis that there was no evidence of a crime, and directed the claimants to the civil courts. The victims appealed, and on 24 June 2013 the Court of Appeal granted the appeal and directed the first instance criminal court to commence a criminal case. There are over 400 victims asking compensation in this criminal proceeding.

<sup>9</sup> Proposal for a Regulation of the European Parliament and of the Council on medical devices, and amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 /\* COM/2012/0542 final - 2012/0266 (COD).

said the PIP case is blatant for consumers, not only incurring serious physical harm, but also being denied the means to claim compensation for harm and costs for medical treatment and surgery. 'The need to better protect all Europeans from cases like this has been clear for a long time. These products are sold across Europe and the victims come from across Europe, yet only very few have a chance of accessing redress'... 'The Commission remains undecided on whether to introduce Collective Redress for consumers and the victims of such EU market malpractice. It's efficient justice for victims and streamlined administration for our courts. Continued hesitation by the Commission while such scandals continue to occur is difficult to justify' Goyens stated.

### *Leading cases. Data and results.*

According to the project's criteria, fourteen cases have been selected as leading: eight of them are Italian, three of them are German and three are Belgian. For each case, a detailed template has been compiled, mapping the voices, data and information detailed in the previous paragraph.

Set out below is a brief summary of the Italian cases:

- **Bussi sul Tirino case** (environment). *The case concerns the plant of Bussi sul Tirino owned by Montedison between 1963 and 2004 and it represents one of the most significant episodes of water pollution caused by industrial activities in Italy.*
- **Eternit Casale case** (environment). *The case concerns thousands of people, who contracted asbestos-related diseases caused by Eternit, a fibre-cement used for the preparation of tiles, sheets for building construction and water pipelines. The case involved the workers of a number of plants located in Cavagnolo, Casale Monferrato, Bagnoli and Rubiera between 1973 and 1986, as well as residents living in the areas, as a result of the wide spread of the material in the cities and in the buildings of infrastructures. The first criminal proceeding was closed in 2015, but a second criminal proceeding concerning the same facts is ongoing.*
- **Heart valves case** (medical devices). *Between 2000 and 2002 the units of cardiothoracic surgery based in the Hospitals of Turin and Padua started using new artificial cardiac valves produced by Tri-technologies Ltda. These valves have been used for more than 100 replacements. After the break of some valves, which caused the death of the patients, it was*



*found that the quality of the materials was poorer than expected and inferior to the relevant legal standards. The criminal proceeding is closed.*

- **Ilva case** (environment). *One most notorious cases of environmental disaster in Italy. The case relates to the industrial activity which has been carried out since 1995 in a plant located in Taranto and to the effects such activity had on both the workers' and the population's health. The environmental disaster would have been produced by the dissemination of highly toxic substances in the air, in the water and in the soil, posing a threat to human beings, animal life and the environment. Its importance comes from the contrasts it created between corporations, workers, citizens and public institutions as well as from the wide impact industrial activities allegedly had on the environment. The trial is ongoing.*
- **Ivrea Olivetti case** (environment). *The case is one of the several Italian criminal proceedings concerning harms to human health caused by the inhaling of asbestos fibre dusts generated during productive activities. Accusation, as in almost all these types of cases, is related to negligent behaviours of corporations, who failed to implement systems, measures, instruments and signals aimed at preventing illness and, especially, asbestos-related diseases. In the Ivrea Olivetti case, in particular, the inhaling of asbestos fibre dusts is supposed to have caused severe injuries and the death of several workers who, having worked without any protective disposals and without being informed about the risks, have been exposed to the substance for a long period of time. The trial is ongoing.*
- **Porto Marghera case** (environment). *Porto Marghera is the first significant criminal case concerning illicit corporate behaviours in managing a productive activity in Italy. Porto Marghera may also be considered a seminal case of historical pollution in Italy: after the Porto Marghera trial, many other similar cases were opened in the whole country. The investigation covered the industrial activity carried out at the Marghera petrochemical plant (in the Venice lagoon) over more than thirty years. Under scrutiny were, in particular, the damages caused to human health (mainly cancer diseases) by toxic chemical substances (Cvm/Pvc) as well as the damages caused to the environment by productive activities around the chemical complex. The criminal proceeding ended in 2006.*
- **Spinetta Marengo case** (environment). *The case concerns the commission of environment-related offences in the context of industrial*

*activities linked to chemical production. The Spinetta Marengo chemical area, operating since the beginning of the XX century, includes plants for the production of plastic, rubber and fluorine lubricants. The chemical area is located between the residential area of Spinetta Marengo (a small town in the province of Alessandria) and river Bormida. In the region, several lots are dedicated to agriculture and groundwater is largely drawn for both nutrition and irrigation. Accusation consisted in two counts: i) intentional water poisoning; and ii) failure to carry out clean-ups as required by the law. The First instance judgement was issued in 2015. The appeal is ongoing.*

- **Tamoil Cremona case** (environment). *The case deals with the alleged production of site contamination due to the industrial activity of the refinery located in Cremona from 2001 to 2007, along with failures in waste management. Thus, the release of toxic substances has produced the contamination of the site where the refinery lies and subsequently – as a dynamic consequence of the pollution – the contamination of groundwater and of natural resources, as the waters of Po river. Allegations relate to the offence of ‘collapse of structures and other intended disasters’ and to that of ‘poisoning water or foodstuffs’. The criminal proceeding is now before the Court of Appeal.*

Set out below is a brief summary of the German cases:

- **Train accident of Eschede** (disaster). *In June 1998, the rubber-sprung wheel, type BA 064, of ICE 844 broke due to material fatigue at the speed of approximately 200-250 km/h six kilometres South of the village of Eschede. Three hundred meters ahead of a road bridge a switch became entangled with the damaged wheel at 10:59:06 causing the train to derail and enabled the point blades to redirect the train. The derailment resulted in a collision with the road bridge, which collapsed instantly. Human casualties summed up to 101 people, leaving 105 severely and slightly injured. The criminal proceeding ended in 2003.*
- **Holzschutzmittel-fall** (environment). *Some companies sold the wood protection agents ‘Xyladecor’, ‘Xylamon-Braun’ and ‘Xylamon-Echtbraun/Naturbraun’ since 1969 as adequate wood protection agents for interior surfaces. These products contained pentaclorfenol (PCP) and Gamma-hexaclorciclohexan (Lindan) and certain production-related contamination substances like dioxin and furan. The people in authority did not react to the 4,000 written complaints by consumers and continued sales and distribution until 1983. They stopped the production of PCP in*

*1978, while continuing to sell the same products with the label 'for exterior surfaces'. The commercial production and sale of PCP was legal until legislation taken up in 1989. The estimate of people having suffered physically from contact with the substances is around 200,000. The criminal proceeding ended in 1995, but in 2014 several parliamentarians questioned the Government on the issue of the victims' situation in the Holzschutzmittel-case.*

- **UB plasma case** (pharmaceutical). *The case concerns one of the most notorious scandals involving the pharmaceutical sector in most of European Countries. In 1985, the company UB Plasma GmbH based in Göttingen (Germany) had received the permit to produce industrial plasma (for further processing) and from 1 November 1989 until March 1992 it was even allowed to produce plasma for direct application to patients. The case relates to the contamination by the human immunodeficiency virus (HIV virus) of the plasma produced by the company and supplied to hospitals in Fulda and Frankfurt. In order to save money, UB Plasma had pooled the blood of several donors before testing, which was considered an unacceptable laboratory practice. This practice rendered the well-established / prevalent HIV and hepatitis tests less sensitive, with the consequence that the HIV infection of certain donors had not been detected in time. Moreover, for financial reasons, the company did not apply and observe the standard quarantine period and storage of the blood plasma, which would have closed the so-called diagnostic window. The company's operating permit was eventually revoked and its laboratories shut down on 28 October 1993. Final judgement was issued in 1996, but people infected are still alive and demanding for justice.*

Set out below is a brief summary of the Belgian cases:

- **Gas Explosion in Ghislenghien** (disaster). *The case concerns the biggest technological disaster ever in Belgium. In July 2004, an accidental gas leakage in a high pressure gas pipe created a persistent smell of gas. The gas pipe passed underneath the industrial zone of Ghislenghien, where construction work was taking place. Some employees of one of the factories alerted the fire-fighters. When the first crew of fire-fighters arrived, an enormous explosion took place, which instantly killed 24 people and wounded 132 others. An enormous flame rose up to 500 meters up in the air, the temperature at the disaster scene went up to 300°C. The heat of the fire was felt until 2 km from the explosion. Debris from the nearby factories was projected up to 6 km away from the epicentre of the disaster. The final judgement was issued in 2012.*

- **Waste Dump of Mellery** (environment). *The case concerns the dumping of illegally toxic waste at the waste dump of Mellery which caused the pollution of the water, ground and gazes on a big surface. Medical tests of the local population showed worrisome results; a saga of medical follow up followed. In 2006, the inhabitants refused to continue the medical follow up as it had not been done seriously. The final judgment was issued in 2003.*
- **UCO – textile plant** (environment). *Since 1976, neighbours of textile company UCO Sportswear have been complaining about odour nuisance. In 2001, an environmental inspection took on the case. In the period 2001-2005, complaints kept coming in, ongoing breaches of environmental regulations were identified, and external reports about the odour nuisance were ordered. The odour nuisance was very clearly established and further to environmental inspections carried out numerous requests to make the necessary technical changes to prevent the odours were raised. The company made promises but did not carry out the necessary changes. Finally, the case went to a criminal court.*

#### *Number of victims identified*

A *significant number* of victims are involved in the selected leading cases of corporate violence. Figures demonstrates that corporate violence affects hundreds or thousands of individuals, and in many cases entire communities.

The number of victims identified and involved in the criminal proceedings forming the sample, as well as the type of victims may be summarized as follows:

#### **Eternit Casale case**

The identified victims for the first charge were specifically: as for the Eternit Cavagnolo facility, 110 deceased individuals and 46 ill individuals (still alive in 2009); as for the Eternit Casale facility, 1379 deceased individuals and 412 ill individuals (still alive in 2009); 4 ill individuals among Eternit Casale suppliers; as for the Rubiera facility, 45 deceased individuals and 7 ill individuals (still alive in 2009); as for the Bagnoli facility, 394 deceased individuals and 190 ill individuals (still alive in 2009). The identified victims for the second charge, deceased or ill, were 2869, among workers and non-workers in the aforementioned Eternit facilities, listed also in the first charge. Specifically, the victims were: 110 deceased and 46 ill and living (in 2009) individuals as for Eternit Cavagnolo; 1378 deceased and 412 ill and living (in 2009) individuals as for Eternit Casale, 16 deceased individuals among Eternit Casale external suppliers, 4 deceased individuals among Eternit

Casale Monferrato suppliers, 45 deceased and 7 ill living (in 2009) individuals as for Eternit Rubiera, 394 deceased and 190 ill and living (in 2009) individuals as for Eternit Bagnoli, 1 deceased person as a result of non-occupational exposure attributable to Cavagnolo Eternit facility, 252 deceased individuals as a result of non-occupational exposure attributable to Casale Monferrato Eternit facility, 2 ill and living individuals (in 2009) as a result of non-occupational exposure attributable to Casale Monferrato Eternit facility, 1 ill and living person (in 2009) as a result of non-occupational exposure attributable to Rubiera Eternit facility, 4 Eternit Casale workers' relatives, 2 Eternit Bagnoli workers' relatives.

### **Heart Valves case**

There were approximately 40 victims involved in the criminal proceedings: relatives of the ten dead patients; 30 patients who suffered injuries since they had to replace Tri valves. All the other patients who were still alive and decided not to have a second transplant can be considered victims, as well. But, those persons hadn't the chance to become parties of the proceeding since their harms were not directly related to the specific crimes under judgment. Approximately 20 formal complaints were filed. Victims who had the status of party in the proceedings: family members of the dead patients and patients submitted to a second valve replacement.

### **Ilva case**

The count of indictment identifies about 900 victims: workers and people living near the plant who suffered damages to their health or life, and in particular: a) Workers allegedly suffered health damages caused by long-term exposure to toxic substances; b) The population living near the plant allegedly suffered health damages caused by both the dispersion of toxic substances in the air and the consumption of dioxin poisoned cattle; Farmers who suffered economic damages arising from the contamination of their land and the poisoning of cattle; Environmental associations in relation to damages caused to the environment individual and entities. All 900 victims identified by the count of indictment filed civil claims within the criminal proceedings to recover damages, including several institutions and victims' association. Some of them withdrew their claims before the start of the trial.

### **Bussi sul Tirino case**

All the people living the Pescara valley were potentially involved and harmed by the contamination of the area, but they could not directly participate into the criminal proceeding. More than twenty institutions/associations (representing collective and victims' interests) were admitted as civil party. Only two individual victims, who are owners in the same neighbourhood, were admitted to participate into the proceeding, but only for economic damages.

### **Ivrea Olivetti case**

Fourteen individual victims have been identified by the count of indictment of the first criminal proceeding. Among these: two seriously injured; twelve died due to asbestos related diseases. Six individual victims are involved with the status of party into the criminal proceeding (one of them seriously injured; the others are family member of workers already died). Many entities and associations representing collective interest, including victims' associations, are also involved in the criminal proceeding with the status of party. In total, nine entities and six individuals are participating as party into the criminal proceeding. Other ten victims identified by the count of indictment (nine among family members of dead and one victim injured) have not the status of party within the criminal proceeding, as they entered in an extrajudicial agreement with the corporation before the trial opening or during the preliminary hearing.

### **Porto Marghera case**

In the count of indictment, the Public Prosecutor identified 546 victims, including, in some cases, family members of people who at the time had already died. More specifically, out of the 546 victims: a) 478 cases concerned victims of involuntary manslaughter and injury offences; b) 157 cases related to deaths, while the others were cases where people had suffered serious injuries; c) 22 cases related to victims who were only 'indirectly affected by the defendants' alleged illegal conducts. In addition, 46 of victims (not included in the Public Prosecutor's list) participated into the criminal proceeding. Not all of the victims identified by the Public Prosecutor were legally considered as 'directly' affected by the behaviours under scrutiny, as too much time had run and the limitation period had already expired. The majority of individual victims identified by the Public Prosecutor (530) entered into extra-judicial agreements with the corporations involved. Around 12 individual victims decided to take part into the criminal proceedings as parties. Among them are the family members of the worker who, at first, lodged the complaint. Other entities, as workers' associations, stayed in the criminal proceedings.

### **Spinetta Marengo case**

About 90 individual victims and several entities and associations claims within the criminal proceedings. The individuals who filed civil claims are residents in Spinetta Marengo, plant's workers and heirs and family members of people who allegedly died as a consequence of the crime.

### **Tamoil Cremona case**

Potential victims are all the citizens living in the area. Victims' instances have been fostered by associations, which aim embraces the social interests that allegedly have been offended. the Cremona Municipality decided not to make any request to join the

proceeding as a party. This decision precluded the private person's legitimating to be considered a party in the proceeding as well. Only one private person, citizen included in the election district of Cremona, decided to claim on the behalf of the whole Municipality.

### **Train accident of Eschede**

More than 100 Victims and descendants joint the criminal proceedings as so-called Private Accessory Prosecutors in first instance. 14 Private Accessory Prosecutors in second instance represented by one lawyer. Type of victims: victims who suffered bodily harm and family members who lost a relative. Not all victims participated in the criminal proceedings.

### **Holzschutzmittel-fall**

The prosecution in Frankfurt received 2,700 criminal complaints. 800 complainant families were registered. The prosecution selected 171 people after investigating their health status and the likeliness of their links to the wood protection agent to compile the indictment, which were organized in 69 different household units (family/couples). 19 of these units served as backup cases to counteract possible statutory limitation and were not introduced to the proceeding. 33 Joint Plaintiffs took part in the criminal proceedings. The complainants were either suffering physically themselves or economically because of their relatives' afflictions.

### **UB Plasma case**

Potential victims are all patients who received infusions from the blood products infected by the HIV virus and which supplied to hospitals in Fulda and Frankfurt. At least two patients in hospitals in Fulda and one in Frankfurt a.M. were tested HIV positive after having received infusions with the said plasma and died after a few weeks to months, however, due to their underlying diseases. The district attorney charged five persons for aggravated battery in 71.303 cases as well as in 3 other cases and for continued fraud. Victims or their heirs did not seem to participate in the criminal proceedings.

### **Gas Explosion in Ghislenghien**

600 civil parties were involved in the trial.

### **Waste Dump of Mellery**

The victims involved in the case and in the legal proceedings were citizens living in the neighbourhood of the waste dump of Mellery.

*Victims' access to justice*

The most important, general remark emerging from the analysis of leading cases is that the number of victims *potentially injured or harmed* by the crime does not equal the number of victims who *could effectively have access to justice* or participate into the relevant criminal proceedings. This output would appear to depend on a number of factors, most of which may be considered typical of criminal contexts involving corporate violence.

Trying to summarize the reasons which affect this result, we can underline the following issues:

I. The opportunity to access justice implies the *identification of victims*, and the decision to access justice assumes that *victims are aware of being victims*. Leading cases show that the lack of identification may result in a lack of victims' awareness of their status, and vice versa. The identification of victims usually depends on the Public Prosecutors' activity. Except for the disasters (e.g. the *gas explosion in Ghislenghien* and the *train accident of Eschede*), where victims are clearly identified as people harmed by the event, in other cases a complete identification of all potential victims by *public authorities* is only partially possible at the time in which the investigation starts. This is true in almost all the Italian cases for diseases related to pollution or contamination having led to harms to people over a long period of time - etiopathogenesis takes very long periods, and often effects are even latent – or producing widespread damages in extended areas of land. Difficulties in identifying victims often also lead the Prosecutors to start additional investigations and new proceedings over time against the same perpetrators and charging the same offences, just because they discover new victims.

II. The media may play a significant role in informing the victims about their status, in making public the existence of an investigation or in giving voice to complaints or journalistic independent investigations. It can be affirmed that sometimes the media are the just ones informing people about a safety or environmental problem, that they never even suspected of.

III. As for victims' rights to be informed, the three national legal systems under our consideration recognize some fundamental rights to victims from the start of the investigation (the right to be informed of dates and deadlines, the right to observe the timeframes to be summoned; the right of his or her defence counsel to access the files). The modalities and the



extension of these rights, of course, vary according to each national criminal procedure system. The Leading cases analysis has shown that at least five categories of obstacles and barriers, listed below, may affect the victims' *awareness of their status* and *right to be individually informed*:

- a) individual victim's needs blend in with the others (often, dozens or hundreds) in a kind of *collective action*. The large number of victims potentially or effectively involved inhibits the chance to take care of individual needs and rights;
- b) the nature of certain crimes charged to corporations – danger crimes or crimes with no result - requires only the evidence of a collective damage (e.g. crimes consisting in the exposure to a pollution or a contamination cause by industrial activities) and not that of the individual harms. Regardless of the fact that the evidence of damages to life or health is an imperative requirement in order to charge these offences, individual victims are not admitted to claim for their personal damages. This consideration, again, creates some distance from the single person's needs and rights and the scope of criminal proceeding;
- c) victims' needs sometimes blend in with the reasons and aims of the accusation, which may, with no intention, prevail on the single victim's right to receive adequate assistance and to be protected from further victimisation and further distress when they decide to take part into the investigation process;
- d) the accusation usually concerns corporate actions or omissions, whose evaluation entails scientific topics and the understanding of complex legal issues, very far from the victims' wealth of knowledge or direct control;
- e) the trial file is almost ever composed by thousands of documents and not accessible to victims without the support of lawyers or experts;
- f) the *type of crimes* charged to corporate representatives and the *time span* covered by the criminal behaviours are often unclear or, at least, not intelligible by citizens, workers or consumers. Victims can find the facts under investigation confusing and overwhelming, having no chance to understand the link between the criminal behaviours and their diseases. Therefore: the *awareness to be a victim* may arise *too late*, when statute of limitation or the procedural deadlines to take part into the criminal proceeding have already run out.

Examples of all the three underlined issues may be provided by the following cases:

**Eternit Casale case**

A complete identification of all victims was only partially possible at the time of first

investigation and trial. Victims who didn't file any complaint, who weren't identified as victims by the associations, or who were not informed or led by the associations to ask for compensation had no chance to access to justice. This 'black hole' has not been remedied even later, when a second criminal proceeding (the so called 'Eternit bis') opened in relation to deaths and diseases discovered after the beginning of the first trial. It may be argued, therefore, that not all the victims have been identified yet nowadays.

### **Ilva case**

Potential victims may be many more than those who effectively joined the criminal proceeding still ongoing at the time of this report. Damages to environment under scrutiny, in fact, cover the whole area surrounding the plant, threatening the health of all the people living nearby it, and damages, as well as potential victims, are still partially unknown. Further to the filing of several criminal complaints on the part of citizens and environmental associations, the Prosecution Service of Taranto appointed experts in Chemistry and Epidemiology to draft two separate reports on the impact of the plant activity on the environment. The chemical report showed a significant dispersion in the air of substances damaging both human health and the environment, as a consequence of the plant activity. Among these substances are powders, nitrogen dioxide, sulphur dioxide, hydrochloric acid, benzene, and dioxin. The latter, in particular, would have contaminated farmlands and made grazing impossible within a 20 km range from the plant, therefore seriously harming the farming activities in the area. The epidemiological report, which takes into consideration a seven-year time span, highlighted 11.550 deaths due to cardiovascular and respiratory issues and 26.999 recoveries due to cardiac, respiratory and cerebrovascular issues. The report also finds that 'continuing exposure to the toxic and polluting substances dispersed in the air as a consequence of the plant activity had caused and keeps causing a decline in the population's health conditions (affecting different parts of the body), resulting in illness and death'.

### **Ivrea Olivetti case**

It's quite sure that the fourteen victims identified within the current criminal proceedings are only a limited part of the potential victims. Experts and Public Prosecutor Office underlined that many other deaths are expected for the period between 2017 and 2020. A representative of the Public sanitary office during her testimony have declared that in the last 15 years they have identified 85 victims directly injured or died. Just a small part of them is participating into the current criminal proceedings. In fact, additional investigations have already been opened (*Olivetti-bis* and *Olivetti-ter* cases), taking into account other victims, and further investigations are expected to be opened. Victims are potentially hundreds in a long-term perspective according to the expert's reports, because all workers exposed to asbestos inside the plant and in the outside are at-risk. But also some of the already identified victims could not participate into the criminal proceeding due to the fact that the offences were already time-barred.

### **Bussi sul Tirino case**

Ascertained damages to environment cover a large area, so that all the citizens living there may have been potentially harmed. As the judgment decision lets emerge, surface waters and groundwater in that area are to be considered as certainly polluted because of the verified presence of toxic substances. Thus it can be estimated that pollution has been carried for 40 years and potential victims could be around 700.000 people, by computing the number of persons who have been using water in the contaminated area along the considered timeframe contaminated water.

The charged offences were focused on the danger caused to the whole local community, that is the public safety instead the individual one. Personal and individual concerns are only a limited portion of the offences charged, which must be perpetrated against public health and collective interest. Therefore, none of the individual victims could be strictly considered 'victim' according to the type of offences charged to the defendants, except for two owner of areas closed to the plant for economic damages (not for harms to health). Therefore, no individual victim was admitted as civil party in the criminal proceeding.

### **Heart valves case**

All the patients who were still alive and decided not to have a second transplant can be considered victims, as well. But, not all those persons had the chance to become parties of the proceeding since their harms were not directly related to the specific crimes under judgment.

### **Holzschutzmittel-fall**

The estimate of people having suffered physically from contact with the substances is around 200,000. The victim's organization IHG (Interessengemeinschaft Holzschutzmittel-Geschädigter) received a total of 60,000 inquiries and documented about 10,000 cases of damage. In the trial, only 29 of the alleged 44 personal injuries were found attributable to the products.

The prosecution in Frankfurt received 2,700 criminal complaints. 800 complainant families were registered. The prosecution selected 171 people after investigating their health status and the likeliness of their links to the wood protection agent to compile the indictment, which were organized in 69 different household units (family/couples). 19 of these units served as backup cases to counteract possible statutory limitation and were not introduced to the proceeding.

The complainants were either suffering physically themselves or economically because of their relatives' afflictions.

#### **IV. *The role of associations, organizations and other entities in supporting victims***

Differences between the three countries are evident on this topic. In Italy, associations and local entities play a relevant role both in enhancing access to justice and in providing support to the victims, also during the criminal proceeding. In Germany these entities are not allowed to take part into the criminal proceeding, while in Italy and Belgium they are admitted. None of the Italian associations is public, even if they play a role similar to that of the victims' support services provided by the Directive.

The role of associations is not only interesting for the understanding of victims' needs, but also for what concerns the modalities of their access to justice. It is a fact that victims' access to justice in itself is often possible only due to the *intermediation of third parties*, which might not always approach victims with a full awareness of their rights and which may have private interests to participate in the criminal proceeding (in Italy and Belgium these associations can claim for the compensation of damages to the association in itself). It is also a fact that often it is only thanks to investigations or research conducted by the environmental associations or the labour unions that victims realize to be harmed by an environmental crime or to have been exposed to toxic substances produced by a productive plant.

Here, some examples of the role played by these private or public associations in the leading cases:

##### **Train Accident of Eschede**

Several days after the incident the Deutsche Bahn named an Ombudsman and provided him with further staff for victims support and also created an emergency fund of 5 Mio. German Mark. Ombudsmann appointed by Deutsche Bahn was responsible for victims for 10 years. Victims association 'Selbsthilfe Eschede' was founded by the victims that negotiated with the Deutsche Bahn on compensation issues.

Victims claims were mainly driven by the activity of one lawyer (Dr. Rainer Geulen), who was not only the legal representative for most victims in the court proceedings but also the speaker of the 'Selbsthilfe Eschede' (victim's association). 'Selbsthilfe Eschede' (victim's association) fought publicly for an official apology of the company.

##### **Holzschutzmittel-fall**

Victims founded the Interessengemeinschaft Holzschutzmittel-Geschädigter (IHG) e.V. in May 1983. The organisation helps: Gathering and evaluation of information on issues concerning chronic and acute health damage attributable to wood protection agents and related substances; Capacity building of victims and affected persons in terms of detection of the damage and verification of links to the harmful substances; Counseling and assistance in medical, toxicological, legal and fiscal matters as well as object decontamination.

### **Eternit Casale case**

The Victim Association Afeva provides an assistance in victims' identification, establishing a direct contact with them, coordination, legal information and legal assistance through their own lawyers. In addition, the Association also asks for compensation in the proceeding. The Turin Court of First Instance endorsed this approach in its ruling of 1 march 2010, holding the Asbestos Victims' Relatives Association was damaged by the crime and rejecting the request of its exclusion from the trial filed by the defendants. It is worth mentioning that, besides this organization (surely the most relevant one), there were other organizations asking compensation as well, with a partly similar role of assisting and informing victims, such as Italian Unions or *Medicina Democratica*.

### **Ilva case**

Some associations and institutions significantly contributed to the start of the proceeding, by filing criminal complaints and providing the Prosecution Office with information and evidentiary elements. A number of institutions and associations joined the criminal proceedings as civil parties.

### **Ivrea Olivetti case**

Many entities and victims' associations representing collective interests, such as labour unions, participated in the criminal proceeding with the status of party. Two victims' associations supported victims before and during the trial. Their representatives have been heard as persons of interest.

### **Porto Marghera case**

The investigation started after a complaint lodged by one single victim, supported by a labour association. Labour unions and other associations/institutions representing victims' interests were admitted as party in the criminal proceedings since the beginning and until their end. Some of these unions and associations played a relevant role in supporting victims, especially during the investigation phase. These entities requested compensation for damages caused to workers, residents and the environment. Some of these associations decided to stay within the criminal proceedings, even after the majority of victims left the proceedings to join the extra-judicial agreement.

### **Spinetta Marengo case**

The Regional Institution for Environmental Protection filed the criminal complaint, further to which the Prosecution Office started a criminal investigation.

The labour association *Medicina democratica* played a very important role. The association not only filed several criminal complaints with the Prosecution Office, but also published fliers and letters addressed to the population living in the area surrounding the plant, encouraging whoever deemed to have contracted diseases from water pollution to file civil claims for damages against Solvay and the other companies operating in Spinetta Marengo. *Medicina democratica* also supported, at a political level, the promotion of epidemiological studies and monitoring activities in the area (see for instance the initiative called '*Osservatorio della Fraschetta*'). Extensive information on the case was also provided to the public on the web. It is worth noting that information spread by *Medicina Democratica* comes from a party to the proceedings and appears very much affected by a unilateral perspective and, therefore, as such, it is to be carefully evaluated in the absence of a final judgement on the case.

### **Tamoil Cremona case**

The criminal proceeding started since a formal complaint was exhibited by the association 'Ambiente, territorio società', concerning the contamination of the groundwater and of natural resources, and particularly of waters along the Po river. The local newspaper 'La Cronaca' dedicated articles and dossiers on the environmental contamination of the area surrounding Cremona: in particular, it was assumed that the groundwater was contaminated until 20 meters, and even 60-70 meters in depth, because of the presence of hydrocarbons and MBTE (an oil additive). Victims' instances have been fostered only by associations, which aim embraces the social interests that allegedly have been offended. Consistent with the campaign conducted by Legambiente and the activities oriented to promote the community awareness on the site contamination, the environmental association constituted in 2008 the 'Comitato contro l'inquinamento Tamoil'.

### **Gas Explosion in Ghislenghien**

The NGO 'Solidarité Ghislenghien' collected money for the children of the victims and to cover the costs related to funerals of victims, transport to hospital etc. The association of victims of Ghislenghien supported victims during all the case, giving a place where victims can meet, share their stories and organize mutual support.

### **Waste Dump of Mellery**

A non-governmental organisation was founded in 1988 and called CADEV, Comité d'Action pour la Défense de l'Environnement à Villers-la-Ville. Cadev filed a civil law suit at the court of Nivelles and started a criminal law suit in Antwerp. Cadev also struggled to get organised and funded a medical follow up of the population living in the neighbourhood of the waste dump. The organisation pushed for and obtained the cleaning up of the site and contributed to the development of more adequate environmental legislation. Now many years after the discovery of the scandal, Cadev still exists and has adopted the larger mission of tackling other environmental problems, focusing more on territorial planning, protection of biodiversity and mobility.

V. The access to criminal justice or, as alternative, to *civil or administrative justice* basically depends on the legal system to which the victims belong. In Italy, access to *criminal justice* seems to be the preferred choice, while in Germany and in Belgium civil lawsuits seem to be an option to which victims revert more frequently, as an additional course of action or as an alternative to the criminal justice system. The reasons underlying such a different approach are complex and may not be investigated here, but it is a fact that bringing civil lawsuits in separate proceedings (i.e. not within the criminal proceeding) is an exception in the Italian cases, while the opposite conclusion may be drawn for almost all the Germany and Belgium cases, as exemplified below:

#### **Train Accident of Eschede**

As the criminal proceedings ended without judgements, no decision on victim compensation was taken. A civil law suit was therefore the only remaining legal possibility. After the Deutsche Bahn spontaneously paid the material and immaterial damages, six victims filed a civil legal test case (that was joined by at least 50 more victims) at the Landgericht Berlin in order to be paid higher *immaterial compensation*. The claim for additional damages was denied by the court (Landgericht Berlin 18. September 2002). This decision was not further challenged by the victims.

#### **Holzschutzmittel-Fall**

Before and after the trial, civil suits by victims participating and not participating in the criminal proceedings were filed, but have not been successful.

#### **Gas Explosion in Ghislenghien**

Besides the criminal proceedings victims also filed separate civil lawsuits on the basis of Art 1384 Civil Code, this is the responsibility for the harm caused by things/objects for which one is responsible. Civil parties wanted to hold Fluxys responsible for the harm caused by the gas pipe and Diamont Boarts for the construction site they owned.

#### **Waste Dump of Mellery**

Besides the criminal law suits, civil law suits were engaged in 1990 and lasted for many years. In 2003, when the criminal suit ended in an acquittal of all the accused persons, the civil law suits were concluded by a 'conciliation'. The victims side perceived the conciliation as a 'bad agreement', but they are tired of years of procedures.

VI. Victims' access to justice is frequently *negotiated with the corporation outside the criminal trial*, where victims' needs and rights may not always be guaranteed. Leading cases show that the existence of a criminal proceeding does not preclude, but, on the contrary, seems to favour attempts to reach at least a monetary compensation during the investigations phase, before the trial. Many cases confirm the primary role of *extra judiciary negotiation* in defining the conflict between victims and corporations, at least for what concerns the economic compensation. In fact, the number of *extrajudicial agreements* between victims and corporations entered into *during the investigation or at the very beginning of the trial* is significantly high. When the agreement is closed in the initial stages of the proceeding, the risk to close an 'unfair deal' is borne by both the parties. In fact, neither victims, nor corporations are aware of the outcome of the final judgment. Consequently, these agreements guarantee a compensation to victims even in case of acquittal or in case of no prosecution sentences. Obtaining compensation at an early stage may also represent an advantage for victims, because proceedings may last several years, with a high probability to incur in the statute of limitation.

Even if both parties risk to close an unfair agreement, it may be assumed that also in this context victims are more vulnerable, especially because of the asymmetry of information about substantially all the data which would support a critical evaluation of the proposal. Victims' needs to receive appropriate support and access to compensation should be guaranteed also in this context, as these agreements undoubtedly imply significant withdrawals of some of the victims' rights: in particular, in exchange of the economic compensation, victims withdraw their right to participate into the criminal proceeding as a party or withdraw their lawsuits as civil party when already brought. Their decisions about entering or not entering in the negotiation, accepting or not accepting the proposal, and the meaning of the withdrawal of their rights should require legal and psychological support, as well as in the context of a criminal proceeding.

Some examples of this kind of negotiations may be found below:

**Eternit Casale case**

In 2008, it was submitted a so called proposal of 'indemnification' (in order to avoid any admission of liability), with a maximum limit of 60.000 Euro per capita, reduced according to the period of employment and the type of disease. The 100% of the sum was granted only to those victims who worked exclusively during the Eternit Swiss Group period, between 1973 and 1986, and contracted a mesothelioma. The *majority of the victims accepted the proposal*. The proposal is actually still valid after the Court of Cassation ruling



in the first Eternit trial; the intention is to prevent civil actions in the 'Eternit-bis' proceeding.

A year after the beginning of the trial, the defendant offered 30.000 Euro to every Casale citizen (deceased or ill) who was living in Casale during the aforementioned Swiss group period and contracted a disease since 1 January 1988 and at least fifteen years after the beginning of his residence in Casale. The proposal was reformulated on 11 July 2015 and, thus, is still valid after the Court of Cassation ruling in the first Eternit trial: the intention is to prevent the civil actions in the *Eternit-bis* proceeding.

It's quite important to note that many victims could not enter into these agreements, because in 1986, when Eternit went bankrupt, some workers reached a settlement with the company. Despite the fact that the agreement did not explicitly include occupational diseases resulting from Eternit activity, the Turin Court of Appeal held that this settlement precluded any chance to ask for compensation, since it formally stated that the workers 'no longer had any claim' against the company.

#### **Ivrea Olivetti case**

Some victims withdrew from the criminal proceeding having entered into an extrajudicial agreement with the corporation for compensation of damages. The negotiation with other victims is still ongoing.

The content of the agreement is unknown. The press reports that the total compensation allocated until now is around 2 million Euros, 150.000 Euros for each individual victim.

#### **Porto Marghera case**

With respect to the individual victims of involuntary manslaughter, injury, and health disaster offences, an extra-judicial agreement was entered into before the trial opening. More precisely, 530 victims entered into the agreement. The total compensation allocated was equal to 63 billion of Italian liras (approximately 34 million euro). With respect to the environmental offences, before the first instance judgment another agreement was entered into between one of the two corporations involved and the Ministry of Environment. The agreement entailed the payment of a compensation of 550 billion lire (approximately 300 million euro) on the part of the corporation to the Ministry in exchange for the withdrawal of victims' participation into the criminal proceedings.

#### **UB Plasma case**

Since 1987, negotiations between German haemophilia societies, corporations producing blood products and their liability insurances took place with the aim of compensating HIV infected haemophiliacs. Only material damage of the victims and their spouses was compensated for. In this context, the victims had to sign a settlement agreement in which they waived all further claims also against possible third-party joint debtors (Gesamtschuldner). The vast majority of victims did consent to this agreement because of

a series of legal challenges which made speedy compensation rather unlikely. On average the victims received 60.000 DM (total above 100 Mio. DM). The financial support provided (pension scheme) to the victims is comparatively moderate. The assets of the foundation were already exhausted by 2010.

In the *environmental field*, remediation activities are sometimes negotiated between the *corporation* and the *public authorities*. Even in this case, the 'bargaining chip' is the withdrawal of public entities' rights to participate in the criminal proceeding. In the **Tamoil Cremona case**, for example, the Cremona Municipality and the corporation agreed on remediation procedures which the corporation should activate. Such an agreement included also the Ministry for Economic Development, local administrations and trade unions. The existence of the agreement may have influenced the choice of the Municipality to give up its right to take part into the criminal proceeding. In the **Eternit Casale case**, in 2011 the defendant offered to the Casale Monferrato Municipality 60 million Euros. The Municipality declined the offer in 2012, a few months before the Court of Turin issued its judgment convicting the defendant in the first instance trial, in which the Municipality was awarded compensation for a similar sum (on a provisional basis). The refusal of the offer was also motivated by the official assurance from the Italian Government of a direct economic intervention. As a matter of fact, at the end of the trial, after the Supreme Court ruling, the Italian Government provided to the Casale Monferrato Municipality an amount of money almost equivalent to corporation's offer.

#### *VII. Victim's position inside the criminal proceeding*

According to the three national procedural systems, victims have the right to take full part in the criminal proceedings as directly injured party (or as family members of a victim), depending on three conditions: a criminal offence must have been committed; the injury or loss must have been caused directly by the offence; the damage must be personal to the victim, existing and current. The precise modalities of the mechanisms of participation, as well as the formal role attributed to victims in the relevant criminal justice system, are determined by national law. The participation implies the right to make a declaration, to present evidences, to access to the court files, to disclose and file supporting documents, to interview witnesses, to appeal, to be informed about decisions, to participate in inspections, and the right to be duly summoned to the main trial.

The victims' role inside the criminal proceeding is not minor. Victims usually actively participate as witnesses, and, in general, they provide active support in the gathering of evidence. For example: in the **Spinetta Marengo**

case, all of the victims who joined the proceedings had the possibility to effectively exercise their rights in court and exercise their role as 'party' through their defence counsel and expert witnesses. In the **Tamoil Cremona case**, the judge in person recognized a very active participation of the victims standing in the process, especially by promoting witnesses' examinations and experts' involvement. In the **Eternit Casale case**, victims participated into the proceeding by writing deeds (act of appearance before the Court, closing arguments) and by participating to the activity of evidence gathering during the hearings of the trial. Some victims also appointed private experts to draft technical reports. In the **Porto Marghera case**, in the investigation phase, victims, their associations, environmental associations and their experts worked side by side with the Public Prosecutor. In the **Ilva case**, victims played a very important role, both during the investigation phase and during the trial. The trial file, in fact, contains several complaints filed by citizens and associations, flagging the emission of anomalous smoke from the plant, as well as by farmers who had to kill dioxin-poisoned cattle. Furthermore, the victims actively collaborated with the Prosecution service in the reconstruction of the relevant facts also through interviews since 2008.

It is also remarkable that in many leading cases individual victims *continue to participate to the hearings regardless the fact that they entered into extrajudicial agreements*. They do not participate as plaintiffs, but as audience or as witnesses. This need to be involved and to participate goes evidently beyond the aim of obtaining economic compensation, and it should probably be seen as a need to follow, step by step, the ascertainment of the truth. In fact, extra judicial agreements are limited to the *economic compensation* issue: no establishment of the facts, admission of liability or other form of reparation are usually covered by the negotiation between victims and corporations. However, the physical attendance and emotional involvement of victims may not always be a positive factor, even from the victims' perspective. In fact, some leading cases show that the presence and voices of victims in the trial hall can transform the trial in a sounding board of the conflict and it may expose victims to the stress of the conflict between Prosecutor and defendants.

### *Appropriate access to compensation*

#### *I. Victims' requests to the criminal justice system*

Victims who participate into the criminal proceeding primarily claim for *economic and moral damages* directly caused by the crime. The dimension and the object of damages claimed depend, of course, on the type of

offence and its consequences. It is quite notable that in case of corporate violence the economic losses may concern an entire community and that moral damages may also take the shape of *fear to be harmed in the future*. Some interesting examples on this issue are the following:

#### **Tamoil Cremona case**

The recreational associations located in the area have requested for material and moral losses related to the crimes. Actually, according to their claims, two different profiles can be distinguished: patrimonial harm, which has been suffered because of the water pollution (particularly concerning the Po river), since pools and other recreational structures could not even be used; moral harm, inasmuch as people felt fear to be personally contaminated and still running the risk to get sick, because of the human exposure to toxics;

Only one citizen has been admitted to participate. This participation depends on the decision of the Municipality to give up its right to stand. Thus, this citizen's claims have to be intended as requested on the behalf of the whole Municipality and not for his personal harms. The citizen participating as civil party claimed, on one side, for *economic loss* suffered by the *local community* related to the necessity to provide administrative measures, so that the agenda has been altered and significant amounts of money have been redirected on that purpose; on the other side, he claimed for *moral damages* suffered by the Municipality due to the severe pollution of surrounding areas, intended as *fear to be personally contaminated* and still running the risk to get sick, because of the human exposure to toxics. Such fear depends also on the awareness that under those circumstances the etiopathogenesis (as the secondary effect of environmental resources contamination) consists in very long periods, which often are even latent. That under consideration has to be intended as a case of victimisation related to danger, rather than to damage. The Judgement recognized to the citizen one million of euro for damages to the citizen representing the community and 40.000 euro for legal expenses.

#### **Eternit Casale case**

Two parties asked also for compensation of a non-material damage (fear they could contract a lung tumour because they are (or were) Eternit workers or Casale citizens).

#### **Spinetta Marengo case**

In the full opinion, the Court expressly stigmatized the strategy consisting in the filing of civil claims in relation to damages which will never be ascertained in the context of a certain criminal proceedings (because unrelated to the charges), stating that it only fosters victims' expectations which are going to be frustrated, thereby causing additional pain to people who already suffered significant losses.

The Court anyway affirms the principle that the right not to be alarmed on one's own health conditions and not to spend a lifetime with health concerns arising from polluting activities is a need deserving legal protection, in that it is part of the broader right to health, which includes also the right to 'psychological peace and quiet'.

II. *Reasons why compensation has been denied or not obtained by victims*  
In many leading cases of corporate violence, the criminal proceeding does not provide for compensation to victims.

Generally, it may be said that there is often *a significant lag between the initial expectation of justice and the effective output of criminal proceeding.*

This result is due to different reasons, which may be summarized as follows:

- a) Individual victims are prevented from participating into the criminal proceedings for *restrictive procedural burdens*,
- b) The type of crime or the lack of strict/direct link between the crime and individual harms; c) Victims may not be parties to the criminal proceeding because they already entered into a extra-judicial agreements with the corporation before the trial;
- c) Under certain conditions, final judgements may be issued even regardless of the ascertainment of the facts and liabilities and therefore with no response to the victims' requests;
- d) Defendants decide not to go to trial, choosing, for example, *plea agreements or other kind of settlements with public authorities* which do not involve victims' compensation.

Three additional remarks deserve to be underlined.

First. Many victims or potential victims do not have the chance to claim for compensation, as they cannot prove a *direct damage* at the time and place where the trial takes place. In these cases, some victims' interests and rights are represented by associations or other collective entities; some others, are not represented at all.

Second. As far as damages are caused by the normal management of the industrial activities, access to justice is often denied to individual victims because the crimes charged protect only *collective interests* and not *individual losses*. In these cases, despite the fact that the crime has also caused harms to human health, individual victims have no chance to participate in the criminal proceeding claiming for a personal compensation, because *individual harms* are not related to the *type of crime* charged to the defendants. Of course, individual claims are included in the collective damages, which are instead under scrutiny. But, an effective damage on a large scale is quite often difficult to be proven.

Third. Also when manslaughter or injuries are charged and victims can claim for individual damages, relevant problems arise in terms of evidence to be provided on both the *causation link* between the corporation's actions or omissions and individual harms, and *personal intention* or *negligence* in having caused individual harms. Acquittal due to these arguments are very common especially in cases of health diseases with a long period of latency

or when epidemiological data are not available or consistent. The uncertainty on the outputs of final judgement does not only affect victims' claims in the single proceeding, but it may also lead to an unequal treatment of victims harmed by identical corporate behaviours with identical consequences on human health (Italian leading cases on asbestos-related diseases is the typical example). In fact, victims may receive a different judgement just depending on accidental factors: the circuit Court where trial takes place, the Prosecutor's ability in collecting the evidence and in identifying victims, the availability of epidemiological data, the experts' position on the importance of epidemiological data. This disparity of results is not easily understandable by victims, who reasonably expect to have the same compensation obtained by other persons in exactly the same situation.

Examples of proceedings where, despite the fact that harms or danger of harms were ascertained, *compensation was not obtained* are the following:

#### **Bussi sul Tirino case**

As the judgment decision shows, surface waters and groundwater in that area are to be considered as certainly polluted since October 2002, because of the verified presence of toxic substances. The structure of one of the charged crimes is premised on water poisoning, rather than on water contamination. That is: in order to prove the crime itself, it is necessary to prove an effective (and not only a potential one) danger for people health. No individual victim could claim for damages because they could not be strictly considered 'victim' according to the type of offences charged to the defendants. Personal and individual concerns are only a limited portion of the offences charged, which must be perpetrated against public health and collective interest; accordingly, public safety – rather than personal health – has been alleged as damaged.

Judges also pointed out that, although contaminated, it's not proved that the waters for human supply were poisoned. At the time of proceeding, any personal harm - in terms of diseases or pathologies certainly related to the contamination - was proved as to allowed a conviction. This circumstance is due to the latency of pathogenesis of the expected diseases: the evidence of a certain correlation between the exposition to toxics and the occurrence of harms to health (think, for instance, to the occurrence of cancer due to such a exposition) is often tricky to ascertain. At the time of proceeding, no epidemiological research and no cancer register were created; so data on disease occurrence and on the incidence of the contamination on human health were not available.

Recent epidemiology findings on the incidence of the increase in cancer cases in the area contaminated are now available. A report of ISS (National Health Institute) dated 30 January 2014, which was filed in criminal proceedings by the Ministry of environment, led to the conclusion that there are objective evidences to configure a significant risk to health of the population exposed to toxic wastes. Anyway the report has not demonstrated a correlation between pollution and the increase of cancers pathologies. Two other surveys have failed to demonstrate that the residents of the municipality of Bussi sul Tirino's exposure to environmental pollution has led to an increase of malignant tumours, although it does not rule out the increased incidence of the verification risk in the years to come.

### **Spinetta Marengo case**

The Court found that, although the plant's industrial activity had certainly seriously polluted the surrounding soil and groundwater – threatening public health – both the water supplied to the plant workers and that drawn for nutrition by those resident in Spinetta Marengo and Alessandria were in line with concentration levels of drinkable water. The Court nonetheless ascertained that the environmental matrices (soil and groundwater at different levels of the aquifer) had been seriously affected by the pollution generated by the plant. Individual victims who had requested damages arising from death and injuries as a consequence of the alleged poisoning saw their claims rejected because the defendants were never charged with these offences and, therefore, no causal connection between the defendants' conducts and the death/injuries has ever been ascertained.

Individual victims who had filed civil claims for damages arising from the exposure to poisoned water were not awarded damages because, at the end of the trial, no one could prove to have drunk or used poisoned water. Likewise, no damages were awarded to those who supported their claim only by indicating that they lived in the plant surroundings. The Court, however, found that the right not to be alarmed on one's own health conditions and not to spend a lifetime with health concerns arising from polluting activities is a need deserving legal protection; it is part of the broader right to health, which includes also the right to 'psychological peace and quiet'. On this basis, approximately 25 individual defendants were awarded damages for an amount of euro 10,000 each and 5 individual defendants were awarded damages to be determined in separate proceedings. Among these, there are people who had worked in the plant, or who had filed with the Court blood analyses showing the presence of several metals in their blood, or who had reported to have changed their life habits as a consequence of the Chromium Emergency scandal (e.g. who used to flush their home vegetable garden with water drawn from wells connected to the plant and had to stop and start drinking only mineral water);

Individual victims who had not been heard in Court were not awarded damages, because the Court found that – since the claims were very general – it had not been possible to ascertain even just their actual 'suffering' from the awareness or the fear to be exposed to toxic substances, which could have justified the award of damages.

### **Tamoil Cremona case**

The proceeding currently stands before the Court of Appeal, and so far the second degree decision is not yet available. All the defendants, but one, have been sentenced guilty with the judicial decision of first instance. The charged offences have to be considered as focused on *the danger caused to the whole local community*.

Despite the fact that for all the victims (associations representing victims' interests) taking part to the proceeding compensations have been recognized, it's quite interesting that epidemiological data have not been considered as relevant for the decision, since they were deemed as unrefined and the charged crimes are characterized only for the occurrence of danger to the public (and not individual) safety. In fact, the proceeding lets emerge the outcome of a research fostered by the Local Sanitary Agency, although it has not been considered consistent with the facts under investigation. The research concerned the cases of leukaemia occurred in the neighbourhoods of the allegedly contaminated

areas during the period 1998-2007: they were assumed as the double than the average in the region; the triple, considering the specific pathology named 'acute myeloid leukaemia', which is consistent with the exposure to benzene. Conversely, the defence expert argued that such data were not trustworthy, as epidemiological study had been conducted on a not extended cohort and the outcome had not been submitted to peer review, so that the study itself could not be intended as scientific. Therefore, victims requested (and obtained) compensation for the fear to get sick, because of the exposition to toxic substances.

### **Train accident of Eschede**

The termination of proceedings was agreed upon on first instance, as the degree of the guilt of the accused was low and the accused consented to a cash settlement of 10,000 € each.

No decision on damages was taken by the courts in the criminal proceeding. Compensation according to the Opferentschädigungsgesetz (OEG) was not accessible because the case did not meet the legal preconditions (intentional crime – prosecution was for negligent injury and negligent killing)

Deutsche Bahn consented without a legal decision to treat victims as if the company had acted with guilt and compensate the victims accordingly (otherwise compensation would have been limited according to the applicable Haftpflichtgesetz). Injured victims received material and immaterial damages (single payments as well as annuity payments) in accordance with generally used tables for damages in German law

Deutsche Bahn AG paid 30,00 DM compensation for each dead. In total, Deutsche Bahn AG paid 32 Mio. € until the end of 2008. After the Deutsche Bahn paid the compensation/provided for compensation, six victims filed a civil legal test case (that was joined by at least 50 more victims) at the Landgericht Berlin in order to be paid higher *immaterial compensation* (Schmerzensgeld). The claim for additional damages was denied by the court. This decision was not further challenged by the victims.

### **Holzschutzmittel-fall**

After a conviction in first instance, the Bundesgerichtshof overturned the conviction on appeal and ordered a retrial at the Landgericht Frankfurt. The Landgericht Frankfurt terminated the proceedings according to sec. 153a StPO due to the bad health of the accused and the length of the proceedings and as the following agreement was reached: Solvay S.A. and Bayer AG agreed to spend 4 Mio. DM on a research chair at the University of Gießen called 'Toxicology of interior air'; the accused paid 100,000 DM to the treasury each.

As the criminal proceedings ended without judgments, no decision on victim compensation was taken.

Before and after the trial, civil suits by victims participating and not participating in the criminal proceedings were filed, but have not been successful.

The main problem for victims was to establish a *causal link* between their illnesses and the sold product. The Bundesgerichtshof in the criminal case found no clear causal connection between damages and the sold product as the scientific basis was not sufficiently clear. Equally civil proceedings denied the necessary causation link.



### **Gas Explosion in Ghislenghien**

The question of the financial compensation of the civil parties was a very complicated one. The amounts of compensation to be paid was estimated by some professionals up to 1 billion euro. Many parties were potentially co-responsible for what happened, and thus also many insurance companies were involved. Because the attribution of responsibility was not clear at all, the insurance companies wanted detailed investigations and they were not keen on paying provisionally before the outcome of the court case. In order to decide about the compensation of the civil parties after criminal responsibility had been determined, a panel of experts was created who started to work immediately after the decision on the criminal responsibility was taken by the court of appeals. Ten years after the disaster not all compensation cases had had a final decision.

### **Waste dump of Mellery**

Medical tests of the local population show worrisome results; a saga of medical follow up follows; it drags on and is not thorough; the funding is problematic, in 2006 the inhabitants refuse to continue the medical follow up as it has not been done seriously. the criminal suit ends in acquittal, the civil law suits are concluded by a 'conciliation'. The victims perceive it as a 'bad agreement', but they are tired of years of procedures. In April 2008 the ECHR sentences the Belgian State to pay financial reparation of 30.000 euro to one of the accused persons for the unreasonable length of the procedure.

Despite evidence of the perpetration of offences harming victims, *procedural obstacles or statutes of limitation issues* may preclude a judgement on the corporate representatives' liability and, consequently, on victims' requests for compensation. In a significant sample of cases, the final judgement acquitted the defendants or stated that they should not be prosecuted, due to the fact that the crime was time-barred.

Some examples of this output are the followings:

### **Eternit Casale case**

The Italian Supreme Court, in 2015, established that the charge of disaster ceased to be perpetrated when the spread of asbestos dust and production waste – caused by the facilities managed by the defendant – ended; thus, *tempus commissi delicti* was considered to be June 1986, when Eternit bankruptcy was declared. The limitation period for the crime, which is 15 years, started therefore in 1986 and so it expired before the first degree sentence, in 2012. Under Italian Criminal Procedural Law, this prevents plaintiffs from asking the compensation of damages awarded by the previous judgments before the Civil Court Judge, since the conviction judgment must occur before the expiring date.

### **Heart valves case**

The corporation officers were convicted in both the proceedings just for few cases (some were statute-barred and for some cases of injures it was not possible to prove the necessity of a second replacement). So, just victims submitted to a second valve replacement obtained compensation and reimbursement of expenses. Since the defendants were charged with manslaughter and injures (related to second replacements) all the patients alive who hadn't submitted to a second operation weren't allowed to be parties of the proceedings. Some of them started a civil suit. Before the Supreme Court decisions, many cases reached statute-barred periods. Two main reasons why some victims' requests have been rejected: effect of statute-barred provisions; type of crimes alleged, which are focused on the victims who directly suffered relevant injures (or who died). Thus, for these cases there was no decision on victims' request.

### **Porto Marghera case**

Victims' requests for the conviction of the defendants were not met (except for the limited conviction established by the Court of Appeal) for many reasons: causation not being easy to prove in court, limitation periods applicable to the relevant offences, and epidemiological data not being evident.

For almost all the cases under examination, the Court's findings could not lead to conviction because the injury charges had become time-barred.

Labour unions and environmental associations never obtained compensation, nor through the criminal proceedings, nor through extra-judicial agreements.

### **Holzschutzmittel-fall**

Compensation claims were often denied by the courts because of limitation of time as the victims raising claims in the 1990s (probably due to extensive media coverage) for acts committed in the 1970s/early 1980s.

### **Ilva case**

None of the corporations involved could join the proceedings as party civilly liable for the payment of damages. With respect to Ilva S.p.A., this was due to the fact that on 21 January 2015 the company was admitted to an insolvency procedure and, as a consequence, according to Italian insolvency law, claims for damages must be filed within such procedure. With respect to Riva F.I.R.E. S.p.A. and Riva Forni Elettrici S.p.A., they were both excluded from the criminal proceedings as party civilly liable on procedural grounds.

Due to all these obstacles, no compensation at all could be guaranteed to victims by the criminal justice.

III. It is quite interesting to note that in case of *acquittal* or *non-prosecution judgements*, but eventually also in case of obtained compensation, *victims continue to demand for justice*. Their requests are almost always the same: information, support and, in case of ascertained environmental disaster, also the recovery of contaminated land. This data indicate that victims need to be supported even *after the criminal proceeding*, especially in the context of corporate violence and when the judgement was not able to answer to victims' requests. In some cases, where the criminal proceedings could not lead to compensation, victims address their requests *to the State*, through appeals, petitions, press releases, Parliamentary questions, or active web-sites. That is very interesting from the victims' perspective, also in an extra judiciary context: access to national/public compensation funds may prevent victims from attacking the corporation. It may be said that in some cases States instead of 'encouraging' offenders to pay compensation to victims play a subsidiary role in advancing alternative, public compensation. This is true especially when a convicted offender fails to provide compensation or the final judgment does not decide on the victims' requests.

Some examples of actions put in place after or besides the judgement, as well as of public initiatives are the followings:

#### **Porto Marghera case**

After the first acquittal, the judges and the whole justice system were strongly perceived as unjust. After the reading of the acquittal, victims present in the room occupied the bench. The judges who issued the first instance judgment left the room (after having read the judgment) under guard. Press reports said judges had also been intimidated. Victims, victims' family members and all of the associations involved never stopped demanding for justice. The level of conflict between victims, their representatives, their lawyers and the corporations was very high, even after the signing of the compensation agreement. During trial hearings, the conflicts between the two parties (Public Prosecutors, associations and their experts on one side; lawyers and experts of corporations on the other side) never faded. It appears quite important to notice that this reaction occurred despite almost all of the individual victims had obtained compensation (entering the extra-judicial agreement with the corporations).

Many initiatives and demonstrations took place in the days following the judgment.

The public sentiment arose despite corporations' attitude and approach had not been particularly aggressive. Corporations offered compensation, which was accepted and considered equitable. As a matter of fact, corporations offered and paid a consistent amount of money as compensation, which, due to the final acquittal and to the relevant statute of limitations, they did not have to pay. At the same time, it is important to underline that corporations never admitted their liability.

### **Eternit Casale case**

The outcome of the trial clearly generated discontent and disbelief, because of the lapsing of the offence by statute of limitation.

It was difficult to understand for the victims why the mere passing of time could make not punishable such a serious felony. Besides, media didn't report the reasons of time-barring in a proper way. The trial wasn't too long, as wrongly reported; the charges were considered to have been already expired when prosecution took place, because they are not permanent, as alleged by Public Prosecution. This is, however, a very technical matter, as hardly comprehensible for the layman as all the conditions of the charges and the necessary trial assessments. Victims' demonstrations and behaviour were pacific and non-violent and never exceeded the edge of legality, but the conflict with the corporation has always and it is still high. A tricolour flag, with a black 'Eternit' writing over it, was brought in Court during the hearings and hung to the balconies of Casale Monferrato.

### **Bussi sul Tirino case**

After the decision, as according to the victims' perspective, an access to justice was denied; therefore, the social debate arose to a conflicting level, still present.

Citizens' concerns and fear don't seem baseless, especially nowadays.

Recent epidemiology findings on the incidence of the increase in cancer cases in the area contaminated are now available.

### **Heart valves case**

Victims involved are still demanding for justice, even through media.

### **Train Accident of Eschede**

Victims claimed that the Deutsche Bahn AG delayed the process of compensation for years and made it unnecessarily bureaucratic. The 'Selbsthilfe Eschede' (victim's association) fought publicly for an official apology; only in 2013, on the 15 year anniversary of the company, the Current Chairman Rüdiger Grube apologized of the tragedy on behalf of Deutsche Bahn AG at the place of the victim's memorial.

### **Holzschutzmittel-fall**

The Coalition against BAYER Dangers publicly campaigns against the Bayer company e.g. in the Holzschutzmittel-case especially by publications and protests in the annual shareholder meetings.

### **Bussi sul Tirino case**

After the judgement of acquittal and non-prosecution, the investigation about the extent of the contamination due to the corporation activity has been committed to a *Parliamentary Committee*. In 2014 a 'Parliamentary Commission of Inquiry on illegal activities and environmental crimes related to the cycle of wasting' has been established. In the period 2014-2016 the Commission conducted several analyses and initiatives including: parliamentary hearings of the delegates of environmental associations, local institutions and members of the I.S.S. It has also been established a Commissioner for the management of economic, social and environmental crisis occurred in all the basin of the river Aterno-Pescara. In December 2015, a call for tender for the drainage of the polluted areas was published. The procurement procedures are still ongoing.

### **Holzschutzmittel-fall**

In 2014 several parliamentarians of the left wing parte (DIE LINKE) questioned government on the issue of the victims' situation in the Holzschutzmittel-case (BT-Drucksache 18/3691 of 19 December 2014), that was answered by the government in 2015 (BT-Drucksache 18/5499 of 9 February 2015). The government mainly stated that the Holzschutzmittel-case was taken as a starting point for finding a European solution that was finally reached with the biocidal products directive 98/8/EC of 16 February 1998 (now replaced by the biocidal products regulation (EU) No. 528/2012 of 22 May 2012). Any damages out of such products are considered to be sufficiently covered by private law product liability regulations.

### **UB plasma case**

On 6 October 1993, the president of the German Health Authority (Bundesgesundheitsamt) and a ministerial officer had to step down due to pressure by the Federal Minister of Health. They were criticized for a poor information policy on HIV infected blood products. On 29 October 1993, the German Parliament (Deutscher Bundestag) set up an inquiry commission 'Inquiry Commission on HIV Infections through blood and blood products' according to Art 44 German Constitution (Art 44 GG); its main focus was to inquire if and to what extent the federal government and administration bore (legal) responsibilities and accountabilities in the context of the scandal. The commission was also mandated to clarify the financial, social and legal situation of the victims (mainly haemophiliacs) and their relatives in order to formulate proposals in the victim's interest to the legislator. A last point was to assess the safety of blood and blood products and what needed to be done to improve those. The final report by the inquiry commission, which was criticised for its weakness and softness on the pharmaceutical industry and for not having vigorously challenging the legal status quo, was published on 25 October 1994. One of the main outcomes for victims was the institution of a foundation (Stiftung Humanitäre Hilfe für durch Blutprodukte HIV-infizierte Personen) in 1995, in parts modelled on the Contergan Foundation. This foundation Humanitarian Help was financed

by the federal government (100 Mio DM), the German States (50 Mio DM), the German Red Cross (9,2 Mio. DM) as well as by the pharmaceutical industry (90.9 Mio. DM), namely: Bayer AG, Immuno GmbH, Behringwerke AG, Baxter Deutschland GmbH, Armour Pharma GmbH and Alpha Therapeutics GmbH. The federal law (Gesetz über die humanitäre Hilfe für durch Blutprodukte HIV-infizierte Personen (HIVHG)) implementing the foundation stipulated some restrictions among others that all further claims stemming out of this subject matter against the federal government, the Red Cross as well as the pharmaceutical corporations, which had financed the foundations, extinguished. The financial support provided (pension scheme) to the victims is comparatively moderate. The assets of the foundation were already exhausted by 2010 and needed to be stocked up due to new medical drugs which significantly improved the life-expectancy of HIV infected persons.

Today, the question of how to sustainably support the victims is still unresolved. The funds will be exhausted again in the near future.

Persons with a hepatitis C infection through contaminated blood products have until today not received financial compensation in Germany.

### **Gas Explosion in Ghislenghien**

A number of initiatives were taken outside and after the context of the criminal trial, which provided recognition to the victims: two large donations by gas company Fluxys to compensate the victims; as a consequence of the disaster of Ghislenghien, a law was adopted according to which victims of a technological disaster are compensated for physical damage without them having to wait until the legal responsibilities have been determined in legal procedures. It was a response to the complaints of many victims who had to wait for years before receiving compensation. A fund was created to make this early compensation possible. Insurance companies contribute to the fund and after the legal procedures they mutually arrange the division of the compensation as decided by the court.

Every year a commemoration is held at the site of the disaster.

### **Waste Dump of Mellery**

A parliamentary commission was set up in 1993 to investigate the regulations and policies developed in Wallonia concerning the treatment of waste and their actual implementation in order to draw lessons for the future. The commission explicitly and logically avoided interfering in questions of individual responsibility, which were treated by the courts. However, the final 9 page political report of the commission, published in 1994, was quite general and weak and avoided pointing out political responsibilities.

In some cases of corporate violence, public interests may also have a direct impact on the outcome of criminal justice. The most significant example is the **Ilva case**. In 2012, despite the persisting dangerousness of the plant, freezing orders previously issued by the judicial Authority were revoked by

the Italian Government, thereby allowing the restart of the industrial activity and the sale of a number of products, which had also been previously subject to the freezing. However, the restart of the plant activity was made subject to the adoption of measures apt at protecting the environment. The decree was subsequently challenged, but the Italian Constitutional Court upheld it. The relevant opinion highlights that the Court deems that the decree correctly balanced two different constitutional rights: the right to health, on the one hand, and the right to work, on the other hand, taking in due consideration the need to protect occupation. The press recently reported that the case was brought before the European Court of Human Rights. In particular, between 2013 and 2015 about 180 people filed complaints, contending that they suffered health damages as a consequence of the plant's activity and that the Italian State 'failed to take all necessary measures to protect the environment and their health'. They also criticize the Government's decision to authorize the restart of the plant's activity. Further to the filing of the complaints, the European Court of Human Rights formally accused the Italian State of having failed to protect the life and health of the people living in Taranto and in the plants' surroundings from the harmful substances dispersed by Ilva S.p.A.

#### *Victims' exposure*

In many leading cases of corporate violence victims received a high public exposure, before, during and even after the criminal proceeding. Leading cases show a need to protect victims' dignity not only *within* the criminal proceeding, but also beyond it. Due to the fact that corporate violence may affect entire communities, extensive regions of land, or strategic productive activities, the corporation can be a central economic player or an important provider of jobs, and the plants can be part of people's daily life, public opinion is always concerned and involved and public issues are always concerned. In some cases, victims' associations, through their web site and their local activities, are the authors of a dissemination of information on the case.

As for example:

#### **Eternit Casale case**

Victims received an overexposure in media. Despite being a geographically restricted case, it had a national impact from the beginning, because it's one of the biggest environmental disasters ever happened in Italy.

### **Porto Marghera case**

Media exposure was enormous since the very beginning of the investigation. Public opinion was constantly informed about the proceedings by press reports, associations, web sites and local and national media. Victims' request for justice was strongly supported by many parties, the Public Prosecutor, the associations representing their general interests, but also the local public authorities and the general public.

### **Spinetta Marengo case**

Media approach was very aggressive and substantially lined up against the defendants. Most websites refer to the case with words such as 'scandal', 'ecological bomb' or 'ecocide' and report the first instance judgment as 'disappointing' and 'worrisome' (mainly because the penalties to which the defendants were sentenced are perceived as too low and environmental criminal law as generally ineffective).

### **Ivrea Olivetti case**

Hearings are on line. the public sharing of information, testimonies and proceeding files come from the proceeding actors.

### **Tamoil Cremona case**

Local media played a significant role, not only at the beginning of the proceeding, but also along its development. The point is consistent with the case, as it can be considered eminently local, with reference to the contaminated area and the immediately victimized community.

### **Bussi sul Tirino case**

Media exposure was very significant during and after the proceeding. After the acquittal, according to the victims' perspective, an access to justice was denied; therefore, the social debate arose to a conflicting level.

This public interest, as well as the dissemination of victims' experiences or criminal proceeding outputs, have advantages and disadvantages, which are too complicated to be deeply analysed here. But some considerations may be pointed out. On one side, public opinion and media participation are instruments of information, but also instruments of 'good pressure' on



public authorities, as well as on corporations, in terms of reputational damages. On the other side, victims are involved, consciously or unconsciously, in the storytelling of their lives: consequently, it is not always possible to balance privacy, personal integrity and personal data of victims with the freedom of expression and information, as well as to guarantee that victims are protected from secondary victimisation. The most significant example of this undesirable result is the German **UB plasma case**, where surviving victims or their heirs did not participate in the criminal proceedings and did not want to testify in Court (probably because of the HIV stigma).

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## PARTNERS



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### **"Federico Stella" Centre for Research on Criminal Justice and Policy (CSGP) – Università Cattolica del Sacro Cuore, Milan, Italy.**

CSGP is the coordinator of the project. CSGP is a research centre on criminal law and criminal policy, committed to promote theoretical and applied interdisciplinary research, aiming at improving the criminal justice system. Its activities, projects and expertise cover a wide range of themes, including business criminal law, corporate liability, criminal law reform, restorative justice and victim support, environmental law, law and the humanities, law and the sciences. An Advisory Committee of prominent scholars, judges and leading experts in juridical, economic, philosophical and psychological disciplines coordinates its scientific activities.



### **Leuven Institute of Criminology – University of Leuven, Leuven, Belgium.**

The University of Leuven (KU Leuven) is charter member of the League of European Research Universities; European surveys rank it among the top ten European universities in terms of its scholarly output. The Leuven Institute of Criminology (LINC) is composed of about seventy professors and researchers involved in criminological research and teaching. LINC continues the Leuven tradition of combining solid research with a deep commitment to society, a goal achieved through fundamental as well as policy-oriented research. LINC consists of eight 'research lines', one of which is on 'Restorative justice and victimology'.



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### **Max Planck Institute for Foreign and International Criminal Law (MPICC), Freiburg i.B., Germany.**

Research projects undertaken at MPICC are comparative, international, and interdisciplinary in nature, and focus on empirical studies of criminal law, crime, crime control, and crime victims. Research also involves: harmonization and assimilation of criminal law and criminal procedure in EU Member States; development of criminal law thanks to insights into existing legal solutions to social problems, and into functional criminal and extra-criminal law alternatives.

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**Scuola Superiore della Magistratura**



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# VICTIMS AND CORPORATIONS

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

## EUROPEAN and INTERNATIONAL SELECTED LEGAL RESOURCES AND CASE LAW

Appendix to the Project's Report  
'RIGHTS OF VICTIMS,  
CHALLENGES FOR CORPORATIONS  
Project's First Findings'

(December 2016, updated July 2017)

This collection of selected legal resources and case laws is a complement to the Report for the Project titled Victims and Corporations. Implementation of Directive 2012/29/EU for Victims of Corporate Crimes and Corporate Violence, funded by the programme “Justice” of the European Union (Agreement number - JUST/2014/JACC/AG/VICT/7417).

The collection law has been compiled and edited by Claudia Mazzucato with the support of Davide Amato and Paola Cavanna. July 2017 update has been compiled by Davide Amato, Irene Gasparini, Paola Cavanna. Links to official websites are provided in order to access the official and updated texts of the selected documents and to access the summary of legislation.

**Project coordination**

Gabrio Forti (Coordinator) and (in alphabetical order) Stefania Giavazzi, Claudia Mazzucato, Arianna Visconti  
Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale - “Federico Stella” Centre for Research on Criminal Justice and Policy

**Project partners**

Leuven Institute of Criminology, Catholic University of Leuven  
Max-Planck-Institut für ausländisches und internationales Strafrecht

**Steering group members**

Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Carolin Hillemanns, Katrien Lauwaert, Enrico Maria Mancuso, Stefano Manacorda

**Project website**

[www.victimsandcorporations.eu](http://www.victimsandcorporations.eu)

Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale, Milan, 2016  
(updated in July 2017)



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**“VICTIMS AND CORPORATIONS”**  
**Implementation of Directive 2012/29/EU**  
**for victims of corporate crimes and corporate violence**

# **EUROPEAN and INTERNATIONAL SELECTED LEGAL RESOURCES AND CASE LAW**

**Appendix to the Project’s Report**  
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## Part I

### European and International Hard Law & Soft Law

#### (A) - VICTIMS IN GENERAL

(Victims rights, support, protection, participation to criminal proceedings)

#### EUROPEAN UNION

- EUROPEAN UNION, [Charter of fundamental rights of the European Union](#)

For this project's purposes refer especially to:

- Article 1, Human dignity (Protection and respect);
- Article 2, Right to life;
- Article 3, Right to the integrity of the person;
- Article 6, Right to liberty and security;
- Article 7, Respect for private and family life;
- Article 8, Protection of personal data;
- Article 11, Freedom of expression and information (Right to receive information);
- Article 16, Freedom to conduct a business;
- Article 17, Right to property;
- Article 21, Non-discrimination (Prohibition of discrimination on grounds of nationality);
- Article 24, Rights of the child;
- Article 25, Rights of the elderly;
- Article 26, Integration of persons with disabilities;
- Article 27, Workers' right to information and consultation;
- Article 31, Fair and just working conditions (Respect for health, safety and dignity);

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- Article 34, Social security and social assistance (Entitlement to social security benefits and social services providing protection in cases such as, among others, illness or industrial accidents);
- Article 35, Health care (High level of human health protection);
- Article 37, Environmental protection (High level of environment protection; sustainable development);
- Article 38, Consumer protection (High level of consumer protection);
- Chapter VI – Justice: Articles 47-50 (Right to an effective remedy; fair trial; presumption of innocence; right of defence; principle of legality; principle of proportionality; double jeopardy).

See also the recital n. 66 of the Directive 2012/29/UE establishing *minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*

- EUROPEAN UNION, [Treaty on the European Union](#) (TEU)

For this project's purposes refer in particular to:

- Article 3 (Promotion of peace and well being of EU peoples; area of freedom, security and justice; prevention of crime; sustainable development; balanced economic growth; social progress; improvement of the quality of the environment; promotion of scientific and technological advance; social justice and protection; equality; solidarity; protection of EU citizens; protection of human rights and child's rights).

- EUROPEAN UNION, [Treaty on the Functioning of the European Union](#) (TFEU)

**(TFEU) Victims rights**

For this project's purposes refer in particular to:

- PART THREE - UNION POLICIES AND INTERNAL ACTIONS
  - Title V - Area of freedom, security and justice
    - Chapter 4 – Judicial Cooperation in Criminal Matters.



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- Article 82, according to which ‘the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules’, concerning among others: ‘the rights of individuals in criminal procedure; the rights of victims of crime’;

See also

- Article 83, according to which ‘1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a *cross-border dimension* resulting from the *nature or impact of such offences* or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. On the basis of developments in crime, the Council may adopt a decision *identifying other areas of crime that meet the criteria specified in this paragraph*. It shall act unanimously after obtaining the consent of the European Parliament. 2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, *directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned*. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76’ [emphasis added].



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### (TFUE) Environment protection, product safety, public health, workers' health and safety, consumer protection

For this project's purposes, also refer, among others, to the followings:

- Article 4 (Principal areas of EU competence: environment, consumer protection; freedom, security and justice; common safety in public health);
- Article 6(a) (Actions in the field of protection and improvement of human health);
- Article 9 (Adequate social protection; high level of protection of human health);
- Article 10 (Fight against discrimination);
- Article 11 (Environment protection);
- Article 12 (Consumer protection);
- Article 114(3), Approximation of laws (High level of protection as a base for health, safety, environment and consumer protection, taking account of development based on scientific facts);
- Articles 153(1, a) (EU support in improvement of the working environment to protect workers' health and safety);
- PART THREE - UNION POLICIES AND INTERNAL ACTIONS
  - Title XIV - Public health
- Article 168(4) (High standards of quality and safety of medical products and devices for medical use)
- Article 169(1) (Promotion of a high level of consumer protection; promotion of health, safety and economic interests of consumers; consumers' right to information; consumers' organisations).
- PART THREE - UNION POLICIES AND INTERNAL ACTIONS
  - TITLE XV - Consumer protection
- PART THREE - UNION POLICIES AND INTERNAL ACTIONS
  - Title XX – Environment
    - Article 191 (Environment protection; protection of human health; precautionary principle)

### (TFUE) Humanitarian aid, victims of man-made disasters

- PART FIVE - THE UNION'S EXTERNAL ACTION



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### TITLE III – Cooperation with third countries and humanitarian aid

- Chapter 3, Humanitarian aid
  - Article 214(1) (*Ad hoc* assistance and relief and protection for people in third countries who are victims of natural or man-made disasters)

### TITLE VII – Solidarity clause

- Article 222 (Solidarity towards Member States object of a terrorist attack or victim of natural or man-made disaster).

- EUROPEAN UNION, [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, and replacing Council Framework Decision 2001/220/JHA](#)

‘The Directive 2012/29/UE **Directive** establishing minimum standards on the rights, support and protection of victims of crime ensures that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice. The Directive replaces the 2001 Framework Decision on the standing of victims in criminal proceedings and considerably strengthens the rights of victims and their family members to information, support and protection and victims’ procedural rights in criminal proceedings. The Directive also requires that the Member States ensure appropriate training on victims’ needs for officials who are likely to come into contact with victims and encourage cooperation between Member States and coordination of national services of their actions on victims’ rights’ [Source: <http://ec.europa.eu/justice>].

- EUROPEAN COMMISSION, DG JUSTICE, [Guidance Document related to the transposition and implementation of Directive 2012/29/UE, December 2013](#)

The *Guidance Document* was issued by the DG Justice to assist Member States in the process of transposition and implementation of the Directive 2012/29/UE. It ‘clarifies the provisions of the Directive, in order to help national authorities, practitioners and relevant service



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providers understanding what is required to make the victims' rights set out in the Directive a reality everywhere in the EU'  
[Source: <http://ec.europa.eu/justice>].

- EUROPEAN UNION, [Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings \(2011/C 187/01\) – Budapest Roadmap](#)

The Budapest Roadmap outlined a package of legislative proposals, including a directive (now Directive 2012/29/UE). The Budapest Roadmap 'put victims at the heart of the EU criminal justice agenda'.

- EUROPEAN COUNCIL, [The Stockholm Programme – An open and secure Europe serving and protecting citizens \(2010/C 115/01\)](#)

'In order to provide a secure Europe where the fundamental rights and freedoms of citizens are respected (...) [t]he Stockholm Programme sets out the European Union's (EU) priorities for the area of justice, freedom and security for the period 2010-14. Building on the achievements of its predecessors the [Tampere](#) and [Hague](#) programmes, it aims to meet future challenges and further strengthen the area of justice, freedom and security with actions focusing on the interests and needs of citizens'. [Source: [eur-lex.europa.eu](http://eur-lex.europa.eu)].

- EUROPEAN COMMISSION, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 – Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme \[COM\(2010\) 171 final\]](#)

The Action Plan 'provides a roadmap for the implementation of political priorities set out in the Stockholm Programme for the area of justice, freedom and security between 2010-14' [Source: [eur-lex.europa.eu](http://eur-lex.europa.eu)].



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- **EUROPEAN COUNCIL, [Internal Security Strategy for the European Union. Towards a European Security Model, 2010](#)**

‘The Treaty on the Functioning of the European Union (in particular Article 72), which entered into force in late 2009, along with the EU Charter on Fundamental Rights, laid the foundations for the development of an EU security policy based on the rule of law, respect for fundamental rights and solidarity. Following the adoption of the Stockholm programme (the EU’s programme for justice and home affairs for the period 2010-14), the EU adopted, in 2010, its internal security strategy (ISS). Given that many security challenges (cybercrime, terrorism, illegal immigration and organised crime) are cross-border and cross-sectoral in nature, no single EU country is able to respond effectively to these threats on its own. In addition, the EU needs to improve its resilience to crises and disasters. The EU’s ISS is thus its joint agenda to use all the resources and expertise available to jointly tackle these challenges (...).’ [Source: eur-lex.europa.eu]

Among the values and principles that inspired the ISS is the ‘protection of all citizens, especially the most vulnerable, with the focus on victims of crimes such as trafficking in human beings or gender violence, including victims of terrorism who also need special attention, support and social recognition’.

- **EUROPEAN COMMISSION, [Communication from the Commission to the European Parliament and the Council - The EU Internal Security Strategy in Action: Five steps towards a more secure Europe \(COM\(2010\) 673 final of 22.11.2010\)](#)**

The Communication aims at putting the EU [Internal Security Strategy](#) into action, focusing on organised crime, terrorism, cybercrime, border security and disasters, It provides for specific actions for the period 2011-14.



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- EUROPEAN UNION, [Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order](#)

‘The Directive sets up a mechanism allowing persons who benefit from a protection order in criminal matters issued in one Member State to request a European Protection Order. Such an order allows for protection also in other Member States where the protected person travels or moves. Protection orders covered by the Directive concern situations where victims, or potential victims, of crime benefit from a prohibition or regulation of entering certain places, being contacted or approached by a person causing risk’ [Source: <http://ec.europa.eu/justice>]. Deadline for domestic implementation was January 11, 2015.

- EUROPEAN UNION, [Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims](#)

‘The Directive 2004/80/EC provides that persons can apply for state compensation when they have fallen victims to crime abroad, and receive assistance to do so. The Directive requires that all Member States have a state compensation scheme which provides fair and appropriate compensation to victims of intentional violent crime. The Directive also creates a system of cooperation between national authorities for the transmission of applications for compensation in cross-border situations, notably victims of a crime committed outside their Member State of habitual residence can turn to an authority in their own Member State to submit the application and get help with practical and administrative formalities’ [Source: <http://ec.europa.eu/justice>].

- COMMISSION OF THE EUROPEAN COMMUNITIES, [Green Paper – Compensation to Crime Victims, COM\(2001\) 536, Brussels, 28 September 2001](#)

The Green Paper ‘launches a consultation with all interested parties on possible measures to be taken at Community level to improve state compensation to crime victims in the EU’ [Source: [eur-lex.europa.eu](http://eur-lex.europa.eu)].



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- EUROPEAN UNION, [Regulation \(EU\) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters](#)

‘The regulation sets up a mechanism allowing for a direct recognition of protection orders issued as a civil law measure between Member States. Thus, persons who benefit from a civil law protection order issued in the Member State of its residence may invoke it directly in other Member States by presenting [a certificate](#) to competent authorities certifying their rights. The Regulation applies as of 11 January 2015’ [Source: <http://ec.europa.eu/justice>].

- See also EUROPEAN UNION, [Council Regulation \(EC\) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation \(EC\) No 1347/2000](#)

‘A single legal instrument to help international couples resolve disputes, involving more than one country, over their divorce and the custody of their children. (...) It sets out: - rules determining which court is responsible for dealing with matrimonial matters and parental responsibility in disputes involving more than one country; - rules making it easier to recognise and enforce judgments issued in one EU country in another; - a procedure to settle cases in which a parent abducts a child from one EU country and takes them to another. (...) Child abduction: The Regulation also lays down rules to settle cases in which children are unlawfully removed or kept. The courts of the EU country where the child normally lived immediately before abduction continue to have jurisdiction until the child lives mainly in another EU country. Recognition: Under the Regulation, any EU country must automatically recognise judgments given in another EU country on matrimonial and parental responsibility matters. (...) Enforcement: A judgment on the exercise of parental responsibility enforceable in the EU country where it was issued can be enforced in another EU country when it has been declared enforceable there at the request of any interested party. However, no declaration is required for judgments granting rights of access or concerning the return of a child that have

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been certified by the original judge in accordance with the Regulation'.  
[Source: eur-lex.europa.eu]

- EUROPEAN UNION, [Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings](#)

The Framework Decision 2001/220/JHA has been replaced by the Directive 2012/29/UE.



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## (A) - VICTIMS IN GENERAL [Follows]

### COUNCIL OF EUROPE

- COUNCIL OF EUROPE, [European Convention on Human Rights](#)

‘Signed in 1950 by the Council of Europe, the ECHR is an international treaty to protect human rights and fundamental freedoms in Europe. All 47 countries forming the Council of Europe are party to the Convention, 28 of which are members of the EU. The Convention established the European Court of Human Rights, intended to protect individuals from human rights violations. Any person whose rights have been violated under the Convention by a state party may take a case to the Court. This was an innovative feature, as it gave individuals rights in an international arena. Judgments finding violations are binding on the countries concerned. The Committee of Ministers of the Council of Europe monitors the execution of judgements. The Convention has several protocols, which amend its framework. **The Treaty of Lisbon, in force since 1 December 2009, permits the EU to accede to the ECHR and a draft agreement for accession was finalised in 2013**’. [Source: eur-lex.europa.eu] In December 2014 the Court of Justice gave Opinion No. 2/2013 concluding that the draft agreement on the accession of the EU to the ECHR is not compatible with EU law.

- COUNCIL OF EUROPE, [European Convention on the Compensation of Victims of Violent Crimes \(ETS No. 116\), Strasbourg, 1983](#)

‘This Convention puts upon States that become a Party to it the obligation to compensate the victims of intentional and violent offences resulting in bodily injury or death. The obligation to compensate is limited to offences committed on the territory of the State concerned, regardless of the nationality of the victim’. The Convention provides for a definition of compensation, and sets principles and conditions of application. [Source: www.coe.int]



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- COUNCIL OF EUROPE, [Recommendation Rec \(2006\)8 of the Committee of Ministers to Member States on Assistance to Crime Victims, 14 June 2006](#)  
Principles of protection of victims' human rights and dignity; Assistance, support, information and access to remedies; Mediation; Public awareness-raising on the effects of crime.
- COUNCIL OF EUROPE, [Recommendation Rec\(2005\)9 of the Committee of Ministers to Member States on the protection of witnesses and collaborators of justice](#)
- COUNCIL OF EUROPE, [Recommendation Rec\(2000\)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, 6 October 2000](#)
- COUNCIL OF EUROPE, [Recommendation No. R \(99\) 19 of the Committee of Ministers to Member States concerning mediation in penal matters](#)  
The Recommendation promotes mediation in penal matters 'Considering the need to enhance active personal participation in criminal proceedings of the victim and the offender and others who may be affected as parties as well as the involvement of the community; Recognising the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimisation, to communicate with the offender and to obtain apology and reparation' [Source: www.coe.int].
- COUNCIL OF EUROPE, [Recommendation No. R \(97\) 13 of the Committee of Ministers to Member States concerning Intimidation of Witnesses and the Rights of the Defence](#)



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- COUNCIL OF EUROPE, [Recommendation No. R \(96\) 8 of the Committee of Ministers to Member States on Crime Policy in Europe in a Time of Change](#)

According to the Recommendation 'it is necessary both to enhance the confidence of victims in criminal justice and to have adequate regard, within the criminal justice system, to the physical, psychological, material and social harm suffered by victims'. Section I.B. of the Recommendation deals with 'economic crime'; para. 12-20 deal with provisions for the 'liability of corporate bodies' [Source: www.coe.int].

- COUNCIL OF EUROPE Committee of Ministers, [Recommendation R. \(87\)21 on Assistance to Victims and the Prevention of Victimisation, 17 September 1987](#)

Measures to provide assistance to victims, especially vulnerable ones, and prevent victimization; situational prevention policy through social development; victim-offender mediation.

- COUNCIL OF EUROPE, [Recommendation No. R \(85\) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure](#)

Recommendation to Member States to review their legislation and practice in accordance with proposed guidelines in relation to police agencies, prosecution, court proceedings and questioning of the victim, compensation, and protection of privacy. Reinforcement of social norms and rehabilitation of offenders as a tool for victim-offender reconciliation.

- COUNCIL OF EUROPE, [Recommendation No. R. \(83\)7 of the Committee of Ministers to Member States on participation of the public in crime policy](#)

Recommendation to Member States to inform the public of its fundamental role in implementing a crime prevention policy and to encourage the public to 'assist victims both during and after the perpetration of the offence' assistance to victims; offender/State compensation to victims; assistance, legal aid.

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(Section III.D 'A crime policy taking account of the victims' interests'). Recommendation to Member States to 'establish contact with associations concerned with protecting the interests of victims in order to secure their support for a crime policy aimed both at fostering the reintegration of offenders, especially through non-custodial treatment, and at making appropriate provision for victims' (para. 24).





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## (A) - VICTIMS IN GENERAL [Follows]

### UNITED NATIONS

- UNITED NATIONS, [General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power , 29 November 1985 A/RES/40/34](#)

‘The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power consists of two parts: Part A, on “Victims of Crime”, is subdivided into sections concerning “Access to justice and fair treatment”, “Restitution”, “Compensation”, and “Assistance”; and Part B, on “Victims of abuse of power”’. Para. 4 of the Preamble calls upon Member States ‘to take the necessary steps’ in order, among others, to endeavour: (...) (e) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns; (f) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises’. Para. 10. of the Declarations provides: ‘In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community’.

- UNITED NATIONS, [Office for Drug Control and Crime Prevention, Handbook on Justice for Victims. On the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, New York, 1999](#)

‘The Handbook outlines the basic steps in developing comprehensive assistance services for victims of crime. (...) This Handbook has been drafted recognizing that differences arise when its principles are applied in the context of different legal systems, social support structures and life situations. (...) The Handbook is not meant to be prescriptive but to

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serve as a set of examples for jurisdictions to examine and test' [Source: [www.unodc.org](http://www.unodc.org)].

- UNITED NATIONS, [Economic and Social Council \(ECOSOC\), UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 24 July 2002, E/RES/2002/12](#)

In setting the basic principles, the ECOSOC Resolution 2002/12 recognizes, among others, that restorative justice: a) 'promotes social harmony through the healing of victims, offenders and communities'; b) 'enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs'; c) 'provides an opportunity for victims to obtain reparation, feel safer and seek closure'; d) 'allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way'.

- UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), [Handbook on Restorative Justice programmes, New York, 2006](#)

The *Handbook* is a practical tool developed by UNODC to support countries in the implementation of the ECOSOC Resolution 2002/12 concerning the basic principles on restorative justice in criminal matters. The handbook 'offers, in a quick reference format, an overview of key considerations in the implementation of participatory responses to crime based on a restorative justice approach. (...) It was prepared for the use of criminal justice officials, non-governmental organizations and community groups who are working together to improve current responses to crime and conflict in their community' [Source: *Handbook on RJ programmes*].



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## (B) - SPECIFIC GROUPS OF VICTIMS

### EUROPEAN UNION

- EUROPEAN UNION, [Directive 2011/92/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, and replacing Council Framework Decision 2004/68/JHA](#)

‘Directive 2011/92/EU brings into line criminal offences relating to sexual abuse committed against children, the sexual exploitation of children and child pornography throughout the EU. It also lays down minimum sanctions. The rules include provisions aimed at combating child pornography online and sex tourism’. The Directive also establishes provisions concerning the assistance, support and protection for victims that must be provided before, during and after criminal proceedings. ‘Child victims of sexual abuse, sexual exploitation or child pornography are considered as particularly vulnerable victims and must be treated in a manner which is most appropriate to their situation’. [Source: <http://eur-lex.europa.eu>]

- EUROPEAN UNION, [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, and replacing Council Framework Decision 2002/629/JHA](#)

The Directive 2011/36/EU ‘lays down minimum common rules for determining offences of trafficking in human beings and punishing offenders. It also provides for measures to better prevent this phenomenon and to strengthen the protection of victims’. As of victims’ support, the Directive provides that ‘victims receive assistance before, during and after criminal proceedings so that they can exercise the rights conferred on them under the status of victims in criminal proceedings. This assistance may consist of the reception in shelters, or the provision of medical and psychological assistance and information services and interpretation. Children and teenagers (under 18) enjoy additional

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measures such as physical and psychosocial support, access to education and, where applicable, the possibility to appoint a guardian or representative. They should be interviewed immediately in suitable premises and by skilled professionals. Victims have the right to police protection and legal assistance to enable them to claim compensation'. [Source: <http://eur-lex.europa.eu>]

- EUROPEAN UNION, [Directive \(EU\) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA](#)

The Directive 'establishes minimum rules concerning the definition of criminal offences and sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, as well as measures of protection of, and support and assistance to, victims of terrorism' (see Article 1). It replaced the Framework Decision 2002/5475/JHA. It further specifies that measures of protection, support and assistance responding to the specific needs of victims of terrorism need to be adopted.

- EUROPEAN UNION, [Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law](#)

See, in particular, Recital 11 and Article 8, according to which 'It should be ensured that investigations and prosecutions of offences involving racism and xenophobia are not dependent on reports or accusations made by victims, who are often particularly vulnerable and reluctant to initiate legal proceedings'.

- EUROPEAN UNION, [Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin](#)

For the purposes of this project, see in particular: a) Recital (16) 'It is important to protect all natural persons against discrimination on grounds of racial or



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ethnic origin. Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members'; b) Recital 20: 'The effective implementation of the principle of equality requires adequate judicial protection against victimisation'; c) Recital 24: 'Protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims'; d) Article 9: 'Victimisation. Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment'.



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## (B) - SPECIFIC GROUPS OF VICTIMS [Follows]

### COUNCIL OF EUROPE

#### COUNCIL OF EUROPE - CONVENTIONS

- COUNCIL OF EUROPE, [Convention against Trafficking in Human Organs \(CETS No. 216\), Santiago de Compostela, 25/03/2015](#)

Among other provisions, 'the Convention calls on governments to establish as a criminal offence the illegal removal of human organs from living or deceased donors also provides protection measures and compensation for victims as well as prevention measures to ensure transparency and equitable access to transplantation services'.

- COUNCIL OF EUROPE, [Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism \(CETS No.217\), Riga, 2015](#)

'The Protocol to the Council of Europe Convention on the Prevention of Terrorism will make a number of acts, including taking part in an association or group for the purpose of terrorism, receiving terrorist training, travelling abroad for the purposes of terrorism and financing or organising travel for this purpose, a criminal offence. The Protocol also provides for a network of 24-hour-a-day national contact points facilitating the rapid exchange of information' [Source: [www.coe.int](http://www.coe.int)]

- COUNCIL OF EUROPE, [Convention on preventing and combating violence against women and domestic violence \(CETS. No. 210\), Istanbul, 2011](#)

The Convention 'opens the path for creating a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. The Convention also establishes a specific monitoring mechanism ("GREVIO") in order to ensure effective implementation of its provisions by the Parties'. [Source: [www.coe.int](http://www.coe.int)] It has been signed also by the EU: see the [Council](#)

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**[Decision \(EU\) 2017/866 of 11 May 2017 on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to asylum and non-refoulement.](#)**

- COUNCIL OF EUROPE, **[Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse \(CETS No. 201\), Lanzarote, 2007](#)**

This Convention establishes ‘the various forms of sexual abuse of children as criminal offences’ and outlines ‘preventive measures’. ‘The Convention also establishes programmes to support victims, encourages people to report suspected sexual exploitation and abuse, and sets up telephone and internet helplines for children (...). The new legal tool also ensures that child victims are protected during judicial proceedings, for example with regard to their identity and privacy’. [Source: [www.coe.int](http://www.coe.int)]

- COUNCIL OF EUROPE, **[Convention on the Prevention of Terrorism \(CETS No. 196\), Warsaw, 2005](#)**

The Convention aims ‘to increase the effectiveness of existing international texts on the fight against terrorism’ and ‘to strengthen member States’ efforts to prevent terrorism (...). The Convention contains a provision on the protection and compensation of victims of terrorism. A consultation process is planned to ensure effective implementation and follow up’. [Source: [www.coe.int](http://www.coe.int)]

- COUNCIL OF EUROPE, **[Convention on Action against Trafficking in Human Beings \(CETS No. 197\), Warsaw, 2005](#)**

‘The Convention is a comprehensive treaty mainly focused on the protection of victims of trafficking and the safeguard of their rights. It also aims at preventing trafficking as well as prosecuting traffickers’ [Source: [www.coe.int](http://www.coe.int)]



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- COUNCIL OF EUROPE, [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CETS No. 126\), Strasbourg, 1987](#)

‘The Convention provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. The committee, composed of independent experts, may make recommendations and suggest improvements in order to strengthen, if necessary, the protection of persons visited from torture and from inhuman or degrading treatment or punishment. This preventive, non-judicial machinery is an important addition to the system of protection already existing under the European Convention on Human Rights’ [Source: www.coe.int]

### COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, RECOMMENDATIONS AND GUIDELINES

- COUNCIL OF EUROPE, Committee of Ministers, [Guidelines on child-friendly justice \(2010\)](#)
- COUNCIL OF EUROPE, Committee of Ministers, [Guidelines on the Protection of Victims of Terrorist Acts \(2005\)](#)
- COUNCIL OF EUROPE, [Recommendation Rec\(2002\)5 of the Committee of Ministers to Member States on the protection of women against violence](#)  
Legislation and policies tailored on victims’ needs; Empowering victims to prevent secondary victimization; Information and public awareness on the consequences of crimes on victims; Effective assistance, treatment and counselling; Compensation; Access to justice and procedural rights.



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- COUNCIL OF EUROPE, [Recommendation No. R \(2000\) 11 of the Committee of Ministers to Member States on action against trafficking in human beings for the purpose of sexual exploitation](#)
- COUNCIL OF EUROPE, [Committee of Ministers, Recommendation No. R \(91\)11 concerning sexual exploitation, pornography and prostitution of, and trafficking in children and young adults](#)
- COUNCIL OF EUROPE, [Committee of Ministers, Recommendation No. R \(85\)4 on violence in the family](#)

#### COUNCIL OF EUROPE – PARLIAMENTARY ASSEMBLY, RECOMMENDATIONS

- COUNCIL OF EUROPE, [Parliamentary Assembly, Recommendation 1178 \(2007\) on Child victims: stamping out all forms of violence, exploitation and abuse](#)
- COUNCIL OF EUROPE, [Parliamentary Assembly, Recommendation 1777 \(2007\) on Sexual assaults linked to “date-rape drugs”](#)
- COUNCIL OF EUROPE, [Parliamentary Assembly, Resolution 1530 \(2007\) Child victims: stamping out all forms of violence, exploitation and abuse](#)
- COUNCIL OF EUROPE, [Parliamentary Assembly, Recommendation 1583 \(2002\) on Prevention of recidivism in crimes against minors](#)
- COUNCIL OF EUROPE, [Parliamentary Assembly, Recommendation 1582 \(2002\) on Domestic violence against women](#)



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- COUNCIL OF EUROPE, [Parliamentary Assembly, Recommendation 1426 \(1999\) on European democracies facing up to terrorism](#)



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## (B) - SPECIFIC GROUPS OF VICTIMS [Follows]

### UNITED NATIONS

- UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), [Handbook on the Criminal Justice Response to Support Victims of Acts of Terrorism, New York, 2012](#) [revised edition]

‘Victims have long played a secondary, and mostly silent, role in criminal trials. UNODC recognizes the importance of representing victims’ interests in criminal proceedings and the relevance of developing comprehensive programmes that effectively provide adequate treatment to victims of acts of terrorism. Effective criminal prosecution of alleged perpetrators is a crucial factor in reducing the perception of victimization and of impunity for terrorist acts. Granting victims equal and effective access to justice is also essential. In order to further integrate the perspective of victims into UNODC’s capacity-building activities addressing the criminal justice aspects of countering terrorism, the role of victims and their surviving family members in criminal proceedings needs to be emphasized’. [Source: *Handbook on the Criminal Justice Response to Support Victims of Acts of Terrorism*].

- UNITED NATIONS, Economic and Social Council (ECOSOC), [UN Economic and Social Council Resolution 2005/30: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 25 July 2005, E/RES/2005/30](#)

Relevant topics: Victims’ right to remedies and reparation; Ensuring that domestic legislations provides the same level of protection as international standards; Enforcement of reparation judgments against liable entities; Information of the public and of victims of the violations and the remedies available; Victims entitled to seek causes of their victimization; Reparation for the harm suffered consisting in: a) restitution; b) compensation; c) rehabilitation; d) satisfaction; e) guarantee of non-repetition.

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- UNITED NATIONS, Commission on Human Rights, [Commission on Human Rights Resolution 2004/34: The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms, 19 April 2004, E/CN.4/RES/2004/34](#)

International community is called to ensure restitution, compensation and rehabilitation to victims of grave violations of human rights and fundamental freedoms.

- UNITED NATIONS, [Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime, 2000](#)

The Protocol deals with trafficking where pursued transnationally, as part of organized crime. It sets the fundamental international framework, where the '4Ps' stand for Prosecution, Prevention, Protection and Partnerships. Indeed, it was intended "(a) to prevent and combat trafficking in persons, [...] (b) to protect and assist the victims of such trafficking, with full respect of their human rights and (c) to promote cooperation among States Parties" (see Article 2).

- UNITED NATIONS, [General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984](#)

- UNITED NATIONS, [General Assembly, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 9 January 2003, A/RES/57/199](#)



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- UNITED NATIONS, [General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979](#)





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## (C) PROJECT'S RELATED TOPICS

**Personal data protection**

**Disclosure of non-financial information**

**Environment**

**Product safety**

**Food safety**

**Safety of medical products and devices for medical use**

**Safety on the workplace and protection of workers**

**Action for damages (infringements of the competition law provisions)**

### *Personal data protection*

- EUROPEAN UNION, [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\)](#)

Regulation (EU) 2016/679 allows European Union (EU) citizens to better control their personal data. It also modernises and unifies rules allowing businesses to reduce red tape and to benefit from greater consumer trust.
- EUROPEAN UNION, [Directive \(EU\) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA](#)

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Directive (EU) 2016/680 ‘aims to better protect individuals’ personal data when their data is being processed by police and criminal justice authorities.

It also aims to improve cooperation in the fight against terrorism and cross-border crime in the EU by enabling police and criminal justice authorities in EU countries to exchange information necessary for investigations more efficiently and effectively. The Data Protection Directive for Police and Criminal Justice Authorities is part of the EU data protection reform package along with the General Data Protection Regulation (Regulation (EU) 2016/679). [Source: <http://eur-lex.europa.eu>].

### ***Disclosure of non-financial information***

- EUROPEAN UNION, [Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups](#)

Directive 2014/95/EU ‘requires certain large companies to disclose relevant non-financial information to provide investors and other stakeholders with a more complete picture of their development, performance and position and of the impact of their activity. (...) Such companies are required to give a review of policies, principal risks and outcomes, including on: environmental matters; social and employees aspects; respect for human rights; anti-corruption and bribery issues; diversity on boards of directors. (...) If companies do not have a policy on one of these areas, the non-financial statement should explain why not. (...) Companies are given the freedom to disclose this information in the way they find useful or in a separate report. In preparing their statements, companies may use national, European or international guidelines such as the [UN Global Compact](#).’ [Source: <http://eur-lex.europa.eu>].



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- EUROPEAN COMMISSION, [Communication from the Commission - Guidelines on non-financial reporting \(methodology for reporting non-financial information\)](#)

Pursuant Article 2, Directive 2014/95/EU and following a public consultation, the Commission has made available non-binding guidelines on methodology for reporting non-financial information, with a view to facilitating relevant, useful and comparable disclosure. In doing so, the Commission has taken into account best practices, relevant developments and the results of related initiatives, both within the EU and at international level.

- See also Århus Convention and related documents





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## Environment

### Environment protection

- EUROPEAN UNION, [Council Decision \(EU\) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change](#)

The Decision 'ratifies the **Paris Agreement on climate change** on behalf of all European Union (EU) countries. The agreement aims to strengthen the global response to the threat of climate change, including by limiting warming to well below 2°C' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment](#)

The objective of the Directive is 'to ensure a high level of protection of the environment and of human health, through the establishment of minimum requirements for the environmental impact assessment of projects', as well as to strengthen 'public access to information and security' and 'ensure a high level of protection of the environment and human health' [Source: Recitals n. 18, 22, 41].

- EUROPEAN UNION, [Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'](#)

'The 7th Environment Action Programme (EAP) will guide European environment policy until 2020. The new Plan identifies nine priority objectives and sets out a long-term vision of where it wants the EU to be by 2050. Guided by the long-term vision of "In 2050, we live well, within the planet's ecological limits", the [7th Environment Action Programme \(EAP\)](#) identifies 3 priority action areas for the EU: 1) Natural capital (...); 2) Resource-efficient economy

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(...); Healthy environment of healthy people (...). (...) The EAP's priority objectives 4 to 7 (the four 'I's) aim to help Europe deliver on the first three goals through: better implementation of legislation; better information by improving the knowledge base; more and wiser investment for environment and climate policy; full integration of environmental requirements and considerations into other policies. The programme's final two priority objectives are: sustainable cities; tackling international challenges (environmental and climate) [Source: <http://eur-lex.europa.eu>].

This Decision 'sets forth a general European Union action programme in the field of the environment for the period up to 31 December 2020, called the 7th Environment Action programme. This programme is based on the precautionary principle, the principles of preventive action and of rectification of pollution at source and the polluter-pays principle. It has the following priority objectives: (a) to protect, conserve and enhance the European Union's natural capital; (b) to turn the European Union into a resource-efficient, green and competitive low-carbon economy; (c) to safeguard the European Union's citizens from environment-related pressures and risks to health and well-being; (d) to maximise the benefits of European Union environment legislation by improving implementation; (e) to improve the knowledge and evidence base for European Union environment policy; (f) to secure investment for environment and climate policy and address environmental externalities; (g) to improve environmental integration and policy coherence; (h) to enhance the sustainability of the European Union's cities; and (i) to increase the European Union's effectiveness in addressing international environmental and climate-related challenges' [Source: <http://www.ecolex.org/>].

- EUROPEAN UNION, [Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance](#) [Seveso III Directive]

'This Directive lays down rules for the prevention of major accidents which involve dangerous substances, and the limitation of their consequences for human health and the environment, with a view to ensuring a high level of

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protection throughout the Union in a consistent and effective manner' [Source: <http://rod.eionet.europa.eu/instruments/661>].

- EUROPEAN UNION, [Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment](#)

The Directive 'contains a legal requirement to carry out an environmental impact assessment (EIA) of public or private projects likely to have significant effects on the environment, before they begin' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law](#)

[Directive 2008/99/EC](#) 'defines a number of serious offences that are detrimental to the environment. It requires EU countries to introduce effective, proportionate and dissuasive penalties for these types of offence when committed intentionally or as a result of serious negligence. (...) This Directive builds upon [Directive 2004/35/EC](#), which lays down rules on environmental liability with regard to the prevention and remedying of environmental damage' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage](#)

'Directive 2004/35/EC on environmental liability with regard to the **prevention and remedying** of environmental damage (ELD) establishes a framework based on the **polluter pays principle** to prevent and remedy environmental damage. As the ELD deals with the "pure ecological damage", it is based on the powers and duties of public authorities ("administrative approach") as distinct from a civil liability system for "traditional damage" (damage to property, economic loss, personal injury). The ELD was amended three times through [Directive](#)

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[2006/21/EC](#) on the management of waste from extractive industries, through [Directive 2009/31/EC](#) on the geological storage of carbon dioxide and amending several directives, and through [Directive 2013/30/EU](#) on safety of offshore oil and gas operations and amending Directive 2004/35/EC' [Source: <http://ec.europa.eu/environment>].

- EUROPEAN UNION, [Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise - Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise](#)

'This Directive is aimed at controlling noise perceived by people in built-up areas, in public parks or other quiet areas in an agglomeration, in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas. It does not apply to noise that is caused by the exposed person him or herself, noise from domestic activities, noise created by neighbours, noise at work places or inside means of transport or noise due to military activities in military areas' [Source: <http://eur-lex.europa.eu>].

- COUNCIL OF EUROPE, [Convention on the Protection of Environment through Criminal Law \(ETS No. 172\), Strasbourg, 1988](#)

'The Convention is aimed at improving the protection of the environment at European level by using the solution of last resort - criminal law - in order to deter and prevent conduct which is most harmful to it. It also seeks to harmonise national legislation in this field. (...) It establishes as criminal offences a number of acts committed intentionally or through negligence where they cause or are likely to cause lasting damage to the quality of the air, soil, water, animals or plants, or result in the death of or serious injury to any person. It defines the concept of criminal liability of natural and legal persons, specifies the measures to be adopted by states to enable them to confiscate property and define the powers available to the authorities, and provides for international co-operation. The sanctions available must include imprisonment

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and pecuniary sanctions and may include reinstatement of the environment, the latter being an optional provision in the Convention. Another major provision concerns the possibility for environmental protection associations to participate in criminal proceedings concerning offences provided for in the Convention' [Source: [www.coe.int](http://www.coe.int)].





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**Århus Convention:** access to information, public participation, access to justice in environmental matters (United Nations, European Union)

### **Århus Convention 1998**

‘Århus Convention 1998 in force since 30 October 2001, is based on the premise that greater public awareness of and involvement in environmental matters will improve environmental protection. It is designed to help protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. To this end, the Convention provides for action in three areas: a) ensuring public access to environmental information held by the public authorities; b) fostering public participation in decision-making which affects the environment; c) extending the conditions of access to justice in environmental matters’ [Source: <http://eur-lex.europa.eu>].

### **Transposition of the Århus Convention into Community law**

‘The Community has undertaken to take the necessary measures to ensure the effective application of the Convention. The first pillar of the Convention on [public access to information](#) was implemented at Community level by Directive [2003/04/EC](#) on public access to environmental information. The second pillar, which deals with public participation in environmental procedures, was transposed by [Directive 2003/35/EC](#). A proposal for a Directive published in October 2003 is intended to transpose the third pillar which guarantees [public access to justice in environmental matters](#). Finally, a Regulation adopted in 2006 is intended to guarantee the application of the provisions and principles of the Convention by [Community institutions and bodies](#)’ [Source: <http://eur-lex.europa.eu>].

- UNITED NATIONS, [United Nations Economic Commission for Europe \(UNECE\), Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Århus Convention, 25 June 1998](#)



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The Århus Convention establishes a set of rights of the public (individuals and associations) with regard to the environment: a) the right to access to environmental information; b) the right to participate in environmental decision-making; c) the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general (access to justice).

More info here: <http://ec.europa.eu/environment/aarhus/>

- EUROPEAN UNION, [Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC](#)

[First pillar of the Århus Convention: access to information]

Directive 2003/4/EC 'adapts national laws to the **1998 Århus Convention** on access to information. It guarantees the public access to environmental information held by, or for, public authorities, both upon request and through active dissemination. It sets out the basic terms, conditions and practical arrangements where access upon request may be exercised' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice - Council Directives 85/337/EEC and 96/61/EC](#)

[Second pillar of the Århus Convention: public participation]

- EUROPEAN UNION, [2005/370/EC Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters](#) 'This Decision approves the **Århus Convention**



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**1998** (signed by the European Community and its Member States in 1998) on behalf of the Community' [Source: <http://eur-lex.europa.eu>]

- EUROPEAN UNION, [Regulation \(EC\) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies](#)

[Third pillar of the Århus Convention: access to justice]

Regulation 1367/2006 'requires the EU's institutions and various bodies to implement the obligations contained in the Århus Convention. These obligations guarantee the public access to information, participation in decision making and access to justice on environmental issues. (...) EU institutions and bodies must [among others]: grant the public access to justice on EU environmental matters; avoid any discrimination based on citizenship, nationality or domicile when treating a request for environmental information. (...) Environmental databases or registers must contain: authorisations given which could affect the environment; environmental impact studies and risk assessments' [Source: <http://eur-lex.europa.eu>]

- EUROPEAN UNION, [Communication from the Commission of 28.4.2017 – Commission Notice on Access to Justice in Environmental Matters \[C\(2017\)2616final\]](#)

C(2017)2616 final is an 'Interpretative Communication on access to justice in environmental matters (...). By bringing together all the substantial existing CJEU case-law, and by drawing careful inferences from it, it would provide significant clarity and a reference source for the following: national administrations who are responsible for ensuring the correct application of EU environmental law; national courts, which guarantee respect for EU law and are competent to refer questions on the validity and interpretation of EU law to the CJEU; the public, notably individuals and environmental NGOs, who



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exercise a public-interest advocacy role; and economic operators, who share an interest in the predictable application of the law' [Source: Para. 9].

### Environment: Pollution

- EUROPEAN UNION, [Directive \(EU\) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC](#)

Directive (EU) 2016/2284 should 'contribute to achieving, in a cost effective manner, the air quality objectives set out in Union legislation and to mitigating climate change impacts in addition to improving air quality globally and to improving synergies with Union climate and energy policies', as well as 'contribut[ing] to the reduction of air pollution'. Its aim, 'inter alia, is to protect human health' [Source: Recitals n. 9, 11, 27].

- EUROPEAN UNION, [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements](#)

'The purpose of Directive 2005/35/EC<sup>(3)</sup> and of this Directive is to approximate the definition of ship-source pollution offences committed by natural or legal persons, the scope of their liability and the criminal nature of penalties that can be imposed for such criminal offences by natural persons (...). Criminal penalties, which demonstrate social disapproval of a different nature than administrative sanctions, strengthen compliance with the legislation on ship-source pollution in force and should be sufficiently severe to dissuade all potential polluters from any violation thereof (...). The Directive also aims at 'reinforc[ing] maritime safety and help[ing] prevent ship-source pollution' in view of the 'the need to ensure a high level of safety and protection of the environment' [Source: Recitals n. 1, 3, 4, 10]



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- EUROPEAN UNION, [Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community](#)

‘This Directive lays down rules for protection against, and prevention of, pollution resulting from the discharge of certain substances into the aquatic environment. It applies to inland surface water, territorial waters and internal coastal waters’ [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements](#)

[Directive 2005/35/EC](#) ‘creates rules that are applicable EU-wide on the imposition of penalties in the event of discharges of oil or other polluting substances from ships sailing in its waters’ [Source: <http://eur-lex.europa.eu>].

#### Environment: Waste

- EUROPEAN UNION, [Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment \(WEEE\)](#)

‘This legislation is designed to prevent electrical and electronic waste by requiring EU countries to ensure the equipment is recovered, reused or recycled’ [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives](#)

The abovementioned Directive ‘establishes a legal framework for treating waste in the EU. This is designed to protect the environment and human health by emphasising the importance of proper waste management, recovery and recycling techniques to reduce pressure on resources and improve their use’ [Source: <http://eur-lex.europa.eu>].



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- EUROPEAN UNION, [Regulation \(EC\) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste](#)

The regulation 'lays down rules for controlling waste shipments in order to improve environmental protection. It also incorporates the provisions of the Basel Convention and the revision of the OECD's 2001 decision on the control of transboundary movements of wastes destined for recovery operations (i.e. where a waste is processed to recover a usable product or converted into a fuel) in EU law' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste](#)

The scope of the Directive 2006/12/EC is 'the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste', in order to achieve and ensure, among others, 'a high level of environmental protection' [Recitals n. 1, 6, 11].

#### Environment: Chemicals

- EUROPEAN UNION, [Regulation \(EU\) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation \(EC\) No 1102/2008](#)

'The provisions of this Regulation on the import of mercury and of mixtures of mercury are aimed at ensuring the fulfilment by the Union and the Member States of the obligations' of the 2013 Minamata Convention on Mercury [see infra] [Source: Recital n. 13].

- EUROPEAN UNION, [Council Decision \(EU\) 2017/939 of 11 May 2017 on the conclusion on behalf of the European Union of the Minamata Convention on Mercury](#)

The Decision approves, on behalf of the European Union, the Minamata Convention on mercury. 'The Convention provides for a framework for the control and limitation of the use, and of anthropogenic emissions and releases,

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of mercury and mercury compounds to air, water and land, with a view to protecting human health and the environment' [Source: Recital 2, Article 1].

- EUROPEAN UNION, [Regulation \(EU\) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products](#)

This Regulation 'harmonises the EU's rules concerning the sale and use of biocidal products, while ensuring high levels of protection of human and animal health and of the environment' [Source: <http://eur-lex.europa.eu/>].

- EUROPEAN UNION, [Regulation \(EC\) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC](#)

The regulation 'lays down rules for authorising the sale, use and control of plant protection products in the EU. It recognises the precautionary principle which EU countries may apply if there is scientific uncertainty about the risks a plant protection product might pose to human or animal health or the environment' [Source: <http://eur-lex.europa.eu/>].

- EUROPEAN UNION, ['Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation \(EEC\) No 793/93 and Commission Regulation \(EC\) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC](#)

'The REACH (registration, evaluation, authorisation and restriction of chemicals) regulation provides a comprehensive legislative framework for chemicals manufacture and use in Europe. It shifts from public authorities to the industry the responsibility for ensuring that chemicals produced, imported, sold and

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used in the EU are safe. It also: i) promotes alternative methods to animal testing; ii) creates a single market for chemicals; iii) aims to foster innovation and competitiveness in the sector; iv) establishes a European Chemicals Agency (ECHA)' [Source: <http://eur-lex.europa.eu>].





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## Product safety

- EUROPEAN UNION, [Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety](#)

Directive 2001/95/EC 'aims to ensure a high level of consumer safety when the public buy goods on sale in Europe. It requires firms to ensure that items on sale are safe and to take corrective action when that is found not to be the case. (...) Products placed on the EU market must be safe. They must bear information enabling them to be traced, such as the manufacturer's identity and a product reference. Where necessary for safe use, products must be accompanied by warnings and information about any inherent risks. A product is considered safe if it meets specific national requirements or EU standards' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN COMMUNITIES, [Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products](#)

Directive 85/374/EEC 'establishes the principle of liability without fault applicable to European producers. Where a defective product causes damage to a consumer, the producer may be liable even without negligence or fault on their part. The Directive applies to damage: caused by death or by personal injuries; caused to private property (...). The injured person carries the burden of proof (...). However, he does not have to prove the negligence or fault of the producer or importer' [Source: <http://eur-lex.europa.eu>].



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## Food safety

- EUROPEAN UNION, [Regulation \(EU\) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations \(EC\) No 999/2001, \(EC\) No 396/2005, \(EC\) No 1069/2009, \(EC\) No 1107/2009, \(EU\) No 1151/2012, \(EU\) No 652/2014, \(EU\) 2016/429 and \(EU\) 2016/2031 of the European Parliament and of the Council, Council Regulations \(EC\) No 1/2005 and \(EC\) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations \(EC\) No 854/2004 and \(EC\) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC \(Official Controls Regulation\)](#)

This Regulation seeks 'to establish a harmonised Union framework for the organisation of official controls, and official activities other than official controls, along the entire agri-food chain, taking into account the rules on official controls laid down in Regulation (EC) No 882/2004 and in relevant sectoral legislation, and the experience gained from the application of those rules' [Recital n. 20].

- EUROPEAN UNION, [Regulation \(EU\) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations \(EC\) No 1924/2006 and \(EC\) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation \(EC\) No 608/2004](#)

Regulation (EU) 1169/2011 'guarantees consumers their right to adequate information by establishing the general principles, requirements and responsibilities for the labelling of foodstuffs they consume. It provides

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sufficient flexibility to respond to future developments in the food sector. It merges the previous legislation, [Directives 2000/13/EC](#) on the labelling of foodstuffs and [90/496/EEC](#) on nutritional labelling' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Regulation \(EC\) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin](#)

'This regulation aims to ensure a high level of food safety and public health. It complements [Regulation \(EC\) No 852/2004](#) on the hygiene of foodstuffs, whose rules mainly cover the approval of operators in the sector. The regulation's rules apply to unprocessed and processed products of animal origin. They generally do not apply to food that contains both products of plant origin and processed products of animal origin. European Union (EU) countries must register and, where necessary, approve establishments handling products of animal origin' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Regulation \(EC\) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs](#)

'The Regulation and its annexes define a set of food safety objectives that firms working with food must meet' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Regulation \(EC\) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety](#)

The Regulation 'strengthens the rules on the safety of food and feed in the EU. It also sets up the [European Food Safety Authority](#) (EFSA), which provides support for the scientific testing and evaluation of food and feed. The Regulation does not cover primary production for private domestic use or the handling of food at home' [Source: <http://eur-lex.europa.eu>].





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- EUROPEAN UNION, [White paper on food safety of 12 January 2000 \[COM/99/0719 final\]](#)

‘A series of crises concerning human food and animal feed (BSE, dioxin etc.) has exposed weaknesses in the design and application of food legislation within the EU. This has led the Commission to include the promotion of a high level of food safety among its policy priorities over the next few years. As was stressed at the Helsinki European Council in December 1999, particular attention must be focused on improving quality standards and reinforcing systems of checks throughout the food chain, from farm to table. The White Paper on food safety is an important element in this strategy. The Commission is proposing a number of measures which will enable food safety to be organised in a more coordinated and integrated manner (...)’ [Source: <http://eur-lex.europa.eu>].

- EUROPEAN COMMUNITIES, [The general principles of food law in the European Union – Commission Green Paper \[COM/97/0176 final\], Brussels, 1997](#)

‘The aim of this Green Paper is to: examine the extent to which the legislation is meeting the needs and expectations of consumers, producers, manufacturers and traders; consider how the measures to reinforce the independence and objectivity, equivalence and effectiveness of the official systems for the control and inspection of foodstuffs are fulfilling their objectives; invite a public debate on our food legislation to provide guidance to the Commission in its future legislative initiative on food, and accordingly; enable the Commission to propose measures allowing, wherever possible, to improve the protection of public health laid down in its measures for the internal market and the common agricultural policy, improve the coherence of Community food law, consolidate and simplify it, improve the operation of the internal market, and take into account the increasingly, important external dimension, notably the policies followed by our most advanced trading partners and the requirements of the WTO agreements (...)’ [Source: <http://eur-lex.europa.eu>].



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- EUROPEAN COMMUNITIES, [Council Directive 92/59/EEC of 29 June 1992 on general product safety](#) [See supra]

‘The purpose of the provisions of this Directive is to ensure that products placed on the market are safe’ [Article 1].

#### Food safety: GMO

- EUROPEAN UNION, [Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms](#)

The Directive ‘lays down rules for the contained use of genetically modified microorganisms (GMMs) in order to protect human health and the environment in the EU’ [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Regulation \(EC\) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed](#)

Regulation No 1829/2003 ‘lays down rules on how genetically modified organisms (GMOs) are **authorised** and **supervised**, and on how genetically modified food and animal feed is **labelled**. It aims to protect: people’s lives and health; animal health and welfare; environmental and consumer interests’ [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Regulation \(EC\) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms](#)

Regulation No 1946/2003 ‘seeks to implement certain points of the Cartagena Protocol on preventing biotechnological risks. This is because some genetically modified organisms (GMOs) may have adverse effects on the environment and human health’. It also aims ‘ To ensure an adequate level of protection, it creates a system for notifying and exchanging information on the export of

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GMOs to non-EU countries' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC](#)

The Directive 2001/18/EC 'aims to make the procedure for granting consent for the deliberate release and placing on the market of genetically modified organisms (GMOs)\* more efficient and more transparent. It also limits such consent to a period of 10 years (renewable) and introduces compulsory monitoring after GMOs have been placed on the market' [Source: <http://eur-lex.europa.eu>].





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## Safety of medical products and devices for medical use

### EUROPEAN UNION

- EUROPEAN UNION, [Regulation \(EU\) No 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU](#)

‘This Regulation aims to ensure the smooth functioning of the internal market as regards medical devices, taking as a base a high level of protection of health for patients and users, and taking into account the small- and medium-sized enterprises that are active in this sector. At the same time, this Regulation sets high standards of quality and safety for medical devices in order to meet common safety concerns as regards such products’. However, ‘The scope of application of this Regulation should be clearly delimited from other legislation concerning products, such as medical devices, general laboratory products and products for research use only’ [Recitals n. 2, 7].

- EUROPEAN UNION, [Regulation \(EU\) No 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation \(EC\) No 178/2002 and Regulation \(EC\) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC](#)

‘This Regulation aims to ensure the smooth functioning of the internal market as regards medical devices, taking as a base a high level of protection of health for patients and users, and taking into account the small- and medium-sized enterprises that are active in this sector. At the same time, this Regulation sets high standards of quality and safety for medical devices in order to meet common safety concerns as regards such products’. However, ‘The scope of application of this Regulation should be clearly delimited from other Union harmonisation legislation concerning products, such as *in vitro* diagnostic medical devices, medicinal products, cosmetics and food’ [Recitals n. 2, 7].

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- EUROPEAN UNION, [Regulation \(EU\) No 282/2014 of the European Parliament and of the Council of 11 March 2014 on the establishment of a third Programme for the Union's action in the field of health \(2014-2020\) and repealing Decision No 1350/2007/EC](#)

'The health programme aims to improve Europeans' health and reduce health inequalities by complementing Member States' health policies in four ways. It is designed to: promote good health and prevent disease: here, countries would exchange information and good practices on how to deal with various risk factors such as smoking, drug and alcohol abuse, unhealthy diets and sedentary lifestyles; ensure that citizens are protected from cross-border health threats: increased international travel and trade mean that we are potentially exposed to a wider range of health threats than in the past, requiring a rapid and coordinated response; support innovation and sustainability in EU countries' health systems: the programme seeks to help capacity building in the health sector, find optimal ways of making scarce resources go further and encourage the uptake of innovations in approaches, working practices, as well as technologies; improve access to quality and safe healthcare: this means, for example, ensuring that medical expertise is available beyond national borders by encouraging the creation of networks of centres of expertise across the EU' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Commission Delegated Regulation \(EU\) No 357/2014 of 3 February 2014 supplementing Directive 2001/83/EC of the European Parliament and of the Council and Regulation \(EC\) No 726/2004 of the European Parliament and of the Council as regards situations in which post-authorisation efficacy studies may be required](#)

This Regulation authorisation decisions and post-authorisation efficacy studies for human medicinal products [Source: Recitals n. 1, 2].





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- EUROPEAN UNION, [Commission Implementing Regulation \(EU\) No 520/2012 of 19 June 2012 on the performance of pharmacovigilance activities provided for in Regulation \(EC\) No 726/2004 of the European Parliament and of the Council and Directive 2001/83/EC of the European Parliament and of the Council](#)

This Implementing Regulation concerns quality systems for the performance of pharmacovigilance system [Source: Recital n. 5].

- EUROPEAN UNION, [Commission Directive 2011/100/EU of 20 December 2011 amending Directive 98/79/EC of the European Parliament and of the Council on in-vitro diagnostic medical devices](#)

- EUROPEAN UNION, [Regulation \(EC\) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency](#)

Regulation (EC) No 726/2004 'seeks to guarantee high standards of quality and safety of medicines, and includes measures to encourage innovation and competitiveness. It sets out procedures for the authorisation and supervision of medicinal products for human and veterinary use and sets up the [European Medicines Agency](#) (EMA)' [Source: <http://eur-lex.europa.eu>].

- EUROPEAN UNION, [Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use](#)

The aim of this Directive is to bring 'together all the existing provisions in force on the sale, production, labelling, classification, distribution and advertising of medicinal products for human use in the EU' [Source: <http://eur-lex.europa.eu>].



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## COUNCIL OF EUROPE

- COUNCIL OF EUROPE, [Convention on the counterfeiting of medical products and similar crimes involving threats to public health \('MEDICRIME Convention'\) \(CETS No. 211\), Moscow, 2011](#)

'The "Medicrime Convention" is the first international criminal law instrument to oblige States Parties to criminalise: the manufacturing of counterfeit medical products; supplying, offering to supply and trafficking in counterfeit medical products; the falsification of documents; the unauthorised manufacturing or supplying of medicinal products and the placing on the market of medical devices which do not comply with conformity requirements. The Convention provides a framework for national and international co-operation across the different sectors of the public administration, measures for coordination at national level, preventive measures for use by public and private sectors and protection of victims and witnesses. Furthermore, it foresees the establishment of a monitoring body to oversee the implementation of the Convention by the States Parties' [Source: <http://www.coe.int/>].



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## ***Safety on the workplace – Protection of workers***

- EUROPEAN UNION, [Commission Recommendation \(EU\) No 2017/761 of 26 April 2017 on the European Pillar of Social Rights](#)

‘The European Pillar of Social Rights expresses principles and rights essential for fair and well-functioning labour markets and welfare systems in 21st century Europe. It reaffirms some of the rights already present in the Union *acquis*. It adds new principles which address the challenges arising from societal, technological and economic developments’ [Recital n. 14].

- EUROPEAN UNION, [Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work](#)

Directive 2009/148/EC ‘aims to protect workers against risks to their health arising from exposure to asbestos at work. It lays down exposure limits and specific requirements with regard to safe work practices, including in respect of: demolition, repairing, maintenance and asbestos removal work; information, consultation and training of workers; health monitoring’. Eu-wide there is a general ban of asbestos: ‘the only exception from this prohibition is the treatment and disposal of products resulting from demolition and asbestos removal’. [Source: <http://eur-lex.europa.eu>]

- EUROPEAN COMMUNITIES, [Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work](#)

Directive 89/931/ECC ‘introduces measures to improve the health and safety of people at work. It sets out obligations for both employers and employees to reduce accidents and occupational disease in the workplace. The directive applies to all sectors of public and private activity (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure and others)’. It stipulates that employees have, among others, the following duties: ‘to ensure the health and safety of their workforce (this includes evaluating and

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avoiding risks, developing an overall safety policy and providing appropriate training to staff); (...) to assess the risks particular workers might face and ensure the necessary protective measures are in place; provide employees and/or their representatives with all relevant information on possible health and safety risks and the measures taken to prevent them'. [Source: <http://eur-lex.europa.eu>]





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### ***Action for damages (infringements of the competition law provisions)***

- EUROPEAN UNION, [Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union](#)

Directive 2014/104/EU 'lays down new rules allowing firms that are victims of cartel or antitrust violations to be compensated for damages. It also seeks to make leniency programmes more efficient (i.e. cases where firms that admit their involvement in a cartel or abuses of dominant market positions pay a reduced fine or are given immunity)' [Source: <http://eur-lex.europa.eu>].



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## (D) – BUSINESS & HUMAN RIGHTS

- UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, [Human Rights Resolution 2005/69, UN Doc. E/CN.4/RES/2005/69, 20 April 2005](#)

With Resolution 2005/69, the UN Commission on Human Rights requested “Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises”.

- ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), [OECD Guidelines for Multinational Enterprises, OECD, Paris, adopted in 1976 revised in 2011](#)

The OECD Guidelines for Multinational Enterprises form part of the 1976 OECD Declaration on International Investment and Multinational Enterprises, a policy commitment by adhering governments to provide an ‘open and transparent environment’ for international investment, encouraging the positive contribution of MNEs to economic and social progress. Nowadays, the Guidelines are a leading international instrument for the promotion of responsible business conduct. Observance of the Guidelines is voluntary, yet adhering governments should establish National Contact Points with the task to promote the Guidelines, to act as a forum for discussion and to remediate in case of conflict.

- UNITED NATIONS - HUMAN RIGHTS COUNCIL, [Protect, Respect and Remedy: a framework for business and human rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/8/5, 7 April 2008](#)

The Special Representative on the issue of human rights and transnational corporations and other business enterprises - Prof. Ruggie - proposed a policy

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framework comprising three core principles: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and the need for greater access by victims to effective remedies, judicial and non-judicial.

- UNITED NATIONS - HUMAN RIGHTS COUNCIL, [Human Rights Resolution 8/7, UN Doc. A/HRC/RES/8/7, 18 June 2008](#)

With Resolution 8/7, the Human Rights Council renewed the Special Representative's mandate for a period of three years until June 2011 for the purpose of operationalizing the 2008 Protect, Respect and Remedy Framework.

- UNITED NATIONS - HUMAN RIGHTS COUNCIL, [Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Business and human rights: further steps toward the operationalization of the protect, respect and remedy framework, UN Doc. A/HRC/14/27, 9 April 2010](#)

The report builds further on the Protect, Respect and Remedy Framework, summarizing the current knowledge on the three pillars and providing for synergies among them, pointing towards the guiding principles that will constitute the mandate's final product.

- UNITED NATIONS - HUMAN RIGHTS COUNCIL, [Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc. A/HRC/17/31, 21 March 2011](#)

The final report of the Special Representative presents the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" for consideration by the Human Rights Council.

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- UNITED NATIONS - HUMAN RIGHTS COUNCIL, [Resolution 17/4, UN Doc. A/HRC/RES/17/4, 6 July 2011](#)

With Resolution 17/4 of 16 June 2011, the Human Rights Council endorsed the Guiding Principles and established a Working Group on the issue of human rights and transnational corporations and other business enterprises.

- UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, [Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework, OHCHR, New York - Geneva, 2011](#)

The publication contains the Guiding Principles on Business and Human Rights providing for extensive commentary under each principle.

- EUROPEAN COMMISSION, [Communication from the Commission to the Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: a renewed EU strategy 2011-2014 on corporate social responsibility, COM\(2011\) 681, Brussels, 2011,](#)

It is the main EU policy addressing the implementation of the Guiding Principles. Particularly, improving the coherence of EU policies with the UN Guiding Principles through National Action Plans is seen as a critical challenge.

- UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, [The Corporate Responsibility to Respect Human Rights. An Interpretative Guide, OHCHR, New York - Geneva, 2012](#)

The Interpretive Guide provides further explanation of the Guiding Principles that relate to the corporate responsibility to respect human rights.



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- COUNCIL OF THE EUROPEAN UNION, [EU Strategic Framework and Action Plan on Human Rights and Democracy, Council of the EU, Luxembourg, 2012, 11855/12](#)

With its Strategic Framework and Action Plan on Human Rights and Democracy, the Council of EU pledged its full support to the Guiding Principles.

- EUROPEAN UNION, [United Nations Human Rights Council - Forum On Business And Human Rights 3-4 December 2013, EU, Geneva, 2013](#)

During the 2013 Forum on Business and Human Rights, the EU reiterated its commitment to the implementation of the Guiding Principles.

- UNITED NATIONS - HUMAN RIGHTS COUNCIL, [Resolution 26/22, UN Doc. A/HRC/RES/26/22, 15 July 2014](#)

With Resolution 26/22, the Human Rights Council mandated further work on exploring “the full range of legal options and practical measures to improve access to remedy for victims of business-related human right abuses”.

- UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, [Frequently Asked Questions about the Guiding Principles on Business and Human Rights, OHCHR, New York - Geneva, 2014](#)

The publication with frequently asked questions (FAQs) is not intended as operational guidance, rather it aims to explain the background and the contents of the Guiding Principles and how they relate to the broader human rights system and other frameworks.

- EUROPEAN COMMISSION, [Commission Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights - State of Play, SDW\(2015\) 144 final, European Commission, Brussels, 14 July 2015](#)

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The Document reinforces the EU's commitment to the UNGPs by presenting the EU's activities in implementing the UNGPs and promoting progress in the area of business and human rights.

- UNITED NATIONS HUMAN RIGHTS COUNCIL, [Improving accountability and access to remedy for victims of business-related human rights abuse. Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/32/19, 10 May 2016](#)

The report sets out guidance to improve accountability and access to remedy for victims of business-related human rights abuses, following the Accountability and Remedy Project of the Office of the United Nations High Commissioner for Human Rights and in response to the request by the Human Rights Council in its Resolution 26/22.

- COUNCIL OF THE EUROPEAN UNION, [Council Conclusions on Business and Human Rights, Doc. 10254/16, Council of the EU, Brussels, 20 June 2016](#)

The Council reaffirmed the EU strong and active engagement to prevent abuses and ensure remedy, through the UNGP's implementation. In particular, the Council requested the EU Fundamental Rights Agency to "*issue an expert opinion on possible avenues to lower barriers for access to remedy at the EU level, taking into account existing EU legal instruments and competences at EU and Member States' levels*".

- EU AGENCY FOR FUNDAMENTAL RIGHTS, [FRA Opinion - 1/2017, FRA, Vienna, 10 April 2017](#)

The EU Fundamental Rights Agency (FRA) was explicitly requested by the Council of the EU to draft an Opinion on "*possible avenues to lower barriers for access to remedy* [in the context of business-related human rights abuse]

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at the EU level, taking into account existing EU legal instruments and competences at EU and Member States' levels". Identifying and lowering barriers to access to remedy (Article 47, EU Charter) is understood as a precondition for victims of business-related human rights abuse to see their rights realised. The Opinion covers the area of judicial and non-judicial remedies and their effective implementation. With regards to judicial remedies, interestingly both civil justice and criminal law cases are reviewed, addressing adverse human rights impacts both within and outside the EU. The rationale is that the EU internal market would be strengthened by establishing a more accessible and uniform system of remedies, providing a level-playing field for businesses and more accessible avenues for victims to access justice.

- **UNITED NATIONS - COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, [General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc. E/C.12/GC/24, 23 June 2017](#)**

The General Comment seeks to clarify the duties of States parties to the Covenant with a view to preventing and addressing the adverse impacts of business activities on human rights. For the purposes of this project see in particular: section IV) 'Remedies' and section V) 'Implementation'.



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## (E) – RIGHTS OF SUSPECTS AND ACCUSED PERSONS (European Union)

‘The EU works towards achieving common minimum standards of procedural rights in criminal proceedings to ensure that the basic rights of suspects and accused persons are protected sufficiently’ [Source: ec.europa.eu].

More information, list relevant legal documents and summary of legislation, [here](#):

- **European Convention on Human Rights**  
See especially Articles 5, 6, 7.
- **EUROPEAN UNION, Charter of fundamental rights of the European Union**  
Especially Chapter VI – Justice: Articles 47-50 (Right to an effective remedy; fair trial; presumption of innocence; right of defence; principle of legality; principle of proportionality; double jeopardy).
- **EUROPEAN UNION, [Directive \(EU\) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings](#)**  
The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer as provided for under Directive 2013/48/EU of the European Parliament and of the Council (3) by making available the assistance of a lawyer funded by the Member States for suspects and accused persons in criminal proceedings and for requested persons who are the subject of European arrest warrant proceedings pursuant to Council Framework Decision 2002/584/JHA (4) (requested persons).



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- EUROPEAN UNION, [Directive \(EU\) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#)

The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.

- EUROPEAN UNION, [Directive \(EU\) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings](#)

The Directive 'aims to guarantee: the presumption of innocence of anyone accused or suspected of a crime by the police or justice authorities; the right of an accused person to be present at their criminal trial'. 'The directive applies to any individual (natural person) suspected or accused in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment a person is suspected or accused of having committed a criminal offence to the final verdict.' [Source: eur-lex.europa.eu]

- EUROPEAN UNION, [Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty](#)

'This European Union (EU) law ensures that suspects and accused persons in criminal proceedings and requested persons in European arrest warrant proceedings (hereafter 'citizens') have access to a lawyer and have the right to communicate while deprived of liberty'. [Source: eur-lex.europa.eu]



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- **EUROPEAN UNION, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings**

‘The directive sets out minimum standards for all EU countries regardless of a person’s legal status, citizenship or nationality. It is designed to help prevent miscarriages of justice and reduce the number of appeals’. [Source: eur-lex.europa.eu]

- **EUROPEAN UNION, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings**

‘It establishes minimum EU-wide rules on the right to interpretation and translation in criminal proceedings and in proceedings for the execution of the European Arrest Warrant. It is the first step in series of measures to establish minimum rules for procedural rights across the EU in accordance with a 2009 roadmap. It was followed in 2012 by the directive on the right to information in criminal proceedings’. [Source: eur-lex.europa.eu]

- **EUROPEAN UNION, Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision**

Council Framework Decision 2002/584/JHA ‘improves and simplifies judicial procedures to speed up the return of people from another EU country who have committed a serious crime. (...) The European arrest warrant replaces the extradition system. It requires each national judicial authority to recognise and act on, with a minimum of formalities and within a set deadline, requests made by the judicial authority of another EU country. (...) The warrant applies in the following cases: offences punishable by imprisonment or a detention order for a maximum period of at least 1 year; where a final custodial sentence has been passed or a detention order has been made, for sentences of at least 4 months. Proportionate use of the warrant: EU countries must

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take the following into consideration (non-exhaustive list): the circumstances and the gravity of the offence; the likely sentence; less coercive alternative measures. [Source: eur-lex.europa.eu]

See also:

- EUROPEAN UNION, EUROPEAN COMMISSION, ***GREEN PAPER Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM (2011) 327, 14 June 2011***
- EUROPEAN COUNCIL, The [Stockholm Programme](#) – *An open and secure Europe serving and protecting citizens (2010/C 115/01)*
- EUROPEAN COMMISSION, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 – Delivering an area of freedom, security and justice for Europe’s citizens – Action Plan Implementing the Stockholm Programme \[COM\(2010\) 171 final\]](#)



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## Part II

### Court of Justice of the European Union

### Selected Case Law Concerning Victims of Crime

#### Related links

<http://curia.europa.eu>  
<http://eur-lex.europa.eu>

- [CJEU - Case C-484/16, Semeraro, 8 September 2016](#)

Criminal proceedings against Antonio Semeraro

Reference for a preliminary ruling: Giudice di Pace di Taranto – Italy Manifest inadmissibility (Article 53, para. 2, Rules of Procedure of the Court of Justice) - **lack of connection with EU law**

Judicial cooperation in criminal matters - Directive 2012/29/EU - The Charter of Fundamental Rights of the European Union - insult Repeal of the crime by the national legislator.

- [CJEU - Case C-79/11, Giovanardi, 12 July 2012](#)

Judgment of the Court (Second Chamber) of 12 July 2012. Criminal proceedings against Maurizio Giovanardi and Others. Reference for a preliminary ruling: Tribunale di Firenze - Italy.

Police and judicial cooperation in criminal matters - Framework Decision 2001/220/JHA - Standing of victims in criminal proceedings - Directive 2004/80/EC - Compensation to victims of crime - **Liability of a legal person** - Compensation in criminal proceedings.

- [CJEU - Case C-507/10J, X, 21 December 2011](#)

Judgment of the Court (Second Chamber) of 21 December 2011.

Criminal proceedings against X.

Reference for a preliminary ruling: Tribunale di Firenze - Italy.

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Police and judicial cooperation in criminal matters - Framework Decision 2001/220/JHA - Standing of victims in criminal proceedings - **Protection of vulnerable persons** - Hearing of minors as witnesses - Special measure for early taking of evidence - Refusal by the Public Prosecutor to request the judge in charge of preliminary investigations to hear a witness.

- [CJEU - Joined cases C-483/09 and C-1/10, Gueye – Sanchez, 15 September 2011](#)

Judgment of the Court (Fourth Chamber) of 15 September 2011. Criminal proceedings against Magatte Gueye (C-483/09) and Valentín Salmerón Sánchez (C-1/10).

References for a preliminary ruling: Audiencia provincial de Tarragona - Spain. Police and judicial cooperation in criminal matters - Framework Decision 2001/220/JHA - Standing of victims in criminal proceedings - Domestic crimes - Obligation to impose as an ancillary penalty an injunction prohibiting the offender from approaching the victim of the offence - **Choice of forms of penalty and level of penalty** - Compatibility with Articles 2, 3 and 8 of the Framework Decision - Provision of national law excluding mediation in criminal cases - Compatibility with Article 10 of the Framework Decision.

- [CJEU - Case C-205/09, Eredics – Sági, 21 October 2010](#)

Judgment of the Court (Second Chamber) of 21 October 2010. Criminal proceedings against Emil Eredics and Mária Vassné Sági. Reference for a preliminary ruling: Szombathelyi Városi Bíróság - Hungary.

Police and judicial cooperation in criminal matters - Framework Decision 2001/220/JHA - Standing of victims in criminal proceedings - **Meaning of 'victim'** - **Legal persons** - Mediation in criminal proceedings - Detailed rules of application.

- [CJEU - Case C-404/07, Katz v Sós, 9 October 2008](#)

Judgment of the Court (Third Chamber) of 9 October 2008. György Katz v István Roland Sós.

Reference for a preliminary ruling: Fővárosi Bíróság - Hungary.



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Police and judicial cooperation in criminal matters - Framework Decision 2001/220/JHA - Standing of victims in criminal proceedings - Private prosecutor in substitution for the public prosecutor - **Testimony of the victim as a witness.**

- [CJEU – Case C-164/07, Wood v Fonds de garantie des victimes des actes de terrorisme et d’autres infractions, 5 June 2008](#)

Judgment of the Court (Second Chamber) of 5 June 2008.

James Wood v Fonds de garantie des victimes des actes de terrorisme et d’autres infractions.

Reference for a preliminary ruling: Commission d’indemnisation des victimes d’infractions du tribunal de grande instance de Nantes - France.

Article 12 EC - **Discrimination on grounds of nationality - Compensation** awarded by the Fonds de garantie des victimes des actes de terrorisme et d’autres infractions - Not included.

- [CJEU - Case C-467/05, Dell’Orto, 28 June 2007](#)

Judgment of the Court (Third Chamber) of 28 June 2007. Criminal proceedings against Giovanni Dell’Orto.

Reference for a preliminary ruling: Tribunale di Milano - Italy.

Police and judicial cooperation in criminal matters - Framework Decision 2001/220/JHA - Directive 2004/80/EC- **Concept of ‘victim’ in criminal proceedings - Legal person** - Return of property seized in the course of criminal proceedings.

- [CJEU - Case C-105/03, Pupino, 16 June 2005](#)

Judgment of the Court (Grand Chamber) of 16 June 2005.

Criminal proceedings against Maria Pupino.

Reference for a preliminary ruling: Tribunale di Firenze - Italy.

Police and judicial cooperation in criminal matters - Articles 34 EU and 35 EU - Framework Decision 2001/220/JHA - Standing of victims in criminal proceedings - **Protection of vulnerable persons** - Hearing of minors as witnesses - **Effects of a framework decision.**



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- [CJEU – Case 186/87, Cowan v Trésor public, 2 February 1989](#)

Judgment of the Court of 2 February 1989.

Ian William Cowan v Trésor public.

Reference for a preliminary ruling: Tribunal de grande instance de Paris - France.

Tourists as recipients of services - **Right to compensation** following an assault – State compensation for victim of an assault – **Prohibition of discrimination** on grounds of nationality

***Directive 2004/80/EC - Failure to transpose, failure to fulfil***

- [CJEU - Case C-601/14, European Commission v Italian Republic, 11 October 2016](#)

Judgment of the Court (Grand Chamber) of 11 October 2016.

European Commission v Italian Republic.

**Failure** of a Member State **to fulfil obligations** — **Directive 2004/80/EC** — Article 12(2) — **National compensation schemes** for victims of violent intentional crime guaranteeing fair and appropriate compensation — National scheme not covering all violent intentional crimes committed on the national territory.

- [CJEU - Case C-112/07, Commission of the European Communities v Italian Republic, 29 November 2007](#)

Judgment of the Court (Fifth Chamber) of 29 November 2007.

Commission of the European Communities v Italian Republic.

Failure of a Member State to fulfil obligations - **Directive 2004/80/EC** - Police and judicial cooperation in criminal matters - **Compensation to crime victims** - **Failure to transpose** within the prescribed period.

- [CJEU - Case C-26/07, Commission of the European Communities v Hellenic Republic, 18 July 2007](#)

Judgment of the Court (Sixth Chamber) of 18 July 2007.

Commission of the European Communities v Hellenic Republic.

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# VICTIMS AND CORPORATIONS

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

## I bisogni delle vittime di *corporate violence*: risultati della ricerca empirica in Italia

Marzo 2017

Edizione in lingua italiana - agosto 2017



UNIVERSITÀ CATTOLICA del Sacro Cuore  
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Questo documento riassuntivo dei risultati della ricerca empirica qualitativa sui bisogni delle vittime di *corporate violence* costituisce uno dei frutti del progetto *Victims and Corporations. Implementation of Directive 2012/29/EU for Victims of Corporate Crimes and Corporate Violence*, finanziato dal programma “Giustizia” dell’Unione Europea (Agreement number - JUST/2014/JACC/AG/VICT/7417)

**Coordinamento:**

Gabrio Forti (direttore del progetto) e (in ordine alfabetico) Stefania Giavazzi, Claudia Mazzucato, Arianna Visconti  
Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale

**Partners del progetto:**

Leuven Institute of Criminology, Catholic University of Leuven  
Max-Planck-Institut für ausländisches und internationales Strafrecht

**Gruppo di ricerca:**

Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Carolin Hillemanns, Katrien Lauwaert, Stefano Manacorda, Enrico Maria Mancuso

**Sito web:**

[www.victimsandcorporations.eu](http://www.victimsandcorporations.eu)

Questo documento è stato realizzato col sostegno finanziario del programma “Giustizia” dell’Unione Europea. La responsabilità dei contenuti dell’opera è da imputarsi interamente ai suoi autori, e tali contenuti non possono in alcun modo essere intesi come espressione della posizione e delle opinioni della Commissione Europea.

Versione originale in lingua inglese di Stefania Giavazzi (§§ 2, 3.6.4, 3.6.4.1, 3.6.4.2, 3.6.4.3, 3.6.4.4, 3.6.4.5, 3.6.4.6, 3.6.4.7),  
Claudia Mazzucato (§§ 1, 3, 3.1, 3.6, 3.6.1, 3.7, 3.7.1, 3.7.2, 3.7.2.1, 3.8) e Arianna Visconti (§§ 3.2, 3.3, 3.4, 3.5, 3.5.1, 3.5.2,  
3.5.3, 3.5.4, 3.6.2, 3.6.3, 3.6.5, 3.6.6, 3.6.7, 3.6.8).

Codifica dei dati a opera di Eliana Greco e Marta Lamanuzzi.

Traduzione italiana di Eliana Greco (§§ 1, 2, 3.1, 3.2, 3.3, 3.4) e Marta Lamanuzzi (§§ 3.5, 3.6, 3.7, 3.8).

Premessa ed editing di Arianna Visconti

Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica Criminale, Milano, 2017

**ISBN 978-88-942229-8-2**

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Questo progetto è cofinanziato  
dal programma “Giustizia”  
della Commissione Europea



**“VICTIMS AND CORPORATIONS”**

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di *corporate violence*:  
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Testo originale in lingua inglese di  
Stefania Giavazzi, Claudia Mazzucato e Arianna Visconti

Codifica dei dati a opera di  
Elia Greco e Marta Lamanuzzi

Interviste e moderazione dei *focus group*: Claudia Mazzucato  
Assistenza: Stefania Giavazzi, Alessandro Provera, Arianna Visconti

Traduzione italiana di Elia Greco e Marta Lamanuzzi

Agosto 2017



## **RINGRAZIAMENTI**

Questo rapporto di ricerca dedicato ai *Bisogni delle vittime di corporate violence* è uno dei frutti di un grande sforzo collettivo.

Desideriamo quindi ringraziare tutti i membri del gruppo di ricerca e di coordinamento che hanno partecipato alla ricerca teorica e pratica del progetto 'Victims and Corporations. Implementation of Directive 2012/29/EU for victims of corporate crime and corporate violence' e hanno così reso possibile la redazione di questo documento: Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Gabrio Forti, Stefania Giavazzi, Carolin Hillemanns, Katrien Lauwaert, Stefano Manacorda, Enrico Maria Mancuso, Claudia Mazzucato, Alexandra Schenk e Arianna Visconti.

Soprattutto, però, vogliamo esprimere il nostro più sentito ringraziamento a tutte le vittime che hanno scelto di condividere con noi le loro storie, come pure ai professionisti che ci hanno permesso di imparare dalla loro esperienza di contatto e lavoro con le vittime, nelle interviste e nei *focus group* alla base della ricerca empirica. Senza la generosità e collaborazione di tutti loro, la redazione di questo documento non sarebbe stata possibile.



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## PREMESSA

La **Direttiva 2012/29/UE** reca in sé il potenziale per innescare grandi cambiamenti negli ordinamenti penali, sostanziali e processuali, dei Paesi membri dell'Unione. La Direttiva introduce, infatti, un insieme di **norme minime in materia di diritti, assistenza e protezione delle vittime di reato** e di partecipazione di queste al procedimento penale, senza pregiudizio per i diritti dell'autore del reato (inteso, ai sensi della Direttiva, non solo come soggetto condannato per un fatto penalmente rilevante, ma anche come indagato e imputato: cons. 12).

Tra i soggetti che ricadono nella definizione di 'vittima' della (e dunque possono beneficiare delle innovazioni introdotte dalla) Direttiva, tuttavia, vi è un **gruppo molto numeroso** che per lo più non viene considerato in questi termini, e il cui effettivo accesso alla giustizia rischia dunque di essere particolarmente difficoltoso. Si tratta delle vittime dei *corporate crimes*, e più specificamente delle **vittime di corporate violence**, ovvero di quei **reati commessi da società commerciali nel corso della loro attività legittima e implicanti offese alla vita, all'integrità fisica o alla salute delle persone**.

Nel corso delle fasi precedenti della ricerca (di cui il lettore potrà trovare una sintesi nel primo *report* di progetto, *Rights of Victims, Challenges for Corporations*, dicembre 2016, disponibile sul sito <http://www.victimsandcorporations.eu/publications/>), è emerso chiaramente come la *corporate violence* sia **altrettanto o più diffusa di altre forme di criminalità violenta 'convenzionale'**. Inoltre, questo tipo di vittimizzazione appare avere natura per lo più collettiva e assai spesso transnazionale, e si deve considerare che il numero di vittime sembra destinato a crescere drammaticamente nei prossimi anni (con gli immaginabili, correlati complessi problemi sia di identificazione delle persone offese, sia di gestione del relativo carico processuale da parte dell'amministrazione della giustizia), anche in ragione dei periodi di latenza spesso molto lunghi tipici dei danni derivanti dall'esposizione a sostanze tossiche (v. §§ 3.2, 3.3 e 3.4).

Il progetto 'Victims and Corporations. Implementation of Directive 2012/29/EU for victims of corporate crime and corporate violence' si concentra in particolare su tre tipologie di 'vittimizzazione d'impresa': reati ambientali, violazioni delle norme sulla sicurezza alimentare e reati legati al settore farmaceutico-medicale. Per questa ragione, larga parte dei **dati empirici** raccolti, che hanno fornito le basi per la redazione di questo rapporto di ricerca, provengono da **interviste** con vittime di questa

tipologia di reati e, più specificamente, di **reati contro l'ambiente** e **reati legati alla commercializzazione di farmaci difettosi**. Tuttavia, data la complessità intrinseca di ogni episodio di *corporate crime*, nel nostro lavoro abbiamo riscontrato spesso l'intrecciarsi, ad esempio, di **illeciti relativi al settore della salute e sicurezza sul lavoro** con le altre tipologie di reati d'impresa che abbiamo potuto analizzare.

Più in generale, come già accennato, le fasi più empiriche e 'operative' del progetto sono state precedute da un ampio e approfondito studio interdisciplinare (i cui esiti sono riassunti nel citato *report*) di ricognizione del panorama sia giuridico che criminologico e vittimologico nazionale (nei tre paesi coinvolti), comunitario e internazionale. Partendo dai risultati di tale analisi preliminare è stata organizzata una serie di **interviste e focus group** con vittime di *corporate violence* e con esperti chiamati a confrontarsi, per motivi professionali, con questa tipologia di reati e di persone offese. Tali interviste e *focus group* ci hanno consentito di raccogliere informazioni preziose sui **bisogni delle vittime di corporate violence** (§ 3.5); informazioni a loro volta indispensabili per orientare quella delicata operazione di «**valutazione individuale delle vittime per individuarne le specifiche esigenze di protezione**» (ora oggetto di specifiche *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence*, pure disponibili sul sito <http://www.victimsandcorporations.eu/publications/>) che l'art. 22 della Direttiva introduce come dovere primario ed essenziale nel contatto con vittime di reato. Informazioni, inoltre, che gettano luce sul complesso insieme di **specifici problemi e criticità** che questa tipologia di vittime incontra **nell'accedere al sistema della giustizia (penale e non solo), a servizi di assistenza e supporto e a forme di compensazione** (§ 3.6).

Come illustrato nel § 1.2, in ragione dell'estrema delicatezza e sensibilità dei dati e delle vicende delle vittime coinvolte nella ricerca, l'esecuzione delle interviste e dei *focus group* è stata preceduta dalla predisposizione di un insieme di **linee guida etiche** (ad opera di *Claudia Mazzucato*), onde assicurare che questi venissero realizzati nel massimo rispetto per la dignità, la libertà morale, la riservatezza e gli specifici bisogni di tutte le persone coinvolte. Sulla base dei risultati della precedente ricerca teorica, sono inoltre state predisposte (da *Katrien Lauwaert* e *Claudia Mazzucato*) delle **linee guida per la conduzione delle interviste e dei focus group**, a supporto e orientamento della fase di ricerca 'sul campo' nei tre Paesi coinvolti (Italia, Germania e Belgio). La **ricerca qualitativa** svolta nel nostro Paese ha condotto, in seguito all'**analisi** delle informazioni raccolte (sulla base di un *coding tree* predisposto da *Katrien Lauwaert* e *Alexandra Schenk*; matrice di codifica per i dati italiani di *Arianna Visconti*; codifica delle informazioni a opera di *Eliana Greco* e *Marta Lamanuzzi*), alla redazione del presente rapporto di ricerca, che illustra i risultati di un

complesso di **9 interviste individuali** e **3 focus group** (interviste e moderazione dei *focus group* a opera di *Claudia Mazzucato*, con l'assistenza di *Stefania Giavazzi*, *Alessandro Provera* e *Arianna Visconti*)<sup>1</sup>. Tra i professionisti che hanno accettato di partecipare a interviste e *focus group* figurano magistrati giudicanti e requirenti, avvocati, medici e sindacalisti; alcune delle vittime intervistate hanno portato anche la loro esperienza di persone attive nell'ambito di associazioni di vittime (che, come il lettore potrà constatare nel § 3.7, nel nostro Paese rappresentano allo stato la principale fonte di sostegno alle vittime di *corporate violence*, a causa della mancanza di quei servizi di assistenza alle vittime che sono in verità previsti all'art. 8 della Direttiva).

La ricerca empirica ha confermato che le vittime di *corporate violence* sperimentano un estremo bisogno di ricevere (citando l'art. 1 della Direttiva) «informazione, assistenza e protezione adeguate» e di essere messe in grado di «partecipare ai procedimenti penali», giacché si rivelano essere un'ulteriore categoria – che va ad aggiungersi alle 'tradizionali' vittime di violenza domestica, abusi, traffico di esseri umani, terrorismo ecc. – di **oggetti estremamente vulnerabili**, anche (e spesso in ampia misura) perché frequentemente non vengono considerate, nel sentire comune ma anche da se stesse, come 'vittime di reato' (si vedano in particolare i §§ 3.6.2 e 3.6.3).

Questo rapporto di ricerca costituisce dunque, unitamente alle omologhe analisi condotte in Belgio e Germania, la base per fornire a tutti i **professionisti coinvolti nel contatto con, e nell'assistenza a, vittime di corporate violence** un insieme di *Linee guida* (v. *supra*) che li aiutino a meglio comprendere e valutare individualmente i **bisogni** di questa tipologia di vittime, nonché per una serie di altre **linee guida specifiche per professionisti ed imprese** (in parte già pubblicate, in parte di prossima pubblicazione sul sito <http://www.victimsandcorporations.eu/publications/>), con lo scopo di mettere a disposizione della collettività ulteriori strumenti, sempre più mirati ed efficaci, per un'effettiva applicazione della Direttiva 2012/29/UE alle vittime di *corporate crime* e *corporate violence*.

Per aggiornamenti sui prossimi risultati e attività del progetto, consultate il nostro sito internet: [www.victimsandcorporations.eu](http://www.victimsandcorporations.eu). Grazie!

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<sup>1</sup> Il gruppo di ricerca italiano desidera ringraziare altresì Elena Agatensi, Davide Amato, Pierpaolo Astorina, Davide Canzano, Marina Di Lello, Eliana Greco, Carlo Novik, Alessandro Provera, Eliana Romanelli e Marco Trinchieri per l'aiuto prestato nella trascrizione delle interviste e dei *focus group*, oltre ad Alberto Redighieri per il supporto tecnico nella registrazione delle stesse.



## 1.

### METODOLOGIA

#### **1.1. L'approccio nazionale alla ricerca empirica**

Conformemente agli obiettivi del progetto, è stata condotta in Italia una ricerca qualitativa sui bisogni delle vittime di *corporate violence*. L'indagine empirica è consistita in 12 fra interviste individuali e *focus group* (come descritti in seguito) e nell'analisi qualitativa dei dati così raccolti secondo la metodologia definita per il progetto e seguita uniformemente in tutti i Paesi coinvolti nella ricerca.

Il gruppo italiano di ricerca ha inteso la ricerca qualitativa come un'opportunità unica per esplorare il campo di indagine oggetto del progetto, dopo aver concluso una fase di approfondito studio sia della letteratura sia della giurisprudenza in materia. Le interviste e i *focus group* hanno consentito allo staff di progetto di entrare in diretto contatto con le esperienze individuali e collettive di alcune delle molte vittime italiane della *corporate violence* e di ascoltare il parere esperto e i punti di vista di professionisti che, a vario titolo, hanno avuto a che fare con vittime di *corporate violence* (giudici, pubblici ministeri, avvocati, medici, rappresentanti di organizzazioni sindacali e di associazioni di vittime).

Lo staff ha cercato di avvicinare le vittime dei casi italiani più significativi, definiti o meno con sentenze penali. La reazione delle vittime, delle associazioni di vittime e dei professionisti con cui i ricercatori hanno interagito è stata estremamente positiva. La disponibilità e la collaborazione di queste persone è stata notevole. Tuttavia, l'obiettivo di raggiungere le vittime di tutti i più importanti casi nazionali di *corporate violence* è stato raggiunto parzialmente: alcuni ostacoli pratici (quali la tempistica serrata del progetto e l'elevato numero di persone coinvolte) hanno impedito allo staff di incontrare, nei tempi prescritti, tutti i potenziali soggetti interessati distribuiti sull'intero territorio nazionale. Nondimeno le interviste e i *focus group* hanno raccolto la voce delle vittime e delle associazioni di vittime coinvolte in alcuni dei casi più rilevanti ai fini di questo studio, nonché l'esperienza di taluni dei professionisti più qualificati per il campo dell'indagine.

#### **1.2. Profili etici**

La partecipazione alle interviste e ai *focus group* è avvenuta su base totalmente volontaria, previa completa informazione sugli obiettivi e la

portata del progetto e della ricerca, ed è stata subordinata al consenso scritto e informato di ogni partecipante.

Particolare attenzione è stata costantemente prestata alle modalità di interazione, contatto, informazione, intervista e *follow-up* delle vittime. Nessuna vittima è stata contattata senza il 'filtro' preliminare di una persona con funzioni di contatto o supporto (un membro di un'associazione di vittime, un avvocato di fiducia, ecc.). È stata data notevole importanza agli aspetti etici e giuridici relativi alla *privacy*, al rispetto della dignità delle vittime, alla prevenzione della vittimizzazione secondaria e ripetuta. Il gruppo di ricerca italiano si è attenuto rigorosamente alle linee guida etiche appositamente elaborate per il progetto. Per l'intera durata della ricerca, il personale del progetto si è impegnato per assicurare un'interazione rispettosa, riservata ed empatica con tutti i soggetti coinvolti. Le risposte ricevute dai partecipanti nell'ambito di informali *follow-up* sono state rassicuranti a tale riguardo: la quasi totalità degli intervistati e dei partecipanti ai *focus group* ha riferito che la partecipazione alle attività ha costituito un'esperienza positiva e una forma di riconoscimento.

Le questioni etiche relative alla protezione dei dati personali sono state trattate in conformità alla normativa nazionale e, in particolare, al *Codice di deontologia e di buona condotta per i trattamenti di dati personali a scopi statistici e di ricerca scientifica effettuati nell'ambito del Sistema Statistico Nazionale* (Allegato n. 3 al c.d. Codice della privacy). Il principio della minimizzazione dei dati personali ha guidato costantemente il personale del progetto nel corso delle attività di trascrizione e codifica dei dati.

### **1.3. Attività di ricerca**

#### **1.3.1. Interviste**

Sono state svolte 9 interviste semi-strutturate, faccia a faccia, individuali. Le interviste hanno visto coinvolti: 3 vittime<sup>2</sup>, un familiare<sup>3</sup> (figlia) di una vittima deceduta, 2 rappresentanti sindacali, membri attivi di un'associazione di vittime indirettamente interessati dal danno collettivo causato dal *corporate crime*, 3 professionisti (1 medico, 1 ex pubblico ministero, 1 avvocato). In totale hanno partecipato alle interviste 7 uomini e 2 donne. L'età media degli intervistati è 60 anni. L'intervistato più giovane è un medico di 44 anni, il più anziano un magistrato di 76 anni. L'età delle vittime intervistate va da 50 a 74 anni. La durata media delle interviste è di 1 ora e 45 minuti circa (durata minima: 83 minuti; durata massima: 2 ore e mezza). Le interviste si sono svolte dal luglio 2016 fino al gennaio 2017.

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<sup>2</sup> Come definite dall'art. 2 Direttiva 2012/29/UE.

<sup>3</sup> Come definito dall'art. 2 Direttiva 2012/29/UE.

Le interviste si sono tenute in luoghi raccolti, riservati, idonei a mettere l'intervistato a proprio agio, scelti di comune accordo da intervistati e ricercatori, e precisamente: a) spazi siti all'interno dell'Università Cattolica; b) spazi messi a disposizione da associazioni di vittime; c) luoghi di lavoro dei professionisti intervistati.

Tutte le interviste sono state condotte dalla stessa intervistatrice, una ricercatrice senior con specifica esperienza, appartenente allo staff di progetto e incaricata del coordinamento della ricerca empirica. Gli altri ricercatori senior dello staff di progetto e un ricercatore più giovane, appartenente all'ente coordinatore del progetto, hanno preso parte alle interviste, alternandosi in qualità di assistenti e apportando un punto di vista 'esterno', così da consentire una miglior valutazione delle questioni rilevanti e dei temi più importanti emersi durante le interviste.

### *1.3.2. Focus group*

Sono stati condotti tre *focus group*. Si sono tenuti nell'ottobre 2016, nel gennaio 2017 e nel febbraio 2017, e ciascuno ha coinvolto un piccolo gruppo di persone.

È stato seguito il modello di *focus group* con un solo moderatore. Lo stesso moderatore ha condotto i tre *focus group*. Si sono alternati come assistenti del moderatore membri dello staff di progetto e ricercatori dell'ente coordinatore del progetto.

Complessivamente, 16 persone – 9 uomini e 7 donne – sono state coinvolte nei tre *focus group*. Due *focus group* hanno coinvolto vittime<sup>4</sup> (o principalmente vittime: il familiare di una vittima e un avvocato hanno preso parte a uno degli incontri); un *focus group* ha coinvolto una pluralità di professionisti (un giudice, un pubblico ministero, un medico). La scelta delle vittime è avvenuta in base a un criterio 'casistico', raccogliendo persone che avevano subito la vittimizzazione nell'ambito delle stesse circostanze. La scelta del gruppo di professionisti, invece, si è fondata su criteri basati su: riconosciuta competenza, diretta esperienza e/o approfondita conoscenza delle questioni sollevate dai principali casi italiani di *corporate violence*.

Per quanto concerne l'età degli intervistati, la vittima più giovane che ha preso parte ai *focus group* ha 43 anni, la più anziana 78. Sono entrambe familiari di persone decedute. Tutte le vittime del *focus group* relativo al caso Talidomide hanno pressoché la stessa età (54-57 anni), in ragione del fatto che il farmaco teratogeno è stato venduto e usato da donne in gravidanza in un circoscritto lasso di tempo. I professionisti che hanno preso parte al *focus group* dedicato hanno un'età compresa tra i 58 e i 74 anni, con una lunga esperienza lavorativa.

La durata media dei *focus group* è stata approssimativamente di 3 ore e mezza (durata minima: 2 ore; durata massima: 5 ore).

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<sup>4</sup> Come definite dall'art. 2 Direttiva 2012/29/UE.

I *focus group* sono stati organizzati in luoghi scelti di comune accordo da partecipanti e ricercatori. Un *focus group* che ha coinvolto vittime si è tenuto nella sede dell'associazione (ciò ha altresì consentito ai ricercatori di visitare alcuni dei luoghi in cui la vittimizzazione si è verificata). Un secondo *focus group* con vittime è stato organizzato in diverse sessioni nell'arco della medesima giornata, in parte presso una sala dedicata di un hotel/caffetteria e in parte presso lo studio dell'avvocato delle vittime: questo *focus group* è stato organizzato in concomitanza con l'assemblea nazionale dell'associazione di vittime e ne ha quindi seguito la sede. Nondimeno, anche in questo caso, il dialogo sviluppatosi in seno al gruppo si è svolto in maniera raccolta e riservata. Il *focus group* con i professionisti si è tenuto presso un'apposita sede messa a disposizione dall'Università Cattolica.

### *1.3.3. Informazioni generali*

Tutti i partecipanti alle interviste individuali e ai *focus group* sono stati informati sui contenuti della Direttiva 2012/29/UE e hanno ricevuto il testo della Direttiva in formato cartaceo o digitale, insieme ad altri materiali informativi dell'Unione Europea in tema di diritti delle vittime (volantini e schede informative).

Le interviste e i *focus group* sono stati video- e audio-registrati (a eccezione della prima intervista, che è stata solo audio-registrata), e poi trascritti *verbatim* da collaboratori affidabili dello staff di progetto. Tutte le trascrizioni sono state sottoposte a un successivo accurato processo di anonimizzazione. A fronte del coinvolgimento diretto dei ricercatori senior del team italiano di progetto nel contatto con vittime e professionisti e nella conduzione delle interviste e dei *focus group* (o nell'assistenza dell'intervistatore/moderatore), si è ritenuto opportuno affidare il processo di codifica a ricercatori più 'neutrali', al fine di assicurare un'interpretazione più oggettiva dei copiosi dati empirici. Pertanto, la codifica dei dati e una preliminare analisi degli stessi sono state affidate a due qualificate giovani ricercatrici. La trascrizione, la codifica, e l'analisi dei dati sono state oggetto di confronto tra i membri del gruppo di ricerca al fine di minimizzare i possibili *bias* dei singoli ricercatori.

I ricercatori hanno deciso di non fare ricorso a *software* di analisi qualitativa. I dati sono stati codificati e analizzati manualmente.



## 2.

### I CASI

#### **2.1. Categorie di casi**

- Settore farmaceutico (sicurezza dei prodotti)
- Ambiente (fenomeni di inquinamento o contaminazione che hanno causato morti o gravi danni alla salute)
- Sicurezza sul lavoro

#### **2.2. I singoli casi**

##### **CASO DEL TALIDOMIDE** (settore farmaceutico)

Il Talidomide è un farmaco, originariamente prescritto come 'farmaco miracoloso' per la nausea mattutina, il mal di testa, la tosse, l'insonnia e il raffreddore. Il Talidomide fu usato anche per alleviare nausea e malesseri mattutini delle donne in stato di gravidanza. Il farmaco fu largamente venduto come sicuro negli anni Cinquanta. Poco dopo l'immissione del farmaco sul mercato, migliaia di neonati in tutta Europa nacquero affetti da focomelia (una malformazione degli arti). Circa il 40% di loro morì.

I primi casi di focomelia emersero nel 1960. Il Talidomide fu ritirato dal mercato in Italia nel 1962, un anno più tardi che in tutti gli altri Paesi europei. In Italia un'identificazione completa delle vittime è solo in parte possibile.

Non è mai stato istaurato un procedimento penale contro le aziende farmaceutiche. Ancora oggi non è chiaro quali, e quante, aziende farmaceutiche furono coinvolte nella distribuzione, così come nella produzione, del farmaco. Sembra che almeno sette aziende farmaceutiche abbiano immesso il farmaco (con diversi nomi commerciali) sul mercato italiano. Inoltre, le vittime hanno incontrato difficoltà nel recuperare le proprie cartelle cliniche e documentazione medica al fine di raccogliere le prove necessarie per intentare un'azione legale.

Le vittime italiane non hanno mai ricevuto un risarcimento da alcuna delle aziende farmaceutiche coinvolte. Anche l'azienda tedesca Grünenthal, che sviluppò il prodotto, non ha mai riconosciuto né risarcito le vittime italiane.

Solo nel 2008, con la legge n. 244/2007, le vittime italiane (ma solo quelle nate tra il 1959 e il 1965) hanno ottenuto un fondo di indennizzo dallo Stato. I criteri e i requisiti che consentono l'accesso al fondo sono molto stringenti e non chiari. Le associazioni di vittime, ancora attive,

chiedono di modificare la legge, almeno per veder riconosciuto l'accesso al fondo di compensazione anche ai nati nel 1958 e 1966<sup>5</sup>.

#### **CASO ETERNIT (ambiente)**

Il caso riguarda migliaia di persone che hanno contratto malattie legate all'amianto causate dall'Eternit, una fibra di cemento utilizzata per la preparazione di piastrelle, guaine per la costruzione di edifici e tubature idriche. Già dagli anni Sessanta diversi studi dimostrarono che le polveri di amianto potevano causare asbestosi, così come una grave forma di cancro chiamata mesotelioma pleurico.

In Italia, il ciclo produttivo delle strutture aperte all'inizio del secolo, nel 1907, e la commercializzazione dell'Eternit durarono fino al 1992.

I casi italiani coinvolgono migliaia di vittime, tra cui lavoratori di un certo numero di stabilimenti, così come residenti che vivono nelle aree in cui gli stabilimenti erano collocati, per effetto dell'ampia diffusione del materiale nelle città, negli edifici e nelle infrastrutture. Tutte le patologie delle vittime sono legate all'amianto (cancro ai polmoni, mesotelioma pleurico, ecc.). Molte di loro sono già morte. Ancora oggi, una completa identificazione delle vittime è solo in parte possibile a causa del lungo periodo di latenza di questo tipo di patologie.

Il primo procedimento penale contro l'impresa produttrice è iniziato nel 2009 ed è giunto al termine nel 2015 con una sentenza di non luogo a procedere per intervenuta prescrizione. Il risultato del processo chiaramente ha generato malcontento e incredulità. La partecipazione delle vittime e delle loro associazioni al primo processo penale è stata notevole. Un secondo processo penale relativo agli stessi fatti è attualmente in corso.

Molte delle vittime identificate durante il primo procedimento penale hanno aderito a un accordo extra-giudiziale con l'ente, ottenendo un parziale risarcimento dei danni.

#### **SANGUE INFETTO (settore farmaceutico/sicurezza dei prodotti)**

Lo scandalo del sangue infetto risale agli anni Ottanta e Novanta. Prodotti emoderivati infetti per la cura dell'emofilia causarono il contagio da HIV ed epatite C e B di un elevato numero di persone. Le patologie furono diffuse attraverso prodotti emoderivati ricavati da grandi *pool* di sangue donato, una gran quantità del quale era però raccolto nelle carceri o da tossicodipendenti prima dell'adozione sistematica del test per l'HIV. Nel 1983, la Bayer dichiarò che sussistevano forti evidenze del fatto di ritenere che l'AIDS fosse trasmesso attraverso i prodotti derivati dal plasma.

Il test per l'HIV divenne disponibile nel 1985, quello per l'epatite C nel 1989. Nonostante ciò, nel 1993 il Ministro italiano della Salute consentì la

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<sup>5</sup> Si segnala che, nelle more della pubblicazione di questo documento, è stata estesa ai nati nel 1958 e 1966 la copertura del fondo di indennizzo, con l. 7 agosto 2016, n. 160 (conversione in legge, con modificazioni, del d.l. 24 giugno 2016, n. 113).

distribuzione delle scorte esistenti, composte da prodotti ancora non testati e perciò non sicuri.

Non sono disponibili dati ufficiali sul numero esatto di vittime in Italia. Le associazioni nazionali di vittime riferiscono che circa 120.000 persone hanno contratto il virus HIV, l'epatite C o quella B a causa del sangue infetto. Quasi 4500 di loro sono già morte. Le categorie di vittime sono: emofiliaci, talassemici, e persone infettate a causa di trasfusioni occasionali.

Il caso italiano costituisce una lunga storia di diniego di giustizia e compensazione per le vittime.

Negli anni Novanta furono aperte a Trento indagini contro il Ministro della Salute (condannato anche per corruzione ad opera di aziende farmaceutiche in un separato processo penale) e contro alcune aziende farmaceutiche italiane e straniere. Dopo sette anni di indagini, a causa dell'intervenuta prescrizione, l'accusa contro le aziende straniere decadde. Il processo penale fu quindi trasferito a Napoli, ma solo per una piccola parte delle imputazioni originarie, e soltanto a carico di una singola azienda farmaceutica italiana. Il processo è attualmente in corso, anche se per molti casi di vittime che si sono costituite parte civile nel processo penale è già stata dichiarata la prescrizione.

Nel 1992, con la l. n. 210, lo Stato italiano ha riconosciuto a quasi 30.000 vittime una somma mensile a titolo di copertura delle spese mediche.

Negli anni successivi, migliaia di procedimenti amministrativi e civili furono intrapresi contro lo Stato italiano per ottenere il risarcimento dei danni. Nel 2003 lo Stato italiano aderì a un accordo stragiudiziale per risarcire le vittime che avevano esercitato le prime 700 azioni civili. Nel 2007, le leggi n. 222 e 244 riconobbero il diritto di accedere a un fondo di indennizzo basato sui danni sofferti da ciascuna vittima. Tuttavia, criteri e requisiti per ottenere l'indennizzo erano così stringenti che la maggior parte delle richieste fu rigettata. Inoltre, nel 2008 la negoziazione tra Stato e vittime finalizzata a chiudere le controversie in corso finì con migliaia di richieste per danni rimaste pendenti davanti ai tribunali. Alcuni tribunali ordinarono al Ministero della Salute di pagare i danni alle vittime, riconoscendo che lo Stato italiano era stato troppo lento a introdurre misure per impedire che i virus fossero diffusi dai donatori di sangue, e non aveva disposto gli opportuni controlli sul sangue e sui prodotti emoderivati. Lo Stato fece appello e anche dopo la formazione del giudicato non pagò. Per questa ragione, nel gennaio 2016 l'Italia è stata condannata dalla Corte EDU a pagare più di 10 milioni di euro a quelle vittime (371) che avevano istaurato l'azione dinnanzi alla Corte stessa.

Nel 2014, una nuova legge ha riconosciuto una somma *una tantum* pari a 100.000 euro a titolo di risarcimento in favore di alcune categorie di vittime.

## 3.

# RISULTATI

### 3.1. Osservazioni generali

Il principale risultato della ricerca empirica condotta in Italia è la sostanziale conferma degli assunti iniziali del progetto, della loro rilevanza e giustificazione, specialmente con riguardo a:

- la *specificità* della vittimizzazione da *corporate violence*, la sua rilevanza europea e nazionale, sociale e giuridica;
- la *mancaza di riconoscimento e protezione* delle vittime di *corporate violence*, a causa di un'insufficiente considerazione di queste vittime rispetto ad altre, nonostante la frequente dimensione collettiva della vittimizzazione da *corporate crime*, che dovrebbe renderne più 'visibile' la vittimizzazione;
- la *scarsa consapevolezza* delle agenzie di controllo e di molti professionisti, da cui deriva una mancanza di tempestivo riconoscimento delle vittime con effetti sulla protezione e sull'accesso, alla giustizia e al risarcimento, che diventa difficili e talvolta impossibile;
- la *necessità di favorire l'attuazione della Direttiva 2012/29/UE* in Italia, principalmente per quanto concerne i servizi di supporto e assistenza alle vittime e la necessità di *adattare l'attuazione della Direttiva agli specifici bisogni delle vittime di corporate violence*, le quali risultano essere una categoria particolarmente vulnerabile.

La ricerca, infatti, ha offerto un riscontro *qualitativo* da parte di vari soggetti (vittime dirette, familiari, associazioni di vittime, professionisti) sui temi sensibili pertinenti alla Direttiva che saranno presentati e trattati nei prossimi paragrafi. A titolo di breve introduzione generale, alcuni aspetti rilevanti, quali risultano dalla ricerca empirica, sono selezionati e riportati di seguito insieme a brani salienti tratti dalle interviste e dai *focus group* e ai riferimenti essenziali alla Direttiva 2012/29/UE.

#### a) Gravità della corporate violence

L'articolo 22 co. 3 della Direttiva 2012/29/UE prescrive di prestare particolare attenzione, nell'ambito della valutazione dei bisogni individuali di protezione, alle «vittime che hanno subito un notevole danno a motivo della gravità del reato». La *corporate violence* colpisce la vita umana, la salute umana e l'ambiente, provocando conseguenze pericolose e spesso letali per le generazioni presenti e future. Le narrazioni degli intervistati e dei partecipanti ai *focus group* sono significative a tale riguardo:

«[A Casale Monferrato] Ogni settimana c'è un nuovo caso di mesotelioma e ogni settimana facciamo un funerale per un cittadino che muore della stessa malattia. [...] E sempre di più la malattia colpisce soggetti giovani. [...] Da sempre i casalesi sanno che questo tumore non ha cure efficaci e a questo tumore nessuno è mai sopravvissuto» (professionista: medico, caso Eternit).

«L'entità della catastrofe è [inimmaginabile]... sono morte centinaia di persone su una popolazione di tremila [quella degli italiani emofilici]. Quindi è stata una catastrofe...» (vittima di farmaci emoderivati infetti).

Molti intervistati hanno descritto il loro caso usando parole come 'catastrofe', 'carneficina', 'massacro', 'guerra' eccetera. A causa delle estreme conseguenze riportate e del numero di persone coinvolte, molte vittime di diversi casi hanno persino paragonato la gravità della loro vittimizzazione agli effetti degli eventi di matrice terroristica avvenuti in Italia durante i cosiddetti 'anni di piombo' (le vittime hanno citato le stragi di Piazza Fontana a Milano (1969), Piazza Della Loggia a Brescia (1974), della stazione ferroviaria di Bologna (1980).

«Questa stage non è diversa da quella di Piazza Fontana o di Piazza della Loggia. Ha fatto meno clamore per tre motivi [...]: la prima è perché non c'è stato il boato dell'esplosione, e quindi si è sentita di meno; il secondo motivo è perché riguardava delle persone già malate, peraltro con una malattia tendenzialmente genetica [...]; e la terza cosa, ti dico, quando parliamo di infezioni [...]c'è sempre il sospetto che se combinazione ti è venuta questa malattia, ma, c'è sempre quel "ma" [...] quel velato sospetto...» (figlia di una vittima di emoderivati deceduta).

#### *b) La dimensione collettiva della vittimizzazione da corporate violence*

Ai sensi dell'art. 18 della Direttiva 2012/29/UE, dovrebbero essere adottate «misure per proteggere le vittime e i loro familiari». La *corporate violence* colpisce persone, famiglie e intere comunità: questo aspetto è emerso fortemente nella presente ricerca.

Esempi di famiglie e comunità vittimizzate con cui i ricercatori sono venuti in contatto sono quelli degli abitanti di Casale Monferrato (caso Eternit) e quello degli emofilici italiani, i quali si percepiscono come una comunità.

L'intera città di Casale Monferrato è stata esposta all'amianto per decenni: i primi a essere colpiti sono stati i lavoratori dell'Eternit; poi impercettibilmente il danno si è esteso ai loro familiari stretti, compresi i bambini, e poi lentamente a tutti gli abitanti esposti all'aria contaminata, in cui le polveri di amianto erano diffuse. Durante le interviste e i *focus group*, i partecipanti hanno raccontato delle mogli degli operai che lavavano gli abiti da lavoro dei loro mariti pieni di fibre di amianto inalate inconsapevolmente e senza alcuna precauzione; o di fratelli o cugini che, da bambini, giocavano nel cortile con la polvere di amianto come se fosse sabbia, e poi si scoprivano malati venti anni più tardi, diagnosticati uno dopo l'altro nel corso della stessa settimana. I medici hanno riferito che il picco della malattia a Casale Monferrato non si è ancora realizzato.

«Per vittime qui non intendo solamente i malati e morti di tumori da amianto o da asbestosi ma parliamo anche dei famigliari che costituiscono delle vittime altrettanto importanti e di tutti i cittadini casalesi e del territorio che pur non essendo malati vivono il terrore di diventarlo. [...] Sono affetti da una patologia di tipo psichiatrico che si chiama disturbo post traumatico da stress, vissuto fino a qualche anno fa dai reduci dei grandi

fatti sanguinosi come la guerra in Vietnam, come lo scoppio della bomba atomica, che è rappresentato da un'ansia continua, dalla paura di morire, paura quotidiana che la propria incolumità possa venire intaccata [...]. Se hanno la tosse per più di dieci giorni, i cittadini casalesi vanno non dal medico di famiglia a farsi dare l'antibiotico o l'antinfluenzale, ma vanno direttamente a farsi fare la radiografia» (professionista: medico, *focus group*, caso Eternit).

«Sono mancati di mesotelioma mio zio e mio papà che erano fratelli e nessuno dei due [...]ha mai lavorato all'Eternit [...].È una cosa che ti porti dentro, per sempre... Per paura che venga anche a te tutte le volte che hai mal di schiena dici 'questa volta tocca a me'» (famigliare di vittime decedute, *focus group*, caso Eternit).

Nel caso del Talidomide, il legame madre-figlio era al cuore della vittimizzazione: in quanto le madri in gravidanza erano state involontariamente le cause del danno provocato al feto dal farmaco pericoloso da *loro* assunto. Inoltre, nel caso del Talidomide, la *corporate violence* ha 'creato' una 'comunità' del tutto nuova, involontaria, estesa a livello nazionale (anzi, in realtà a livello internazionale). Questa comunità è composta dalle centinaia di persone che, in tutta Italia, sono nate negli stessi anni, all'inizio degli anni Sessanta, con una disabilità 'tipica' denominata come il farmaco teratogeno assunto dalle gestanti durante la gravidanza. La vita di queste vittime coincide e cade insieme alla loro vittimizzazione: queste persone sono *nate* 'vittime', e la loro vittimizzazione è iniziata addirittura prima della loro nascita. La loro identità collettiva prende il nome dalla causa della loro deformità e disabilità: sono affetti dalla 'Sindrome del Talidomide', sono i 'neonati del Talidomide', sono 'i talidomidici'. Le madri dei talidomidici sono una categoria di vittime invisibile: il problema del Talidomide è stato percepito e trattato come questione teratogena, appunto, riguardante i feti e i bambini nati, non anche le loro madri, che anzi hanno percepito se stesse come colpevoli.

### *c) Complessità della corporate victimisation e vulnerabilità delle vittime di corporate violence*

Il *considerando* 56 della Direttiva insiste sulla necessità di «tenere conto delle caratteristiche personali della vittima, quali [...] stato di salute, disabilità, status in materia di soggiorno, difficoltà di comunicazione, relazione con la persona indagata o dipendenza da essa».

Questi aspetti sono ricorrenti nelle interviste e nei *focus group*. La *corporate violence* nel settore farmaceutico, per esempio, spesso colpisce persone che sono già malate e costantemente bisognose di trattamenti farmacologici. Ma le vittime di *corporate violence* possono anche ammalarsi per effetto del danno sofferto.

«Il mesotelioma, che è un tumore raro, [...] qui è un tumore frequente. [...] Sei vittima due volte: sei vittima della patologia e sei vittima del fatto che comunque sei discriminato sul piano terapeutico. Le opzioni sono inferiori rispetto a quelle dei tumori frequenti e gli investimenti sono molto inferiori...» (professionista: medico, caso Eternit).

«Lì [...] erano tutti inc..., ma quell'inc... non nasceva soltanto da una condizione patologica, per di più acquisita per curarne un'altra [...] quindi dal danno iatrogeno, [...] nasceva dall'essere stati totalmente ignorati fino a quel momento» (vittima di farmaci emoderivati infetti).

Con riferimento alle *difficoltà di comunicazione*, gli intervistati hanno riferito, in maniera pressoché costante, il loro bisogno di essere supportati nell'affrontare la superiorità informativa e organizzativa delle imprese e/o le complessità tecnico-giuridiche durante i procedimenti penali e civili o durante le transazioni stragiudiziali.

«Noi abbiamo avuto praticamente bisogno di tutto, perché ci siamo trovati con i piedi dentro senza praticamente sapere che cosa volesse dire mesotelioma» (famigliare di una vittima deceduta, caso Eternit).

Dalle interviste e dai *focus group* emerge una particolare forma di *dipendenza dal corporate offender*, che implica il bisogno delle vittime di essere supportate nel riequilibrare – o nell'interrompere (ove possibile) – il rapporto con quest'ultimo. Questa dipendenza, per esempio, è connessa alla stessa sopravvivenza nel caso degli emofiliaci, la cui vita dipende ancora dalle società farmaceutiche. Nel caso Eternit, la dipendenza dalla *corporation* è connessa al rapporto datore di lavoro-lavoratore subordinato, ma anche all'impatto economico e all'indotto di un grande stabilimento su un intero territorio, nonché al legame ambientale tra la sede della fabbrica e i luoghi in cui le persone vivono.

«lo definii un abbraccio mortale: [...] fu l'elemento che non permise ai lavoratori e alle loro coscienze di emergere. [...] Perché Eternit, quindi la filosofia di un gruppo multinazionale, era quella di dire "la nostra è una grande azienda, ti viene incontro sotto qualsiasi profilo" [...]: la colonia al mare [...], borse di studio, [...] il regalo di Natale, [...] lo spaccio, dove ti do dei prodotti calmierati, [...], stipendi maggiorati anche al 30%... Come poteva all'interno di quell'azienda nascere la protesta? Era quasi impossibile. Era quasi impossibile [...]» (rappresentante sindacale e membro di un'associazione di vittime, caso Eternit).

Quanto alle *questioni relative allo status di residenza*, i tre casi principali affrontati approfonditamente durante la ricerca (l'amianto, gli emoderivati infetti, il Talidomide) sono accomunati da alcune caratteristiche: a) la dimensione internazionale, europea e nazionale della vittimizzazione (vi sono vittime in diversi Paesi; la vittimizzazione si è verificata in diversi Paesi); b) il coinvolgimento di società multinazionali aventi la loro sede fuori dal Paese di residenza delle vittime; c) il coinvolgimento, a livello locale, di filiali nazionali o di distinte imprese nazionali, con tentativi di rimbalsarsi o addirittura scaricarsi le responsabilità; d) gli ostacoli all'accesso al risarcimento dovuti al succedersi di società diverse, multinazionali e nazionali, nella produzione e/o nella vendita dei prodotti pericolosi.

«Alcuni nostri associati e anche non associati hanno fatto richiesta alla [corporation] di risarcimento. E la risposta della [corporation], gelida, è sempre stata la stessa: noi con l'Italia [...] non abbiamo mai avuto niente a che fare, [in] Italia [...] hanno commercializzato il farmaco a nostra insaputa» (vittima, *focus group*, caso del Talidomide).

«[Questo] è il famoso farmaco dell'azienda austriaca alla quale non si è riusciti ad arrivare... per i problemi appunto di rogatoria internazionale ed altro» (vittima, emoderivati infetti).

#### d) La natura ingannevole della corporate violence

Quasi sempre, i partecipanti alle interviste e ai *focus group* hanno descritto una sorta di tragico inganno e una forma di illusione: la *corporate violence* è stata spesso riferita nascondersi dentro la 'promessa' di una vita migliore – associata a un'attività lavorativa o a un nuovo prodotto commerciale –, oppure, ancora più tragicamente, dentro l'*iniziale* esperienza di un *effettivo* miglioramento delle condizioni di vita. Salutati come frutto del progresso scientifico, prodotti tecnologici avanzati, 'pillole miracolose', fabbriche all'avanguardia che avrebbero portato benessere e crescita economica, le attività economiche e i prodotti commerciali avevano, invece, una intrinseca e occulta natura negativa, che avrebbe portato a conseguenze opposte rispetto alle 'promesse'. Ciò che avrebbe dovuto realizzare miglioramenti sociali ed economici, benessere, migliori condizioni di salute ha rivelato progressivamente la sua natura letale o dannosa. E quando le cose sono diventate chiare... era troppo tardi.

«Li chiamano "I farmaci magici". Ma sono magici [...] Veramente. Se io ho male a una caviglia, una caviglia [gonfia] così, [...] nel giro di un quarto d'ora io non ho più dolore, si comincia a ridurre! Nel giro di due ore posso camminare di nuovo. [...] Sono efficaci, son veramente efficaci» (vittima di farmaci emoderivati infetti).

«[...] il fascino della grande fabbrica sicura, il lavoro sicuro [...], il posto sicuro [...], della nuova fabbrica...» (rappresentante sindacale e membro dell'associazione di vittime, caso Eternit).

#### e) La persistenza nel tempo della corporate violence

La *corporate violence* non è né un fenomeno nuovo, né un problema che può essere considerato superato. I casi esaminati durante la ricerca empirica lo dimostrano chiaramente: i casi del Talidomide e degli emoderivati infetti sono risalenti, ma ancora di recente le vittime hanno dovuto lottare per ricevere qualche forma di indennizzo e/o risarcimento. I lunghi periodi di latenza tipicamente connessi all'esposizione all'amianto influiscono sull'accesso alla giustizia e sulle azioni giudiziarie esperibili. Inoltre, i trattamenti per l'eliminazione dell'amianto sono tutt'altro che completati in Italia, per non parlare del fatto che il divieto dell'estrazione e dell'uso di amianto non è ancora sancito in tutto il mondo. Altri casi 'ambientali', affrontati durante le interviste e i *focus group*, mostrano come la *corporate violence* sia ancora in corso (si pensi, ad esempio, all'inquinamento prodotto dall'impianto ILVA di Taranto).



### **3.2. Tipologie di danno**

Tutti i partecipanti hanno riferito di aver pagato un pesante tributo in termini di danni fisici, inclusi decessi, malattie a lungo termine e patologie invalidanti.

Nei casi di contagio da HIV e/o HCV dovuti a farmaci emoderivati infetti, più specificamente, i danni oscillano dall'aver contratto un'infezione che richiede un monitoraggio costante e ulteriori trattamenti farmacologici (non sempre coperti dal sistema sanitario nazionale), allo sviluppo della malattia correlata (AIDS e/o conseguenze dell'HCV), che comporta lunghe e gravose sofferenze e, in centinaia di casi, la morte. In effetti, circa l'80% degli emofiliaci italiani trattati tra gli anni Sessanta e la prima metà degli anni Ottanta ha contratto l'HCV, mentre circa il 50% degli stessi pazienti ha contratto l'HIV; di conseguenza, circa cinquecento emofiliaci italiani (in molti casi, bambini o giovani) sono stati uccisi, negli anni successivi, dalle malattie diffuse attraverso i farmaci contaminati. In alcuni casi, a causa della mancanza di informazioni durante i primi anni di questa 'epidemia', altre persone – coniugi e partner – sono state infettate, hanno sviluppato la malattia e sono morte, aumentando così la sofferenza psicologica delle vittime.

«Sono morte centinaia di persone su una popolazione di tremila, [...] è stata una catastrofe [...] dal punto di vista umano, [...] è stata una catastrofe dal punto di vista sociale, perché poi ha fatto regredire tutto, tutte le acquisizioni anche sociali che erano state fatte nel momento in cui erano arrivati i farmaci e che avevano consentito agli emofiliaci di mettere fuori la testa» (vittima di farmaci emoderivati infetti).

L'esposizione all'amianto ha a sua volta generato una diffusione epidemica di danni alla salute, che vanno dall'asbestosi al cancro al polmone e, in ultimo, alla morte. Sono state riferite migliaia di morti premature nei siti degli impianti di produzione dei derivati dell'amianto, e altre migliaia di morti sono attese, a causa del periodo di latenza molto lungo. Le persone colpite erano lavoratori impiegati nelle fabbriche, ma anche membri della famiglia – in particolare le mogli, esposte all'amianto mentre lavavano le tute da lavoro dei loro mariti – e, più in generale, i residenti nelle aree che circondano gli stabilimenti (circa l'80% delle nuove diagnosi annuali riguardano persone esposte alla contaminazione ambientale), compresi i bambini esposti alle polveri di amianto disperse nell'ambiente (anche a causa di metodi di trasporto e smaltimento non sicuri), che hanno successivamente sviluppato o stanno sviluppando le malattie correlate all'amianto (a un'età generalmente molto più giovane dei lavoratori). L'asbestosi, i mesoteliomi e le altre patologie connesse all'amianto implicano sofferenze lunghe, invalidanti e gravose per coloro che ne sono colpiti, e la certezza della morte, in quanto non esistono cure.

Nel caso delle malformazioni fetali provocate dal Talidomide, la conseguenza fu la focomelia, una grave patologia che colpiva il normale sviluppo del corpo, sicché le vittime intervistate sono nate senza uno o più

arti o parti di essi. Hanno quindi dovuto lottare con questo handicap per tutta la loro vita, e le loro famiglie con loro.

Una vasta gamma di danni psicologici e sociali sono poi legati a quelli fisici.

Le vittime riferiscono la propria intensa angoscia e la paura di conseguenze dannose a lungo termine sulla propria salute, in molti casi (in particolare per le persone esposte ad amianto o a emoderivati infetti) aggravate dal dolore, dalla rabbia e dall'impotenza dovuti al fatto di aver visto colleghi di lavoro, conoscenti e/o membri della famiglia sottoposti allo stesso iter di malattia e di morte.

In particolare, le persone che abitano nelle aree circostanti gli impianti di lavorazione dell'amianto vivono nel costante timore di sviluppare le malattie correlate, soffrono di un costante e intenso stress e, qualora si ammalino, della consapevolezza che certamente moriranno. I professionisti che si occupano di questo tipo di pazienti hanno riferito in particolare un alto livello di rabbia, frustrazione e ruminazione mentale, tanto che è spesso possibile diagnosticare un PTSD (disturbo post-traumatico da stress) sia nei pazienti sia nei parenti di pazienti (che in molti casi sono l'una e l'altra cosa).

In un caso, una vittima affetta da HIV a causa di farmaci emoderivati infetti ha riportato di aver inconsapevolmente trasmesso la malattia alla partner, che alla fine è morta: in una situazione come questa, la sofferenza e il lutto per la perdita sono inaspriti dalla sensazione di esser stati in qualche misura responsabili della morte di un'altra persona, e possono durare per decenni.

In alcuni casi – in particolare per le persone affette da HIV – la malattia ha colpito anche lo status sociale delle vittime (e delle loro famiglie), a causa del forte stigma connesso a questa specifica malattia e, dopo che il contagio su larga scala degli emofiliaci venne reso pubblico, anche all'emofilia stessa. I genitori dei bambini contagiati, in particolare, temono per il loro futuro, sia in relazione alla malattia stessa, sia per la reazione sociale alla stessa; più in generale, le persone contagiate (o semplicemente emofiliache) e i loro parenti hanno sperimentato, talvolta, la stigmatizzazione e l'emarginazione e, in alcuni casi, una costante paura delle stesse, a causa del timore dell'HIV diffuso nell'opinione pubblica, e a causa dello stigma sociale che patologie come questa comportano.

Lo stigma sociale è stato anche riferito da vittime del Talidomide, a causa della deformità fisica con cui sono nati e con la quale, una vittima ha riportato, alcuni di loro per molti anni hanno combattuto, con l'obiettivo di nasconderla, non riuscendo integrarla nella propria identità:

«Ero molto brava a nascondermi, ero un'artista, infatti molte persone dopo anni mi dicevano: "ma no, non è possibile ti ho sempre visto due mani, ma adesso come è possibile, no, [...]". Ero bravissima. [...] Avevo trascorso dei giorni [in vacanza] lì, quindi [...] questa zia di questo mio fidanzato, si accorse [della mancanza del braccio] e uscì di casa e andò a raccontarlo a tutto il paese. A un certo punto io mi sono alzata ed è cominciata la processione di queste persone che venivano a vedere la bestia rara. Cominciavano a

fare... [mima una persona che guarda all'altezza del braccio] "dico, ma scusa... ma tu come fai a lavarti la faccia la mattina, ma tu come fai...?" [...] Alla terza persona io ho fatto le valigie» (vittima del Talidomide).

Ma anche nei casi di amianto, un membro della famiglia di una vittima deceduta ha lamentato una sorta di stigma sociale sulle persone che hanno sviluppato una malattia legata all'amianto, che erano in qualche misura 'colpevolizzate' per la loro condizione.

Nel caso degli emoderivati, l'infezione contratta ha fortemente condizionato anche la vita sessuale e familiare, che deve essere regolata in relazione al rischio di contagio sempre presente e alla costante necessità di precauzioni:

«[La] limitazione che mio padre [un emofiliaco che ha contratto sia l'HIV sia l'HCV] ha sentito fortissimo [...], credo sia stato il momento della sua maggiore sofferenza e addirittura aveva valutato il suicidio per questo motivo, perché non immaginava di poter vivere, io ricordo queste parole, senza poter abbracciare serenamente sua figlia. Poi la malattia ha prevaricato, ha prevaricato sui sentimenti, perché è stata estremamente invalidante, [...] è stato veramente scendere rapidamente all'inferno» (figlia di una vittima di emoderivati infetti).

Anche la maternità è fortemente limitata o impossibile, dal momento che una gravidanza naturale sarebbe troppo pericolosa, una fecondazione medicalmente assistita è spesso troppo costosa e difficile, e l'adozione generalmente viene negata a causa delle precarie condizioni di salute.

Più in generale, a causa degli effetti a lungo termine del danno alla salute prodotto in tutti i casi analizzati, le famiglie delle vittime hanno visto la loro vita fortemente compromessa: ogni aspetto di questa ruota attorno alla malattia della persona/delle persone colpite, spesso per molto tempo, addirittura per decenni; quando le persone colpite sono i figli, preoccupazione e angoscia, ma anche problemi pratici, in rapporto al loro futuro sono un elemento costante e dominante della vita della famiglia.

Nei casi, frequenti, di morte di una persona colpita, sono stati riportati lutto, rabbia, angoscia, e traumi a lungo termine a causa della morte prematura. Alcuni parenti riferiscono la loro incapacità di superare il lutto e la rabbia, che influenzano ogni aspetto della loro vita.

Le malattie e le morti portano con sé anche conseguenze economiche, come l'impossibilità o la ridotta abilità al lavoro, minori guadagni, ingenti spese mediche. Nei casi di esposizione all'amianto la chiusura delle strutture coinvolte lasciò centinaia o migliaia di persone senza un lavoro, mentre il problema della contaminazione ambientale doveva ancora essere affrontato.

Anche la vita sociale è stata influenzata, in particolare nei casi di amianto – dove la popolazione locale è stata lentamente ma inesorabilmente decimata, il servizio sanitario si è trovato sotto un'enorme pressione e si è dimostrato incapace, almeno per alcuni anni, di affrontare l'epidemia', e l'economia locale è stata gravemente colpita – e nel caso degli emoderivati – dove la solidarietà interna alla comunità degli emofiliaci

(un aspetto indispensabile per combattere efficacemente una malattia rara e invalidante) è stata compromessa dalla stigmatizzazione sociale legata all'HIV, così come dalla distribuzione irrazionalmente parziale e diversificata dei risarcimenti.

### **3.3. Percezione del danno**

La percezione del danno è stata generalmente differita, per periodi più o meno lunghi. Mentre nei casi del Talidomide gli effetti nocivi sono stati percepiti alla fine della gravidanza, con la nascita dei bambini colpiti, agli emofiliaci tendenzialmente sono occorsi anni per rendersi conto di aver sviluppato una o più patologie oltre alla loro malattia originaria, anche a causa dell'iniziale mancanza di conoscenze mediche sui virus in questione (HIV e HCV). E mentre questo gruppo di vittime è stato in qualche modo protetto dal contagio non appena i loro medici hanno realizzato il rischio che fossero stati esposti a farmaci potenzialmente contaminati, nei casi di amianto, anche se la pericolosità delle polveri di amianto era conosciuta da lungo tempo, per decenni i controlli medici sul posto di lavoro sono stati praticamente inesistenti e non è stato disposto alcuno *screening* sistematico della popolazione potenzialmente colpita, sicché a lungo le persone si sono rese conto di essere state colpite solo anni o decenni dopo la loro esposizione, al manifestarsi dei primi sintomi; attualmente, si assiste a una sorta di inversione di tendenza, in quanto le persone che vivono (o hanno vissuto) nelle aree circostanti gli stabilimenti di amianto tendono a collegare qualsiasi malessere fisico a una patologia legata all'amianto, vivendo nella paura di sviluppare il mesotelioma e dovendo sottoporsi ai relativi controlli medici molto più frequentemente delle altre persone.

Anche la portata e la gravità dei danni di solito non sono stati immediatamente realizzati. Da un lato, numerosi problemi medici e pratici collegati al danno primario sono emersi solo nel corso degli anni, quando le patologie si sono sviluppate e/o, in caso di bambini affetti, questi sono cresciuti e hanno dovuto affrontare nuove sfide della vita; dall'altro, specialmente nei casi di amianto e di contagio da emoderivati, la mancanza di conoscenze mediche ha reso impossibile, per molti anni, comprendere l'effettiva portata e l'esatto sviluppo futuro dei danni subiti (per esempio, l'HCV non era inizialmente distinguibile con precisione da altre forme di epatite e l'HIV stava appena iniziando a essere studiato all'inizio del contagio che ha colpito gli emofiliaci), cosicché, per un certo lasso di tempo e fino alle prime morti, la nuova malattia è stata percepita come una sorta di 'complicazione' della preesistente, e 'più grave', emofilia.

Solo lentamente è emersa una piena consapevolezza della portata reale dei danni subiti, sia attraverso l'esperienza diretta (aggravamento dei sintomi, deterioramento delle condizioni di salute), sia attraverso la

conoscenza di casi di altre persone, o attraverso una migliore informazione medica (e generalmente attraverso l'insieme di questi elementi). Ciò ha generalmente portato effetti dirompenti, tali da cambiare la vita delle persone colpite, in quanto questo tipo di danno alla salute influisce pesantemente (vedi *supra*, § 3.2 e *infra*, § 3.4) su ogni aspetto della vita di un individuo (e di solito anche della sua famiglia), dall'abilità al lavoro alle relazioni sociali e familiari.

In parte per le stesse ragioni, la vittimizzazione subita, spesso, inizialmente non è stata percepita come tale, e solo lentamente le persone colpite hanno cominciato a rendersi conto che le loro sofferenze potevano essere dovute alla responsabilità – e persino alla responsabilità penale – di qualcuno.

Ad esempio, nel caso degli emoderivati, mentre il collegamento tra contagio da HIV/HCV e farmaci assunti per controllare l'emofilia è stato subito evidente, ci sono voluti anni perché le vittime si rendessero conto che la contaminazione dei farmaci era dovuta a irregolarità, di natura potenzialmente criminosa, nella raccolta e nel trattamento del sangue da parte delle imprese farmaceutiche, nonché alla mancanza di controlli e di intervento da parte delle autorità pubbliche.

Nei casi di amianto, per decenni l'asbestosi è stata accettata come una malattia professionale 'normale' per i lavoratori impegnati in quella produzione e l'opinione pubblica non era a conoscenza della connessione tra amianto e cancro ai polmoni (mesotelioma), né della possibilità di contrarre le patologie legate all'amianto in modi diversi dal lavoro nelle fabbriche in cui veniva usato il minerale (i primi casi registrati di parenti di lavoratori che hanno sviluppato patologie mortali connesse all'amianto emersero negli anni Ottanta). Solo lentamente le vittime hanno capito che i pericoli legati all'amianto erano molto più diffusi, che l'impresa ne era venuta a conoscenza molto prima dell'opinione pubblica e che la produzione e la commercializzazione dell'amianto erano state gestite in modo molto negligente o addirittura sconsiderato.

Nel caso del Talidomide, mentre il danno era immediatamente percepibile alla nascita, per molto tempo i genitori non sono stati nelle condizioni di capire che effettivamente si trattava di una conseguenza lesiva dell'assunzione del medicinale (e non di una 'fatalità'), in quanto il legame con l'uso del farmaco che aveva effettivamente causato la focomelia era in gran parte ignoto. Anche dopo che le informazioni sul potenziale effetto teratogeno del Talidomide hanno cominciato a circolare, questo fu strenuamente negato dalle industrie farmaceutiche coinvolte e occorsero anni di battaglie legali per ottenere il riconoscimento del danno subito.

### **3.4. Conseguenze del danno**

Come già accennato (vedi *supra*, § 3.2) i danni subiti hanno comportato per tutte le vittime di *corporate violence* che hanno partecipato alla ricerca

conseguenze a lungo termine e un significativo impatto sulle loro esistenze.

Coloro che sono ancora vivi, anche se si rapportano alla malattia con atteggiamenti diversi (vedi § 3.7.1), mettono in luce le difficoltà quotidiane nel confrontarsi con patologie che influiscono, in diversa misura, sulla loro vita professionale, sociale e privata. Anche i familiari di persone decedute hanno dovuto generalmente lottare per lungo tempo con i problemi di salute dei propri cari, prima che questi morissero, e hanno poi subito una terribile perdita (i figli che hanno perso un genitore in giovane età e i genitori che hanno perso un figlio risultano i più traumatizzati) e anche, in molti casi, una significativa diminuzione di reddito in seguito alla perdita della 'fonte di sostentamento' della famiglia. Le malattie gravi e a lungo termine sviluppate dalle vittime richiedono che la loro vita e, in generale, la vita dei loro familiari, vengano interamente ripasmate intorno alla patologia, a causa dei tempi molto lunghi per controlli e trattamenti medici (in alcuni casi addirittura non disponibili nei pressi del luogo di residenza), dei sintomi invalidanti e delle relative necessità di supporto e assistenza, delle misure precauzionali da adottare per evitare il contagio (per gli emofiliaci affetti da HIV/HCV), della paura dello stigma sociale (in particolare per gli emofiliaci).

Nei casi di amianto, in particolare, la vita di intere comunità è stata ridisegnata progressivamente intorno alle conseguenze dannose dell'inquinamento ambientale, giacché la popolazione colpita vive nella paura di contrarre le patologie legate all'amianto e in generale sente la necessità di sottoporsi a controlli medici e test al minimo sintomo di malessere fisico. Medici specialisti e professionisti in particolare hanno posto l'accento sulla necessità di coinvolgere il servizio sanitario locale al fine di sviluppare nuove strategie e trovare risorse adeguate per affrontare un'epidemia di cancro senza precedenti, non solo con riferimento ai trattamenti medici, ma anche al supporto psicologico per pazienti senza speranze di recupero e per le loro famiglie, che spesso sembrano avere bisogno di aiuto nella gestione della rabbia e della frustrazione (sovente sfogate nei confronti degli stessi medici) e frequentemente soffrono di forme di PTSD (vedi anche *supra*, § 3.2). Un parente di una vittima deceduta ha lamentato livelli di stress e di paura così elevati da ritenere di aver contratto una malattia oncologica grave non connessa all'amianto, ma causalmente riconducibile a quei sentimenti.

«Siamo a trent'anni dalla chiusura della Eternit e siamo ancora qui a morire, anzi morire più di prima. Ecco quello che contraddistingue [la nostra comunità] è l'estremo peggioramento della qualità di vita che paradossalmente l'informazione capillare che è stata fatta a tutti i cittadini, a partire dalle scuole, gli insegnanti, convegni pubblici, divulgazione, [ha portato]. Paradossalmente l'informazione ha alla fine aumentato le paure: più il cittadino è informato, più teme che il sintomo di cui ha sentito parlare sia il segnale di una malattia incurabile, mortale. Credo che appunto una delle cose che a tutt'ora non siamo in grado di accogliere fino in fondo è questa comunitaria paura di essere una città diversa dalle altre, una specie di città appestata che non vede ancora spiragli di miglioramento dall'epidemia» (medico, caso di amianto).

Più in generale, l'incertezza sul futuro (il proprio e/o quello del familiare colpito) grava pesantemente su queste vittime, sia in rapporto agli sviluppi futuri della malattia, sia in relazione a tutte le questioni pratiche correlate (lavoro, reddito, assistenza, relazioni familiari, ecc.).

Nei casi di amianto, un'ulteriore fonte di incertezza, preoccupazione e dilemmi morali per tutti i soggetti interessati (vittime, famiglie, sindacati, comunità locali) è consistita nella stretta relazione tra fonte dei danni – gli impianti di lavorazione dell'amianto – e dipendenza delle vittime e dell'intera comunità, per il proprio sostentamento, da quelle stesse produzioni.

La presa di coscienza, spesso avvenuta nel corso di un lungo periodo di tempo (vedi *supra*, § 3.3), della natura probabilmente illegale e persino criminale dell'offesa, e le notevoli difficoltà nell'ottenere qualsiasi tipo di riconoscimento, rimedio e sanzione (si veda di seguito, § 3.6), inoltre, sono generalmente stati menzionati quali fonti di pesanti conseguenze sulla vita e sull'atteggiamento mentale delle vittime. A questo proposito, la lunghezza, la farraginosità e la mancanza di efficacia dei procedimenti giudiziari, nonché l'atteggiamento non cooperativo o ostile delle imprese coinvolte, le estreme difficoltà a ottenere informazioni adeguate e la mancanza di controlli preventivi, da una parte, e, dall'altra, di adeguato sostegno e di rimedi efficaci a posteriori, da parte delle istituzioni pubbliche, sembrano aver minato la fiducia delle vittime nello Stato e nelle sue istituzioni, suscitando sentimenti di tradimento, sfiducia e rabbia.

Le vittime appaiono arrabbiate, ma anche disilluse, nei confronti delle imprese (in particolare, una vittima del Talidomide ha espresso la propria rabbia per la sensazione di essere stati trattati come 'cavie' dall'industria farmaceutica), ma la loro rabbia è generalmente altrettanto forte, o addirittura più forte, nei confronti dello Stato, che, nella loro percezione, le ha tradite a un livello più profondo, innanzitutto non proteggendole adeguatamente, anche dopo che i pericoli erano diventati noti o conoscibili dalle autorità pubbliche, e poi non sostenendole nel far emergere la responsabilità delle *corporation* e dei loro vertici, per garantire loro un tempestivo e/o adeguato ristoro (per i dettagli, si veda § 3.6). Molti famigliari di persone decedute a causa di patologie legate all'amianto hanno dichiarato apertamente di essersi sentiti vittime tre volte: una prima volta a causa del reato subito, una seconda volta a causa della mancanza di sostegno da parte dello Stato e una terza volta a causa della costante paura di ammalarsi come conseguenza dell'esposizione all'amianto.

Un aspetto che ha suscitato sentimenti di frustrazione e di rabbia e una mancanza di 'closure' per molte vittime intervistate è stato l'assenza di uno o più 'colpevoli' individuabili (all'interno dell'impresa o delle istituzioni pubbliche ritenute per vari motivi coinvolte negli illeciti) e la conseguente percezione di dover lottare contro organizzazioni gigantesche, impersonali e opache, senza speranza di ottenere alcun tipo di ammissione di responsabilità.

### 3.5. Bisogni delle vittime

Durante le interviste e i *focus group*, le vittime non sempre hanno espresso i propri bisogni in maniera esplicita e diretta, tuttavia, in diversi casi, questi ultimi sono affiorati dalle narrazioni di quanto accaduto e dai racconti relativi ai problemi affrontati.

Ancora più spesso, esigenze diverse sono apparse strettamente intrecciate come parti della complessiva necessità di riconoscimento delle proprie vicende dolorose e della propria dignità di esseri umani (*i.e.*, di riconoscimento non solo quali 'oggetti' su cui si riverbera l'azione di soggetti ultranei, siano essi le *corporations*, le agenzie di controllo, lo Stato, o altro): così, ad esempio, nel racconto di una vittima di farmaci emoderivati infetti, che ha espresso un forte bisogno di informazioni chiare e comprensibili – sia da parte delle istituzioni pubbliche sia dei medici – questa richiesta è apparsa in realtà fortemente legata all'intimo bisogno di sentirsi trattato come essere umano, come cittadino, evidenziandosi in ciò la necessità di un pieno riconoscimento, a sua volta strettamente connesso alla richiesta di un sostegno e di un risarcimento adeguati.

Le distinzioni operate nei paragrafi che seguono sono, quindi, per certi versi, semplicistiche e arbitrarie, e hanno il solo scopo di facilitare uno *screening* più dettagliato e completo, nonché di favorire un migliore adeguamento terminologico alle disposizioni della Direttiva.

#### 3.5.1. Bisogni di riconoscimento

Il bisogno di riconoscimento emerge in tutte le testimonianze delle vittime. Ciò che esse hanno percepito esser stato sempre loro negato è, fondamentalmente, il riconoscimento della propria dignità e della propria umanità, dal momento che le imprese e le istituzioni pubbliche le hanno sempre considerate come 'numeri', 'pratiche', 'problemi'. La mancanza di un riconoscimento dei danni sofferti, della loro natura ingiusta e delle pesanti conseguenze sulle loro vite sono stati la principale fonte di afflizione per queste vittime.

Le vittime si sono generalmente sentite abbandonate dallo Stato, dalla società civile e dai media, e lasciate completamente (o quasi completamente: si veda *infra*, §3.6) sole con le loro battaglie e sofferenze, se si esclude il reciproco supporto ricevuto dalle associazioni di vittime. Nessuno – né i media, né l'opinione pubblica, né tantomeno le imprese coinvolte – è sembrato disposto ad ascoltarle davvero:

«E, veramente, quando nessuno ti ascolta, tu non esisti» (vittima di farmaci emoderivati infetti).

Diverse vittime hanno confermato che, anche per questo motivo, si sono sentite vittimizzate più volte: una prima volta a opera dagli autori del reato, un'altra volta dallo Stato – e, dunque, anche come cittadini – e,



infine, dalle istituzioni, per via del loro atteggiamento burocratico e della loro inerzia, e dai media, o dalla società in generale, per la stigmatizzazione e l'indifferenza subite. Molti degli elementi emersi dalle testimonianze delle vittime – il bisogno che le responsabilità siano ufficialmente riconosciute e pubblicamente accertate, il bisogno di ricevere delle scuse, il bisogno di ottenere ristoro economico e la necessità di avere informazioni tempestive, complete, chiare e comprensibili (non solo sulla propria posizione legale, ma sui fatti del proprio caso, sulle proprie condizioni di salute, sulle prospettive future, ecc.), il bisogno che la propria storia sia riportata dai media in modo corretto e non sensazionalistico, ecc. – si collegano strettamente a una più basilare necessità di essere riconosciuti *come persone*.

Ad esempio, nel caso degli emoderivati, una delle vittime intervistate (che è anche stata per lungo tempo una figura-cardine nell'associazione di vittime) ha affermato espressamente che un'offerta di indennizzo da parte di una *corporation* non era stata considerata ricevibile, sebbene consistente, per il modo in cui essa era stata presentata, dal momento che l'impresa intendeva farla figurare come 'aiuto umanitario', negando così la basilare ingiustizia del danno patito dalle vittime e fingendo di donare loro ciò che fondamentalmente era percepito come carità.

Più in generale, alcune vittime hanno espresso il bisogno di un rapporto più 'dialogico' e 'umano' tra istituzioni pubbliche e (cittadini in generale, oltre che, in particolare) vittime, in modo che queste possano essere più direttamente e più attivamente coinvolte nelle decisioni che le riguardano.

### *3.5.2. Bisogni di protezione.*

I bisogni di protezione espressi dalle vittime e dai professionisti intervistati sono essenzialmente di due tipi.

Uno si pone al di là dell'ambito di disciplina delineato dalla Direttiva ma, nondimeno, è stato espresso con grande forza: il sentimento che *avrebbero dovuto essere protetti* dalle istituzioni pubbliche nei confronti delle offese subite *prima* di subirle, sicché queste *non sarebbero mai dovute accadere*. Le lamentele per l'omesso esercizio dei controlli dovuti e per gli interventi tardivi e poco efficaci, i sospetti di connivenza con le imprese coinvolte e/o che l'azione (o l'inerzia) pubblica fosse motivata da ragioni economiche 'pesate' più della sicurezza e della salute di centinaia o migliaia di cittadini, si legano tutti a questo basilare bisogno di protezione *preventiva*.

Quanto ai bisogni di protezione *in seguito* alla vittimizzazione patita, ne sono emersi molti.

Il problema della protezione contro l'intimidazione e la ritorsione è specificamente emerso nei casi di amianto, con riferimento alle vittime e/o ai portavoce delle vittime che erano anche impiegati nell'impresa coinvolta e che hanno subito sanzioni disciplinari illegittime, demansionamenti,

*mobbing*, ecc. Su scala più ampia, la strategia della *corporation* di dichiarare il fallimento e cessare l'attività senza provvedere alla decontaminazione del sito e/o al ricollocamento professionale dei lavoratori è stata in qualche misura percepita come una misura intimidatorio-ritorsiva o, almeno, come un modo di lasciar cadere tutto il peso della contaminazione ambientale sulle spalle delle comunità locali, tutte situazioni contro cui i lavoratori e la comunità avrebbero dovuto essere protetti dallo Stato:

«C'è un dovere fondamentale di tutelare questi lavoratori, in modo tale da non averli contro la trasformazione, o la riconversione, o la chiusura, ma dargli un'alternativa, perché è un dovere di qualunque società che voglia somigliare a una società civile» (rappresentante sindacale esponente di un'associazione di vittime, contaminazione da amianto).

Il tema della vittimizzazione ripetuta è emerso frequentemente.

Nei casi di amianto, le famiglie sono state colpite da malattie amianto-correlate un membro dopo l'altro, generazione dopo generazione: nelle stesse famiglie, le persone soffrivano prima in qualità di parenti di una o più vittime decedute, e poi come persone che, una alla volta, sviluppavano lo stesso tipo di patologia. I lavoratori sono stati esposti per anni all'amianto, e le persone che non erano poste nella condizione di lasciare l'area contaminata sono state esposte quotidianamente per decenni; nelle zone in cui non sono state disposte misure di decontaminazione, le comunità sono ancora quotidianamente esposte alle polveri e alle fibre di amianto. La protezione dalla vittimizzazione ripetuta, perciò, implica qui, primariamente e principalmente, l'apprestamento di misure di messa in sicurezza e di bonifica dei siti contaminati, nel modo più veloce ed efficace possibile.

Nel caso degli emoderivati, molte vittime hanno sofferto il contagio sia da HIV sia da HCV; in più, esse non sono in genere nella condizione di accertare esattamente quando e da quale farmaco siano state infettate, dal momento che la negligente raccolta e gestione del sangue era un fenomeno abbastanza diffuso e le vittime hanno ricevuto, negli anni, dozzine o centinaia di infusioni, quasi tutte potenzialmente infette. Dal momento che la comunità degli emofiliaci era piuttosto piccola e unita, tra l'altro, molte tra queste vittime hanno anche sofferto per la perdita di conoscenti, amici, parenti; un'esperienza particolarmente dolorosa fu, per alcuni di loro, scoprire di aver contagiato i propri *partners*, tant'è che, oltre a essere vittimizzati come pazienti contagiati, questi individui sono stati vittimizzati anche come *partners*/coniugi, in un modo che li ha in qualche misura fatti sentire responsabili per la morte della persona amata.

Con riferimento alla vittimizzazione secondaria, questa appare praticamente una costante, sebbene ciò non sia dovuto sempre a mancanze del sistema giudiziario – dal momento che molte di queste vittime non sono mai state attivamente coinvolte in procedimenti penali. Tuttavia, la lamentata indifferenza e inattività delle istituzioni pubbliche

(per ulteriori dettagli si veda *infra*, §3.6.3) rappresenta un importante fattore di sofferenza per queste vittime, che più di una volta hanno lamentato di essere state trattate irrispettosamente dal sistema e tradite anche come cittadini.

Con specifico riferimento ai procedimenti giudiziari – siano essi penali o civili – specifiche preoccupazioni sono emerse nei casi dei farmaci pericolosi, dove una grande fonte di turbamento è rappresentata dal rischio percepito (e, in alcuni casi, dalla effettiva esperienza) che dettagli estremamente privati sulla propria salute potessero divenire pubblici nei processi (con un rischio aggiuntivo di stigmatizzazione sociale nel caso degli emoderivati: si veda *supra*, §§ 3.2 e 3.4).

### *3.5.3. Bisogni di informazione*

Il bisogno di un'informazione adeguata è emerso costantemente in tutte le interviste e *focus group*.

Nella prospettiva delle vittime, i bisogni di informazione riguardano diversi profili.

Esse hanno espresso il bisogno di una informazione corretta, completa e comprensibile rispetto alle opzioni legali a loro disposizione e rispetto al funzionamento e ai possibili esiti dei procedimenti giudiziari, informazioni che non sempre hanno potuto attingere dalle istituzioni pubbliche o, più in generale, dagli operatori del diritto.

Dal momento che tutti i casi hanno implicato danni alla salute e all'integrità fisica, abbastanza frequente è stata anche l'espressione del bisogno di una informazione corretta, completa e comprensibile in relazione al proprio stato di salute, alle proprie prospettive nonché alla natura, alle cause e agli sviluppi futuri della propria condizione, trasmesse con modalità sensibili ed empatiche.

Infine, molte vittime hanno espresso un forte bisogno di conoscere sia tutti i fatti che hanno condotto alla loro vittimizzazione, sia chi ne fossero i responsabili; bisogno che molti (specie nel caso del Talidomide) hanno lamentato essere stato quasi completamente frustrato dal comportamento delle imprese e delle istituzioni pubbliche. Questo bisogno appare legato non solo, in alcuni casi, alla percepita mancanza di un senso di 'chiusura' della propria dolorosa vicenda, ma anche al forte desiderio (espresso da quasi tutti i partecipanti) di prevenire la verifica di fatti del genere in futuro.

I professionisti e gli operatori intervistati, che hanno offerto supporto alle vittime, hanno fundamentalmente convenuto sul bisogno di informazione, e i professionisti del diritto in modo particolare hanno sottolineato la necessità di una informazione corretta, completa e comprensibile in relazione a tutte le vie giuridicamente percorribili dalle vittime, nonché con riferimento ai meccanismi di svolgimento e ai possibili esiti dei procedimenti giudiziari, affinché le vittime non coltivino speranze

irrealistiche (che finiscono per alimentare sentimenti di amarezza e tradimento). A questo proposito, una formazione migliore di tutte le figure professionali coinvolte – a partire dalle forze dell'ordine, dagli avvocati e dalle agenzie di controllo, che normalmente sono i primi soggetti a venire in contatto con questa tipologia di vittime – è stata ritenuta indispensabile e urgente.

#### 3.5.4. Bisogni di assistenza

Le insufficienze dei servizi di assistenza pubblica sono state uno degli elementi più frequentemente emersi nei racconti sia delle vittime sia dei professionisti intervistati e una delle principali ragioni addotte per la centralità, o addirittura vitalità, del ruolo svolto dalle associazioni delle vittime in tutti i casi analizzati (si veda *infra*, § 3.7.2.1).

Dal momento che, in Italia, non esistono servizi specifici di assistenza alle vittime, questa situazione è facilmente comprensibile: le associazioni di vittime e altre simili organizzazioni (nel caso dell'amianto, ad esempio, anche i sindacati hanno svolto un ruolo importante) sono fondamentalmente l'unica possibile fonte di informazione e sostegno (oltre ai medici, ai professionisti del settore legale e agli psicologi, per le persone che dispongano di adeguate risorse economiche). I sentimenti di 'solitudine' e 'abbandono' che molte delle vittime hanno manifestato sono in larga parte legati all'assenza di idonee e specializzate strutture pubbliche e all'abituale atteggiamento burocratico di quelle esistenti (le quali, comunque, hanno competenze solo settoriali, come ad esempio INAIL, ARPA, servizio sanitario nazionale, servizi sociali, ecc.).

L'assistenza ritenuta necessaria dalle vittime e dalle associazioni di vittime riguarda diversi aspetti.

L'assistenza medica (diagnostica e terapeutica) sembra essere una necessità primaria (si veda anche *infra*, § 3.6.5), con un correlato bisogno di competenze ritagliate sulle specificità delle malattie rare (come il mesotelioma o la focomelia) e di situazioni cliniche complesse (come nel caso degli emofiliaci affetti da una o più malattie virali), oltre che di accesso a terapie sperimentali e, più in generale, di maggiori risorse per la ricerca medica:

«Il mesotelioma, che è un tumore raro, [...] qui è un tumore frequente. [...] Sei vittima due volte: sei vittima della patologia e sei vittima del fatto che comunque sei discriminato sul piano terapeutico. Le opzioni sono inferiori rispetto a quelle dei tumori frequenti e gli investimenti sono molto inferiori...» (professionista: medico, caso Eternit).

L'assistenza psicologica continuativa e specializzata e le attività di *counselling* sono altresì da molti percepiti come bisogno primario (tanto che i professionisti del settore medico che si occupano di malattie amianto-correlate hanno sottolineato l'importanza di aver costruito una rete locale di assistenza integrata medico-psicologica). Alcune vittime in

particolare hanno sottolineato il bisogno di condividere le proprie storie e di sentirsi considerati, ascoltati e compresi.

L'informazione giuridica di qualità e l'assistenza legale appaiono particolarmente importanti, in ragione della grande disparità di risorse rispetto alle imprese coinvolte sottolineata dagli intervistati, e del fatto che molte vittime non possono far fronte alle elevate spese che i lunghi e complessi procedimenti giudiziari comportano, considerando, altresì, la complessità del sistema giudiziario in generale, oltre che delle specifiche questioni giuridiche in gioco.

Infine, l'assistenza economica svolgerebbe un ruolo non secondario: in molti casi, l'illecito comporta perdite economiche dirette (dal momento che la capacità lavorativa e di guadagno è ridotta o annullata dai problemi di salute o dalla morte della persona percettrice di reddito), oltre a perdite indirette, come le notevoli spese sopportate dalle vittime e/o dai loro familiari per i trattamenti medici, l'assistenza alle vittime disabili, il supporto psicologico privato, e altri simili.

### **3.6. Accesso alla giustizia, sostegno alle vittime e compensazione**

#### **3.6.1. Gruppi sociali di riferimento**

L'assistenza della famiglia e degli amici è stata riferita come elemento cruciale per far fronte alla vittimizzazione; in alcuni casi, le modalità con cui le famiglie hanno fornito aiuto alle vittime nella vita quotidiana si sono rivelate fondamentali per sopravvivere e superare lo stigma sociale: ciò è particolarmente vero per le vittime del Talidomide e per le persone colpite da HIV attraverso gli emoderivati.

«La fortuna è stata una bella famiglia alle spalle, perché altrimenti non sarebbe andata così [...]. Mio padre mi ha portato a destra e a manca, indebitandosi, con l'aiuto anche dei medici che hanno scritto dappertutto, fino negli Stati Uniti [per trovare un modo per curarmi]» (vittima, caso del Talidomide).

#### **3.6.2. Media**

Nel complesso, sia le vittime sia i professionisti intervistati hanno per lo più raccontato di aver avuto un rapporto difficile con i media, che non si sono dimostrati né sensibili, né di supporto rispetto ai problemi e ai bisogni delle vittime.

La maggior parte delle vittime ha sottolineato la fondamentale mancanza di interesse dei media per gli episodi di *corporate violence* che le avevano colpite, episodi riportati di solito in modo superficiale e semplicistico, senza dare all'opinione pubblica un resoconto completo rispetto alla complessità di cause ed effetti; una vittima ha percepito che la mancanza di individui chiaramente identificabili come 'criminali', nel caso

che l'ha vista coinvolta, sia stata uno dei principali fattori che lo ha reso non 'spendibile' per la stampa (un caso, cioè, che non 'avrebbe fatto notizia').

L'interazione con i media è stata definita generalmente come difficile, fondamentalmente perché i giornalisti sono apparsi più interessati a patetici e sensazionali 'casi umani' – così facendo pressione sulle vittime perché fornissero dettagli sulle loro storie personali – che a un resoconto informativo completo di casi complessi, caratterizzati da una dimensione collettiva notevole (con l'eccezione di alcuni singoli giornalisti, che una vittima ha definito 'sensibili' e 'attenti').

La superficialità e il sensazionalismo più generali dell'approccio dei media sono stati in alcuni casi avvertiti come dannosi per le vittime: nel caso degli emoderivati, il modo allarmistico e stigmatizzante con cui i media hanno trasmesso le informazioni su HIV e AIDS in generale, durante gli stessi anni in cui il contagio degli emofiliaci iniziava a essere scoperto, ha causato a questi ultimi un notevole disagio sociale (si veda anche *supra*, § 3.2), contribuendo ad associare l'intera comunità degli emofiliaci, nel comune sentire, a una malattia che era presentata come una 'piaga' estremamente infettiva e con implicazioni morali negative; nel caso del Talidomide, una vittima ha lamentato che il modo superficiale con cui il problema fu (comunque scarsamente) affrontato dai media contribuì a presentarlo all'opinione pubblica come una 'disgrazia', una 'fatalità' senza responsabili, e ha anche espresso il sospetto che i media potessero in qualche misura aver ceduto a pressioni esterne nel tenere questo atteggiamento.

Nel caso dell'amianto, sono emerse visioni più diversificate: mentre i professionisti intervistati (pubblici ministeri e giudici) hanno lamentato la distorsione dei fatti e la superficialità dei media nel riportarli, nonché la concentrazione sproporzionata sui procedimenti giudiziari piuttosto che sulle cause e le responsabilità per la tragedia umana e ambientale (tanto che il caso ha finito per essere presentato più come un fallimento del sistema giudiziario che come un illecito commesso da individui che avevano violato la legge ed esposto a pericolo migliaia di persone), un rappresentante di una organizzazione di assistenza alle vittime ha espresso apprezzamento per il sostegno che almeno alcuni media avevano dato alla loro battaglia per ottenere il riconoscimento del 'massacro' in corso.

### 3.6.3. *Politica*

Le opinioni sugli atteggiamenti dei politici e delle istituzioni pubbliche sono generalmente molto negative, con poche eccezioni espresse nei confronti delle istituzioni locali e/o di singoli rappresentanti politici.

Fondamentalmente, sia le vittime sia i professionisti intervistati hanno lamentato una lunga indifferenza e inattività da parte dello Stato in tutti i casi analizzati; le vittime generalmente hanno sottolineato di essersi

sentite deluse e abbandonate dallo Stato, tanto che sarebbero state praticamente sole se non si fossero auto-organizzate in associazioni di vittime; le vittime inoltre hanno sottolineato l'atteggiamento burocratico delle istituzioni pubbliche nei confronti della loro situazione, tanto che non si sono sentite considerate 'vittime' e anzi, in linea generale, nemmeno 'persone'; in taluni casi hanno addirittura percepito lo Stato come un nemico:

«Ho sempre pensato che [...] eravamo soli, anche se ben accompagnati dalla nostra gente, dai giovani, dalla città, dalla collettività, ma eravamo fundamentalmente soli, mancava... mancava un elemento importante, mancava al nostro fianco lo Stato, e questa percezione [...] è sempre stata forte; ho avuto la percezione che noi eravamo veramente Davide [contro Golia]» (membro del sindacato e membro di un'associazione di vittime, caso dell'amianto).

«Abbiamo sperimentato sulla nostra pelle che lo Stato è stato nemico, si è comportato come un oppositore feroce, cinico» (vittima di emoderivati infetti).

In particolar modo nei casi degli emoderivati e del Talidomide, alcune vittime hanno lamentato di aver percepito che lo Stato fosse in qualche modo 'ostaggio' delle *corporations*, più dalla loro parte che dalla parte delle vittime e dei cittadini, e che in ogni caso aveva rifiutato, in un modo percepito come irrazionale e 'scandaloso', di ritenere le imprese almeno economicamente responsabili per il danno cagionato, recuperando da queste i fondi che, almeno tardivamente e parzialmente, le istituzioni pubbliche avevano assegnato a sostegno delle vittime (una vittima ha affermato che questo, in particolare, lo aveva offeso anche come cittadino, dopo essere stato offeso come vittima del reato). A quest'ultimo proposito, anche nel caso dell'amianto l'impossibilità di recuperare quanto dovuto dalle imprese fallite è stata percepita dalle vittime come un grande fallimento da parte dello Stato.

Le vittime concordano sul fatto che i politici e le istituzioni pubbliche hanno generalmente iniziato a prendere nota delle segnalazioni delle vittime e delle sottostanti sofferenze e danni patiti solo grazie alle associazioni e, ancor di più, grazie alla pressione dei media. La loro reazione è sembrata, comunque, lenta e inadeguata; molte vittime hanno lamentato una sorta di atteggiamento paternalistico e 'caritatevole' da parte dei politici, ritenuto alquanto umiliante: si sono sentite trattate, cioè, più come vittime di fatalità che ispirano compassione, alle quali esprimere pietà a parole o fare la carità, che come vittime di un torto da riparare. In particolar modo nel caso degli emoderivati, la legge sul risarcimento dei pazienti colpiti, sebbene percepita come un miglioramento rispetto alla precedente, completa inattività, è stata considerata sotto molti profili inadeguata, parziale, applicata lentamente e in modo non corretto. Tant'è che le vittime sono state costrette a fare ricorso alla Corte EDU (ricorso di cui si è fatta carico l'associazione delle vittime) per ottenere una condanna dell'Italia in merito all'eccessiva lunghezza del processo relativo al risarcimento del danno. Nei casi in cui si è prospettata l'ipotesi di un

coinvolgimento dello Stato nella causazione dei danni subiti, come per le vicende degli emoderivati e del Talidomide, le vittime hanno generalmente lamentato la completa mancanza di assunzione di responsabilità da parte dello Stato stesso come un fattore particolarmente angosciante.

Mentre i rappresentanti politici nazionali e le istituzioni pubbliche sono stati in genere percepiti dalle vittime come distanti, disinteressati, indifferenti e opportunisti, i politici e le istituzioni locali hanno invece ricevuto una migliore valutazione. La differenza è emersa, nello specifico, nei casi legati all'amianto, dove gli amministratori locali – probabilmente perché anch'essi sono parte della stessa comunità colpita e vivono nel costante pericolo di malattie amianto-correlate, come i loro concittadini – sono stati generalmente descritti come sensibili, supportivi, proattivi, e in genere fondamentali nel portare il caso all'attenzione dell'opinione pubblica e delle istituzioni nazionali.

Con riferimento all'opinione espressa dai professionisti (in particolar modo pubblici ministeri, giudici e avvocati), questi condividono fondamentalmente la valutazione delle vittime sull'inadeguatezza dell'azione dello Stato sia nella fase preventiva sia nella fase repressiva degli illeciti in esame. I pubblici ministeri e i giudici hanno sottolineato in particolare il fatto che il giudice è troppo spesso chiamato a svolgere una sorta di ruolo di 'supplenza' del legislatore e delle agenzie di controllo che sarebbero competenti per la prevenzione e i controlli specifici: situazione, questa, che a sua volta pone un compito impossibile e un troppo alto livello di aspettative in capo ai tribunali. Alcuni progressi della pubblica amministrazione in anni più recenti sono stati comunque riconosciuti.

#### *3.6.4. Settore pubblico. Accesso alla giustizia.*

##### *3.6.4.1 Procedimenti penali.*

l) Alcuni partecipanti hanno segnalato la mancanza di informazioni in relazione al loro diritto di accesso al sistema giudiziario sia in generale, sia più specificamente con riferimento al sistema della giustizia penale. Le difficoltà di informare le singole vittime in merito ai loro diritti sono descritte come strettamente correlate all'elevato numero di vittime coinvolte in questo tipo di procedimenti penali.

«Il maggior problema dal punto di vista delle vittime che io ho incontrato è l'informazione stessa, cioè il momento iniziale dell'informazione e quindi di che cosa [possano fare] le vittime, che in questi casi sono quasi sempre nella stragrande maggioranza dei casi una collettività, un numero diffuso e non uno o due o pochi soggetti. La difficoltà di questi soggetti, che sono tanti ma non necessariamente collegati tra di loro, [è di] avere informazioni già su quello che può essere l'accesso alla via giudiziaria e quindi alla tutela in quella sede [...] Informazione che quando c'è è fornita quasi esclusivamente da associazioni di tipo sostanzialmente privatistico, perché non ho mai incrociato associazioni o organizzazioni pubbliche o para-pubbliche che abbiano svolto questo ruolo informativo» (professionista, *focus group* sui casi di inquinamento ambientale).



Un altro ostacolo per l'accesso alla giustizia è legato al tempo. Le indagini e i procedimenti penali iniziano troppo tardi, quando i ricordi sono ormai confusi. Le vittime hanno inoltre spesso difficoltà psicologiche a riaprire di nuovo dopo molti anni un passato che non vogliono ricordare o che hanno voluto superare.

«Io non voglio andare a chiedere più niente a nessuno, perché [...] mi sono stancato veramente e – diciamo – la mia vita è andata così» (vittima del Talidomide).

Alcune vittime hanno riferito di aver avuto difficoltà nella gestione degli interrogatori condotti dalle pubbliche autorità e, in generale, nel loro rapporto con gli inquirenti. Alcuni partecipanti hanno riferito, come aspetto negativo, che gli inquirenti si relazionano senza conoscere la storia personale della singola vittima e, spesso, non hanno l'esperienza per poter dialogare con le vittime.

«Il dialogo fatto col pubblico ministero [...] a me ha [lasciato frastornato], io sono tornato veramente frastornato... Ma più che [il dialogo] col pubblico ministero, [quello] con il responsabile, il Maresciallo [...] che conduceva l'equipe investigativa... Perché [...] lo stimo, [...] però, quando un Maresciallo della Finanza mi viene a dire: "Perché, vede, allora questo medico ha prescritto male... al paziente, al bambino". Ma, dico: "Maresciallo, ma si rende conto?! È una malattia complessa, rara, lei è medico? Lei è uno specialista? Lei la conosce quella famiglia?! Quel bambino ce l'ha davanti agli occhi? Adesso lei dice che non dovevano fargli il farmaco. Vent'anni dopo?"» (vittima di farmaci emoderivati infetti).

«[In] quel dialogo col pubblico ministero [...] veramente io ero in difficoltà. Perché lì, a un certo punto, io mi son guardato col mio amico e ho detto: "Noi siamo entrati qui come persone che volevano portare delle prove... sostenere l'iniziativa d'indagine e quant'altro... andiamo fuori e ci arriva che siamo inquisiti noi..."» (vittima di farmaci emoderivati infetti).

II) Molte vittime hanno riferito il loro bisogno di contribuire alla fase investigativa. Le vittime hanno dichiarato che vi è da parte loro la volontà e il desiderio di aiutare il pubblico ministero nella ricerca delle prove e di contribuire all'indagine in modo costruttivo e con il massimo sforzo. Molte vittime considerano altresì estremamente importante il loro ruolo durante il processo. Vogliono testimoniare e partecipare attivamente al dibattimento.

«[Nome della persona] ha raccontato la vita della fabbrica, [nome della persona] ha raccontato la sua esperienza, sono quindi cose pesanti, cose che fanno male, ma io penso, nello stesso tempo, che siano cose giuste da sapere. Non ho partecipato a tutte le udienze perché, lavorando, non mi era possibile, ma a quelle più importanti c'ero sempre, ci son sempre stata» (familiare di una vittima, caso Eternit).

In questi tipi di procedimenti, le richieste delle vittime si fondono in una sorta di azione collettiva.

«C'è una bella differenza tra vedere le persone una per una e vedere un teatro pieno di vittime, cioè di familiari di gente morta... e tutti per lo stesso motivo e per le stesse responsabilità. Si esprime un clima e anche delle richieste completamente diverse... perché il fatto di essere vittime numerose, di episodi analoghi con verosimilmente gli

stessi responsabili, introduce una forte solidarietà tra le vittime stesse e quella domanda di giustizia collettiva, che è diversa dalla domanda di giustizia individuale» (avvocato delle vittime).

Di conseguenza, le vittime hanno riferito il bisogno di organizzare la partecipazione al processo con una strategia collettiva, nonché l'importanza di collaborare con le istituzioni pubbliche per gestire la propria partecipazione.

«Avevamo guadagnato anche la fiducia [delle autorità, perché] noi non abbiamo mai esagerato, non ci siamo mai presentati come estremisti, diciamo così, non abbiamo mai alzato la voce e ci siamo sempre comportati civilmente, [...] io ho sempre detto: “non c'è bisogno di esagerare, diciamo solo le cose come stanno, [...] basta raccontar le cose come stanno» (rappresentante sindacale, caso Eternit).

«Noi organizzammo in un modo incredibile la partecipazione e la possibilità di accedere alle due maxi-aule messe a disposizione e all'aula magna enorme, dove noi organizzavamo la partecipazione di tutta questa gente [...]» (rappresentante sindacale, caso Eternit).

Un professionista ha riferito, tuttavia, le possibili distorsioni connesse alla presenza delle vittime nel procedimento.

«I giudici non sono robot, e quindi anche l'elemento personale conta. La presenza nel processo in qualche modo responsabilizza il magistrato. Cosa fanno infatti i magistrati normalmente? Dicono toglietemi dai piedi le parti civili, che poi procedo più tranquillo» (avvocato delle vittime).

Dal punto di vista degli operatori, le vittime dovrebbero essere informate non solo in merito ai loro diritti, ma anche in merito ai diritti degli imputati. Gli operatori della giustizia dovrebbero avere un ruolo fondamentale nell'informare e renderne consapevoli le vittime dei meccanismi del processo penale.

«Bisogna educare anche le vittime, educarle nell'esercizio dei loro diritti, quindi fargli capire che hanno dei diritti, però anche tenendo conto che il processo penale è un dramma per le vittime, ma anche per chi è sottoposto a processo [...] Voglio dire, c'è anche una dimensione di cui occorre tener conto, che è la dimensione dell'imputato...» (professionista: pubblico ministero).

III) Molte vittime o potenziali vittime hanno riferito di non aver avuto la possibilità di accedere alla giustizia e di chiedere il risarcimento dei danni, in ragione dell'impossibilità di provare di aver patito un danno diretto causato dal reato contestato, nel luogo e nel momento in cui il processo si è svolto. Problemi notevoli sono emersi, in generale, in relazione alle prove. Uno degli ostacoli maggiormente evidenziati è indubbiamente la prova del nesso di causalità tra le azioni od omissioni contestate all'impresa e ai suoi rappresentanti e i danni individuali subiti dalle vittime.

«La difficoltà da un punto di vista giudiziario, quando [...] ad un certo punto si è incominciato a pensare di fare qualche cosa, [...] era di provare il nesso di causa, perché in

realtà è vero che il farmaco che girava copriva il 90% [delle somministrazioni], però poi tutti quanti noi abbiamo fatto quello che c'era. Proprio perché c'era penuria [...] di farmaco [...] tu andavi al centro emofilia e quello che c'era» (vittima di farmaci emoderivati infetti).

«A Casale Monferrato c'era [...] la Procura della Repubblica, facevamo esposti, facevamo esposti, non succedeva mai niente; dopo un po' cominciano ad arrivare le richieste di archiviazione, così formulate: "il Procuratore ha dato l'incarico all'ASL di svolgere indagini su questa situazione, non è stato possibile individuare responsabili, si chiede l'archiviazione". [...] Sono andato a parlare con il Procuratore [...] E questo mi fa: "ma penserà mica che tutte le volte che muore qualcuno facciamo un processo!"» (avvocato delle vittime).

La prova del nesso causale in questo tipo di procedimenti penali spesso dipende dalla rilevanza delle prove scientifiche. Infatti, il ruolo della scienza medica, e della scienza in generale, è chiaramente segnalato da molti partecipanti come uno degli aspetti più critici di queste vicende giudiziarie, essendo all'origine di esiti incerti o persino diametralmente opposti in relazione a fatti o contestazioni del tutto speculari.

«Giuridicamente ci sono mille dibattiti possibili, da quelli sul valore dell'epidemiologia, come ti uso e se ti uso l'epidemiologia oppure no, a quello su tutte le patologie per cui non è stata riconosciuta con estrema precisione la dinamica d'innescio... [...] C'è il problema dell'oltre ogni ragionevole dubbio, che è proprio del penale, perché qui il problema è questo, se io posso supporre che un percorso abbia portato a quel risultato... però la condanna c'è se è certo ogni oltre ragionevole dubbio. E lì quand'è oltre ogni ragionevole dubbio? Una cosa in cui non puoi avere la fotografia, ovviamente, o una ricostruzione dimostrata? Devi comunque andare sul piano logico e questo permette soluzioni in tutte le direzioni...» (avvocato delle vittime).

IV) I partecipanti hanno segnalato l'asimmetria informativa e la disparità di mezzi difensivi tra vittime e imprese in ogni fase del procedimento penale.

«[Se] ti vai a schiantare contro la [grande multinazionale], quanto paghi? Di risarcimento alla [multinazionale] per aver prospettato l'ipotesi che mandasse in giro dei cancerogeni?» (avvocato delle vittime).

Le grandi imprese hanno disponibilità economiche sufficienti per potersi permettere i migliori avvocati ed esperti della materia, mentre le vittime in molti casi possono ricorrere solo al patrocinio legale gratuito. In questo tipo di procedimenti penali, la possibilità di poter pagare i migliori consulenti offre un indubbio vantaggio alle *corporations*, perché l'accertamento dell'esistenza del nesso di causalità dipende in gran parte dalla rilevanza delle prove scientifiche.

«Chi ha provato a fare causa alle aziende si è trovato con tutta la potenza [delle imprese contro], cioè quelli potevano permettersi di pagare gli avvocati per dieci anni e di difendersi *dal* processo...» (vittima di farmaci emoderivati infetti).

«[C'è] la necessità di avere degli esperti [...] che siano realmente in grado di essere neutrali, ma nello stesso tempo molto preparati. [...] Hai bisogno di uno che non sia in conflitto di interessi (e questo lo sai solo se è da anni che lavori in questo settore) e

dall'altra [parte], però, che sia uno anche molto preparato [...]. Dove li trovi? [...] I nostri periti o consulenti non guadagnano quello che guadagnano i consulenti della difesa: io ricordo che c'erano consulenti che guadagnavano 40.000 € a udienza, i nostri a mala pena vengono pagati alla fine» (professionista: pubblico ministero).

V) I partecipanti hanno riferito che spesso le vittime non ottengono il risarcimento del danno, nonostante l'accertamento in ordine all'esistenza dei reati che le hanno colpite. Il più grande ostacolo sotto questo profilo è il tempo e, in particolare, la prescrizione, in presenza della quale il giudice è obbligato a pronunciare sentenza di non doversi procedere perché il reato è estinto. In presenza di questi esiti, la reazione delle vittime è, alternativamente, di grande delusione, incomprensione, rassegnazione (quando l'esito negativo era facilmente prevedibile), disperazione. In sostanza, in questi casi il procedimento penale produce una vittimizzazione secondaria.

«Non ho visto giustizia e, viste le premesse, per molti di loro [le vittime] non ci sarà» (vittima, *focus group*, caso Eternit).

«Il problema delle vittime nel nostro Paese è che sono vittime due volte, vittime del reato e della giustizia» (familiare di una vittima, *focus group*, caso Eternit).

«La sera [della lettura del dispositivo in] Cassazione [...] il mio compagno [...] diceva [al giudice] "le auguro quello che stiamo passando noi" non come malattia, ma psicologicamente» (vittima, *focus group*, caso Eternit).

«[I] pazient[i] che [...] erano in prima linea [...] quando c'è stata la sentenza, l'ultima sentenza, stavano malissimo, arrivavano in ambulatorio tristissimi [...]» (professionista, medico, caso Eternit).

«Più che rabbia ormai è depressione, direi. Non so se ha notato le reazioni delle persone, erano più depresse che [arrabbiate]. [...] Qualcuno che tiene duro, lo fa per motivi di principio, [...] c'è sempre. Ma socialmente c'è la rassegnazione. Quindi l'effetto di vittimizzazione è arrivato sino alle estreme conseguenze, [...] vittime siamo e vittime restiamo» (avvocato delle vittime, caso Eternit).

«Ed è finita proprio male rispetto alle aspettative che avevamo tutti quanti. Dopo dieci anni è arrivat[o] come una beffa sentirsi dire sì, è colpevole di tutto, ma il reato non c'è perché è prescritto. Alla fine è stata questa la beffa. E non c'è stato neanche l'aspetto risarcitorio che avrebbe potuto in qualche modo attutire il colpo» (vittima, caso Eternit).

Le vittime hanno riferito anche la difficoltà di comprendere gli aspetti giuridico-tecnici legati a questo tipo di esiti giudiziari, sia quelli legati al decorso del tempo, sia quelli che non pervengono alla condanna degli imputati per l'impossibilità di dimostrare il fatto oltre ogni ragionevole dubbio.

«[Ci sono anche] coloro che [...] si sono posti il problema [...] "ma come, la Corte di Cassazione dice che se avessimo fatto un processo per il danno alla persona, avremmo avuto giustizia. E perché abbiamo fatto un processo sul disastro doloso, quindi con un capo di imputazione diverso?», la gente questa domanda se l'è posta, e non è facile rispondere, non è facile rispondere, anche se [la risposta] è implicita...» (vittima e rappresentante di un'associazione di vittime, caso Eternit).

«[...] Ci sono delle maglie larghe, che permettono delle interpretazioni [...] anacronistiche: se il disastro è ancora in essere perché me lo dichiaro prescritto? [...] Questa forse è la negazione maggiore della vittima» (familiare di una vittima, *focus group*, caso Eternit).

«Molto spesso, poi, si finisce con l'averle le vittime che credono che l'unica possibilità di avere giustizia, tra virgolette, sia avere il processo e avere una condanna, soprattutto. [Da qui] la difficoltà a far capire che meccanismi giuridici e processuali possono portare anche alla non individuazione di un colpevole in senso penale» (professionista, *focus group* sui casi di inquinamento ambientale).

VI) Molti partecipanti hanno segnalato *una significativa distanza tra la loro iniziale aspettativa di giustizia e l'esito effettivo del procedimento penale*. L'indagine crea spesso grandi aspettative, che poi però vengono frustrate dai meccanismi del processo e dal rigore probatorio richiesto dalla legge penale. La conseguenza finale è che la fiducia delle vittime verso l'intero sistema della giustizia penale ne esce drasticamente ridimensionata.

«L'ho vissuto [il processo] vivendo diverse fasi: una prima fase ovviamente piena di entusiasmo, come momento di conquista di un qualcosa di vero, di profondo [...]. Quando parte il processo però immediatamente la mia seconda fase fu di vivere tutta questa partita... [...] Ho sempre pensato che [...] eravamo soli anche se ben accompagnati dalla nostra gente, dai giovani, dalla città, dalla collettività, ma eravamo fundamentalmente soli mancava un elemento importante, mancava al nostro fianco lo Stato, e questa percezione [...] è sempre stata forte; ho avuto la percezione che noi eravamo veramente Davide [contro Golia]. [...] Ci siamo sentiti quel giorno della sentenza [di Cassazione] tremendamente soli, ma è come se l'annuncio di questo essere soli ce lo fossimo portato dietro» (vittima e rappresentate di un'associazione di vittime, caso Eternit).

«Chi te ne parla [del processo] – perché ci sono anche i [pazienti] che ti dicono “cosa me ne frega del processo, intanto io sono ammalato e muoio” [...] – ma c'è una quota di pazienti, invece, [...] che la vive in termini di “speriamo almeno che adesso venga fatta giustizia” perché almeno... perché sarebbe un modo per far star meglio...» (professionista, caso Eternit).

Le esigenze che sembrano essere maggiormente disattese sono, da un lato, la necessità che vi sia qualcuno che si dedichi con particolare impegno, dedizione e competenza al loro caso; dall'altro lato, la necessità di una continuità d'azione da parte della magistratura. La percezione è particolarmente negativa quando le vittime hanno l'impressione che il sistema garantisca più i diritti degli imputati che non i loro.

«Dal punto di vista [...] della soddisfazione della giustizia questa cosa è totalmente inesistente. [...] Non ho mai visto nessuno, nessun giudice, nessun magistrato, decidere, impugnare la lancia e dire “io adesso, cascasse il mondo, prima che io muoia, questa roba la porto a termine [...]”» (vittime di farmaci emoderivati infetti).

«L'accesso alla giustizia è stato drammatico [...]. Eravamo una cinquantina, una sessantina di persone che avevano fatto questo ricorso alla Corte europea, lo vincemmo, e lo Stato non pagava. Non pagava» (vittima di farmaci emoderivati infetti).

«Vorrei una sentenza consona [...], quello che prevede la giustizia quando si ammazza e viene scoperto che tu sei responsabile di quelle morti [...]. Dico [...] che la sentenza della Cassazione è stata distruttiva perché il Procuratore Generale [...] disse: “Io ho di fronte o far valere il diritto, o la giustizia”. Naturalmente, per “diritto” s'intende “diritto [...] per gli

imputati” [...] La parola “diritto” non riguarda le vittime, assolutamente. [...] Quindi, è la giustizia che riguarda le vittime: “ma io – da magistrato, da procuratore della Cassazione – devo far valere il diritto e quindi rinuncio alla giustizia” – l’ha detto! [...] Naturalmente, è il diritto dell’imputato – che è molto superiore a quello delle vittime – che va tutelato, perché siamo un paese civile noi e dobbiamo tutelare chi commette dei crimini, chi magari ha sulla coscienza qualche migliaio di morti [...] » (rappresentante sindacale, caso Eternit).

Nonostante il problema sopra evidenziato, la necessità di vedere i colpevoli puniti, o almeno di stabilire la verità, rimane un’istanza di primario interesse, evidenziata da molti partecipanti. Il bisogno di ottenere un riconoscimento pubblico delle responsabilità attraverso una sentenza penale è rappresentato spesso come una priorità persino più cogente dell’ottenimento del risarcimento del danno.

«Ho perso un po’ l’aspettativa, la speranza e l’illusione che ci possa essere [una condanna], però io ritengo che debba esserci e che il fatto che non ci sia stato questo riconoscimento, un riconoscimento istituzionale, questa è la morte dello Stato» (vittima di farmaci emoderivati infetti).

«[Se ci fosse stata una condanna] cambierebbe tutto. Io come persona non sono punitiva, [...] però [...] credo che perché una società funzioni ci debbano essere colpe riconosciute e condanne certe, non per vendicare [...] [e] non solo per accertare [...], ma perché non può essere gratuito un danno del genere» (familiare di una vittima di farmaci emoderivati infetti).

«[C’è] bisogno comunque di verità, cioè il fatto che comunque venga fuori la verità storica [...]. Sarebbe più soddisfacente [...] che venga riconosciuta la realtà da chi ha commesso il danno [...] È fondamentale questo, trovare il colpevole, cioè provare chi è stato il colpevole» (vittima del Talidomide).

VII) Anche quando la risposta finale alle richieste delle vittime è negativa, alcuni partecipanti hanno riferito che il sistema della giustizia penale è comunque necessario e utile. Infatti, il procedimento penale è descritto come: l’unica possibilità di richiamare l’attenzione e l’interesse pubblico sul caso; lo strumento più utile per raccogliere le prove, quando le vittime non hanno abbastanza mezzi per provvedere da sé; l’unico modo per ottenere il risarcimento dei danni, a causa del fallimento di tutti gli altri sistemi; l’unico sistema che conduce a un riconoscimento pubblico delle istanze di giustizia delle vittime.

«Nella mia esperienza, la giustizia penale la metto al primo posto, perché [...] un conto è dire che un sindacalista dica: “Lì dentro si muore [...] E un conto è una sentenza di un tribunale “in nome del popolo italiano” [dica]: “Questo lavoratore è morto a causa di quella lavorazione. Questi dieci lavoratori sono morti” (vittima e rappresentante di un’associazione di vittime, caso Eternit).

«[Il processo, malgrado la conclusione in prescrizione], ha tolto il coperchio da una situazione tremenda e ha messo in luce di fronte al mondo [la nostra vicenda]» (rappresentante sindacale, caso Eternit).

VIII) Molte vittime hanno riferito di essersi sentite personalmente molto esposte, sia durante la fase delle indagini, sia durante il processo. Alcune vittime hanno chiaramente ammesso di essere state sottoposte a una vittimizzazione secondaria da questo tipo di esposizione.

«Ti sei fatto addirittura strumento, persone che hanno mostrato il proprio dolore, non dico che sia umiliante ma... non è giusto arrivare a questo per aver solo il tuo» (vittima, *focus group*, caso Eternit).

Alcune vittime hanno parlato delle conseguenze sulla loro *privacy* e sulla loro reputazione indotte dai meccanismi del processo penale. La divulgazione di dati personali e della propria storia personale è segnalata come una delle circostanze negative che può derivare dalla pubblicità che caratterizza il processo penale.

«[L'avvocato, parente di una delle vittime,] diceva, "no perché appena depositiamo l'atto di citazione il giornalista va nella cancelleria, prende i nomi e viene a bussare a casa tua..."» (vittima di farmaci emoderivati infetti).

«Una delle preoccupazioni fortissime del penale, a [fa il nome di una piccola città] in particolare, è che fossero chiamate le persone a testimoniare... con la stampa presente [...]. Giornalisti, tv, erano assembrati fuori [...] è una città piccola [...] e lì c'erano fuori le orde di giornalisti, io sono andato [...] [al]la prima udienza ed ero vicino proprio al Presidente del Tribunale di allora. E lì... mi son sentito vittima forse per la terza volta» (vittima e capo dell'associazione di vittime di farmaci emoderivati infetti).

«NAS che andavano a casa (non la mia, per fortuna) che si presentavano per fare dei sequestri... Allora, ti arriva un carabiniere a casa: "Lei ha questi farmaci, me li dia!". "Ma, scusi, perché?". "Non posso dirglielo!". Non posso dirglielo?! [...] Siccome non potevano avvertire tutte le parti lese, hanno fatto un bellissimo elenco con le diagnosi e l'han pubblicato su internet [...] Perché costava troppo? Perché sono troppe le vittime?! Trova un altro modo!» (vittima e capo dell'associazione delle vittime di farmaci emoderivati infetti).

#### 3.6.4.2. *Procedimenti civili*

Alcune vittime hanno dichiarato che i procedimenti civili hanno costi troppo elevati e occorre troppo tempo per ottenere una sentenza definitiva (nei tre gradi di giudizio).

«[Nella causa civile] ci avevamo buttato dentro anche dei soldi, perché ovviamente [...] inizi[at]a nel 1993, nell'anno 2000 sei ancora lì a diguazzare... senza sapere che cosa succede...» (vittima di farmaci emoderivati infetti).

La mancanza di una *class action* nel nostro ordinamento è un altro ostacolo segnalato dalle vittime.

«Ma come fai a tutelarti se non fai quella che potremmo chiamare un *class action* [...]. Ma se io da solo potessi andare dall'avvocato scalzacani, perché con quello che posso pagare [posso permettermi] solo quello, non sarebbe neanche in grado di spulciare gli atti. Ci vuole un team di avvocati, noi qui siamo di fronte a una multinazionale» (vittima, *focus group*, caso Eternit).

#### *3.6.4.3. Procedimenti amministrativi*

Nessun riscontro in ordine a questo profilo.

#### *3.6.4.4. Fondi di indennizzo*

Nessun riscontro in ordine a questo profilo.

#### *3.6.4.5. Servizi di assistenza alle vittime*

Nessun servizio istituzionalizzato di assistenza alle vittime è al momento disponibile in Italia.

#### *3.6.4.6. Mediazione*

Nessuna procedura di giustizia riparativa ha ancora avuto luogo in Italia per casi di *corporate crime*.

#### *3.6.4.7. Assistenza legale*

Il sistema italiano di giustizia è percepito come inefficiente, specialmente per l'assenza di un'assistenza legale gratuita offerta dallo Stato.

«[Le vittime] hanno bisogni di assistenza, ma anche di assistenza legale; allora si devono rivolgere a degli avvocati [...]. Lo Stato li deve provvedere di una difesa, a suo carico [...]. Dentro l'Avvocatura dello Stato dovrebbe esserci una sezione, che dovrebbe chiamarsi Avvocatura a carico dello Stato [...]. Una difesa attiva, non un gratuito patrocinio per la difesa di un interesse individuale, ma è un interesse Pubblico quello di mettersi insieme alle vittime di questi reati per andare a ricercare le responsabilità penali e i punti di risarcimento del danno» (vittima del Talidomide).

#### *3.6.5. Settore sanitario*

I commenti delle vittime sull'assistenza ricevuta dal settore sanitario sono variegati, ma generalmente positivi con riferimento al servizio sanitario nazionale, sebbene in alcuni casi si evidenzia una limitazione di risorse che ne condiziona il funzionamento. Comunque, ogni caso esaminato presenta peculiarità con riferimento a questo aspetto.

Nel caso degli emoderivati infetti, tutte le vittime erano già costantemente seguite da specialisti a causa della loro patologia originaria; l'atteggiamento delle vittime verso questi medici si è dimostrato generalmente positivo: ad eccezione di un caso (e anche in quel caso, con vari distinguo), non incolpano i medici per la loro condizione, poiché riconoscono come essi abbiano agito in buona fede trattando una malattia veramente grave e potenzialmente letale con i farmaci più avanzati ed efficaci al momento disponibili; farmaci la cui potenziale pericolosità (a causa della contaminazione del sangue) non poteva essere pienamente valutata al tempo, per la generale mancanza di informazioni. Al contrario, queste vittime generalmente apprezzano l'impegno dei medici nel seguire i



pazienti anche in relazione alle nuove patologie aggiuntesi alla loro emofilia, apprezzano la loro vicinanza e umanità, il loro sostegno e la qualità della cura professionale.

Sono anche stati riferiti alcuni casi di ritiro o freddezza da parte del personale medico, ma una vittima con esperienza sia come paziente che come esponente di una associazione di vittime ha fondamentalmente ricollegato questi casi a una comprensibile situazione di *burn-out* di quei medici, che si sono improvvisamente trovati nel mezzo di un'epidemia con conseguenze letali (anche per i pazienti molto giovani e per i bambini), e non sono riusciti a reggerne lo stress psicologico.

Nel caso del Talidomide, mentre una vittima ha riconosciuto che alcuni medici si sono dimostrati attenti e hanno offerto supporto alle vittime, la generale impressione è che la classe medica si sia mostrata troppo reticente nell'identificazione delle cause delle malformazioni, probabilmente per la paura di incorrere in forme di responsabilità professionale; in seguito, quando l'associazione delle vittime ha iniziato la sua battaglia per il riconoscimento e l'assistenza, la percezione riportata è che la classe medica fosse in linea di massima riluttante a prestare aiuto su quel fronte.

Nei casi di amianto, c'è una significativa differenza tra i giudizi espressi sui medici di fabbrica e quelli relativi ai medici del servizio sanitario nazionale. Mentre i primi sono generalmente considerati 'complici' delle imprese, completamente inefficienti nel fornire aiuto e assistenza, sia a causa di un basso profilo professionale, sia perché erano pagati dalle *corporations* (o per una combinazione dei due fattori), i secondi hanno ricevuto una valutazione generalmente positiva, nonostante alcune distinzioni.

Più specificamente, sia le vittime sia i medici intervistati hanno dichiarato che, mentre i sanitari non abituati a trattare l'epidemia di mesoteliomi tipica dei luoghi dove si era svolta la produzione di amianto (e, quindi, anche i medici di questi stessi luoghi, all'inizio dell'epidemia in questione) spesso non possedevano le dovute conoscenze né la specifica sensibilità per rapportarsi con questo tipo di pazienti, i medici del servizio sanitario nazionale locale si sono rapidamente ed efficientemente adattati alla nuova emergenza, e hanno sviluppato, nei lunghi anni di confronto con questa crisi, un'assistenza completa per le vittime e le loro famiglie, con riferimento sia alle attività diagnostiche, sia a quelle terapeutiche, ma anche all'assistenza psicologica e all'assistenza sociale. I sanitari sono generalmente considerati attenti, sensibili ed esperti, e ciò è un grande aiuto per le vittime.

I medici, dal canto loro, hanno sottolineato l'enorme peso psicologico gravante su di loro, sia per la natura incontrovertibilmente letale delle malattie amianto-correlate, sia perché spesso si ritrovano a essere i soli (o, quantomeno, i primi) professionisti in contatto personale e diretto con le vittime, che capita spesso sfoghino su di loro la loro frustrazione e la rabbia per il torto subito, dal momento che non hanno altre persone su cui

riversare i propri sentimenti. Essi inoltre lamentano come le risorse siano generalmente inferiori rispetto a quelle che servirebbero e, perciò – oltre che per la natura invariabilmente mortale del mesotelioma –, le vittime disperate sono, a volte, portate a seguire cure ‘alternative’, offerte da ciarlatani senza scrupoli.

### *3.6.6. Settore privato: le imprese interessate*

I commenti sulle imprese coinvolte nei casi analizzati sono stati in generale molto negativi, sia da parte delle vittime che dei professionisti. Più specificatamente, l’atteggiamento di indifferenza e, in alcuni casi, manipolatorio, delle aziende coinvolte, unitamente alla mancanza di disponibilità ad assumersi almeno una parte di responsabilità per i danni subiti dalle vittime, ha – in tutta evidenza – contribuito alla sofferenza di queste ultime, alimentata peraltro dalla percezione di dover trattare con entità del tutto impersonali, dal potere e dalle risorse incommensurabilmente più grandi delle vittime stesse.

Nel caso dell’amianto, in particolare, i lavoratori coinvolti nella rappresentanza delle vittime hanno subito documentate minacce e rappresaglie dalla società interessata, che ha anche intrapreso campagne di informazione ingannevoli per dislocare la responsabilità delle malattie polmonari su qualsiasi altro fattore che non fosse l’amianto (finanche riconducendone la completa responsabilità alle vittime che fossero anche fumatori). L’industria dell’amianto non ha mai investito nella ricerca medica sul mesotelioma, facendo invece pressione sui medici di fabbrica per nascondere il problema (v. anche *supra*, § 3.6.5), e sia le vittime che i professionisti percepiscono l’offerta tardiva, per conto della *corporation*, di un risarcimento per le vittime e le istituzioni locali come una mossa puramente opportunistica, intesa a liberarsi di loro durante i procedimenti penali, senza alcun riconoscimento, esplicito o implicito, della loro condizione di vittime e senza alcuna assunzione di responsabilità. I costi di decontaminazione sono stati per la maggior parte sostenuti dal settore pubblico, anche perché la società ha dichiarato fallimento non appena il numero di vittime richiedenti il risarcimento si è dimostrato in crescita esponenziale.

Sia nel caso degli emoderivati, sia nel caso del Talidomide, le vittime hanno lamentato analoga indifferenza e lo stesso atteggiamento burocratico delle imprese, come pure l’indisponibilità di queste a riconoscere qualsiasi livello di responsabilità almeno per il danno collettivo causato, con frequenti tentativi di nascondersi dietro l’impossibilità di provare la correlazione causale nei singoli casi. Nella vicenda degli emoderivati, in particolare, una vittima ha riferito come persino l’unica azienda (tra le diverse impegnate nella produzione e commercializzazione di farmaci infetti) che decise di formalizzare un accordo per contribuire a un fondo di assistenza per le vittime, abbia provato, fino alla fine, a

presentare tale contributo come ‘aiuto umanitario’, il che è stato considerato umiliante e inaccettabile dall’associazione delle vittime. Nel caso del Talidomide, una vittima ha espresso il sospetto che le società coinvolte fossero ricorse alla corruzione per eliminare le prove e manipolare le istituzioni pubbliche. Più in generale, in entrambi i casi le vittime e i professionisti intervistati hanno evidenziato la forzata ambivalenza della relazione tra associazioni di vittime e società/gruppi farmaceutici, a causa del tentativo costante di questi ultimi di manipolare le prime – costrette a lottare costantemente per mantenere la propria indipendenza – al fine di ottenere risultati positivi in termini di reputazione e visibilità.

Molte vittime di farmaci pericolosi hanno manifestato angoscia e frustrazione per essere state danneggiate da prodotti e attività teoricamente mirati a migliorare la loro salute, mentre l’interdipendenza economica tra le comunità colpite e le attività legate all’amianto è stata riferita come una caratteristica particolarmente problematica dei casi di amianto (cfr. anche *supra* § 3.4).

### *3.6.7. Settore privato: assicurazioni*

Nessun dato è emerso su questo tema dalle interviste con le vittime e con i professionisti italiani.

### *3.6.8. Altre questioni rilevanti*

Una questione sollevata da alcuni partecipanti (rispettivamente, una vittima di emoderivati infetti e un medico professionista coinvolto nel caso Eternit) fa riferimento all’importanza di sviluppare una migliore ricerca sulle questioni – scientifiche, legali, organizzative – emerse da episodi di *corporate violence* come quelli che li avevano visti coinvolti: attualmente, questo tipo di ricerca sembra quasi inesistente, mentre gli intervistati sembrano considerare molto positiva l’interazione diretta o a distanza con i pochi ricercatori interessati. I medici coinvolti nel caso dell’amianto hanno in particolare sottolineato la necessità di investire risorse in studi epidemiologici, di condividere protocolli *ad hoc* e le migliori pratiche relative sia a patologie rare correlate alla *corporate violence*, sia alla consulenza psicologica per i medici che devono affrontare questo tipo di ‘epidemie’ estremamente stressanti.

I legali e i soggetti coinvolti nell’assistenza alle vittime hanno anche sottolineato l’importanza di un cambiamento di mentalità tra i professionisti del diritto, che dovrebbero sviluppare un approccio più sensibile alle vittime. Sia gli avvocati che le agenzie di controllo (in particolare le forze dell’ordine, i pubblici ministeri e le autorità amministrative) dovrebbero essere formati in tal senso e, in conseguenza, fornire alle vittime informazioni precise, chiare e comprensibili sui principi

e sul funzionamento del sistema legale e giudiziario in generale, e dei processi penali in particolare, in modo da non generare aspettative irrealistiche e contestualmente dare loro la possibilità di scegliere il tipo di azione legale più adatta alle proprie esigenze e caratterizzata dalle migliori prospettive di successo.

### **3.7. Resilienza delle vittime: iniziative individuali e collettive**

#### **3.7.1. Iniziative individuali**

Le iniziative e le strategie individuali per far fronte alla vittimizzazione variano da persona a persona, da caso a caso. La resilienza delle vittime è altamente soggettiva e dipende da molteplici caratteristiche individuali e sociali: questo è stato confermato dalla ricerca empirica.

Le persone coinvolte nella ricerca empirica hanno generalmente dato prova di essere impegnate e reattive: hanno tutte trovato modalità per 'reagire' alla vittimizzazione.

Le reazioni spesso riportate dalle vittime intervistate sono state: a) una sorta di ostinazione nel costringere se stessi e le proprie famiglie a condurre uno stile di vita il più possibile normale, nonostante le gravi conseguenze della vittimizzazione; b) la costante partecipazione alle udienze penali; c) l'impegno a tempo pieno nell'associazione e/o in campagne di sensibilizzazione o altre iniziative in favore delle vittime. E molti altri.

Alcune vittime, di diversi casi, hanno riferito di aver rifiutato proposte transattive forfettarie in segno di 'protesta' (individuale) contro ciò che avvertivano come il tentativo della società commerciale di «sbarazzarsi di loro», «toglierli di mezzo» o «corromperli».

Quanto alle iniziative adottate dai professionisti, vale la pena di menzionarne due in particolare. I medici coinvolti nell'assistenza alle vittime del mesotelioma, nel caso Eternit, hanno riferito di essersi rapidamente resi conto che i loro pazienti non necessitavano 'solo' di trattamenti medici. La comunicazione della diagnosi finiva per essere inestricabilmente intrecciata con informazioni sulla vittimizzazione subita e si accompagnava quindi a una sorta di riconoscimento dello status di vittima. Gli oncologi si sono, così, molto presto trovati a dar vita a una rete informale che comprende la collaborazione con l'associazione delle vittime e il sistema nazionale di previdenza sociale, anche al fine di informare tempestivamente le vittime circa le procedure da avviare a seguito del riconoscimento di malattia professionale o nella loro nuova condizione, anche per poter accedere in tempo utile a forme di assistenza e previdenza.

Un pubblico ministero, con una significativa esperienza in molti dei casi più rilevanti di *corporate violence*, ha avviato negli anni Novanta presso la propria Procura della Repubblica un 'osservatorio dei tumori professionali',

alimentato grazie alle segnalazioni dei medici a cui la Procura chiedeva di riferire i nuovi casi diagnosticati nel distretto di competenza, al fine di monitorare i segnali di allarme e, dove opportuno, avviare indagini penali.

Alcune vittime particolarmente impegnate hanno anche deciso di trasformare la propria situazione personale in una fonte di miglioramento delle condizioni di altre vittime a livello nazionale e anche internazionale. A causa della dimensione collettiva della *corporate violence*, le iniziative individuali, infatti, sono spesso divenute collettive.

### 3.7.2. Iniziative collettive

Come descritto nei paragrafi precedenti, le vittime e le associazioni di vittime dei casi analizzati in questa ricerca hanno svolto un ruolo fondamentale di *advocacy*: si devono principalmente alle iniziative e alle azioni intraprese dalle vittime, per esempio, la legge che ha bandito l'uso dell'amianto in Italia e le leggi che hanno istituito forme di indennizzo alle vittime dell'amianto, del Talidomide e del sangue infetto. Nel caso Eternit, un ruolo importante è stato svolto, dagli anni Settanta in poi, da rappresentanti sindacali locali, con il sostegno di associazioni ambientaliste e di alcuni medici operativi all'interno dello stabilimento: questa 'cordata' di soggetti ha progressivamente avviato la cosiddetta 'vertenza amianto', cercando di coinvolgere il comune e le istituzioni pertinenti in materia di sicurezza sul lavoro, previdenza sociale, ecc.

Tra le iniziative collettive di cui le vittime dell'Eternit e i rappresentanti delle associazioni di vittime hanno parlato durante le interviste e i *focus group*, ne ricordiamo alcune riguardanti Casale Monferrato:

- il regolamento comunale del 1987, recante il divieto di qualsiasi prodotto contenente amianto nel territorio di Casale Monferrato;
- la creazione, nel 2012, dell'Unità Funzionale Interaziendale Mesotelioma, una speciale unità multidisciplinare di assistenza sanitaria volta a promuovere un'assistenza personalizzata dei pazienti affetti da mesotelioma e una costante ricerca. Essa deriva dallo sforzo congiunto degli ospedali locali di Alessandria e Casale Monferrato e dell'Università di Torino;
- l'istituzione, nel 2016, del parco "EterNOT" nato nella stessa zona – ora bonificata – dove sorgeva l'impianto Eternit. Il parco, che comprende anche una zona ricreativa, è anche un memoriale delle vittime.

#### 3.7.2.1. Associazioni delle vittime

I casi analizzati in questa ricerca empirica mostrano la necessità che le vittime si uniscano per affrontare le sfaccettate conseguenze del danno e della perdita economica causati dalla *corporate violence* (l'art. 2 della Direttiva vittime fa riferimento al «danno fisico, mentale, emotivo») e per affrontare il percorso complesso (e spesso senza esito positivo) necessario per ottenere il risarcimento, accedere alla giustizia, ricevere protezione e

prevenire future, maggiori o ripetute conseguenze negative o vittimizzazioni.

Tutti i casi con cui ricercatori sono entrati in contatto, direttamente o indirettamente, nel corso della ricerca hanno visto sorgere associazioni di vittime, le quali hanno svolto un ruolo fondamentale, spesso in solitaria: le associazioni hanno agito nell'interesse delle vittime e fornito consulenza pratica e quotidiana, assistenza legale, assistenza medica e supporto psicologico/emotivo. Le associazioni hanno facilitato, e non di rado organizzato, la partecipazione delle vittime ai procedimenti penali (caso Eternit, ma v. anche il caso Ilva o il caso della strage di Viareggio) e sostenuto i costi delle difese e delle consulenze. Hanno inoltre svolto un ruolo di primo piano nel supportare l'accesso a risarcimenti o indennizzi e nell'esercitare pressione verso il mondo politico per addivenire a forme pubbliche di indennizzo.

In un Paese come l'Italia, dove non esistono servizi di assistenza istituzionali e generali per le vittime, le associazioni hanno assunto un ruolo di supplenza e riempito le lacune. Le vittime, insomma, si sono aiutate reciprocamente.

Le associazioni si dichiarano principalmente auto-finanziate, ma occasionalmente ricevono (o hanno ricevuto) sostegno economico pubblico o privato. Nel caso degli emoderivati infetti, una fondazione è stata creata a seguito di un'erogazione forfettaria ottenuta mediante accordi stragiudiziali con una delle case farmaceutiche coinvolte.

### **3.8. Questioni critiche e 'battaglie' delle vittime**

I percorsi per ottenere riconoscimento, corrette informazioni, protezione e forme di risarcimento/indennizzo sembrano essere stati (e ancora sono) irti di difficoltà per le vittime di *corporate violence* con cui il gruppo di ricerca è entrato in contatto.

Le principali battaglie delle vittime impegnate in questa ricerca empirica riguardano sostanzialmente la sopravvivenza, le cure mediche, l'assistenza sociale e previdenziale, la protezione e la prevenzione dei danni futuri: argomenti che sono cruciali nell'impianto politico-culturale della Direttiva 2012/29/UE. La domanda di giustizia è talvolta sullo sfondo, come tema verso cui farsi poche illusioni o come fonte di delusioni. Nella scala di priorità degli intervistati, la ricerca della giustizia è persa in secondo piano rispetto al soddisfacimento delle necessità sopra esposte, ritenute più essenziali, vitali e 'pratiche'.

La mancanza di riconoscimento e di assunzione di responsabilità da parte delle *corporations*, tuttavia, sono riferite come esperienze molto dolorose e vissute come una sorta di vittimizzazione secondaria, specialmente quando si risolvono in clausole di esonero da responsabilità inserite come condizioni nelle proposte di transazione. Il risarcimento e, in generale, gli accordi transattivi monetari sono stati spesso definiti dalle

vittime come ‘cose vili’ con cui confrontarsi. Accettare un risarcimento o una compensazione monetaria, o al contrario esigere forme di riparazione e rimedi di natura collettiva (quali la bonifica ambientale dei siti inquinati, l’attivazione di servizi sanitari o assistenziali, ecc.), hanno generato dilemmi etici nelle vittime e tensioni tra le vittime e le relative associazioni.

L’interazione con un ente (la società commerciale), anziché con una persona fisica, è stata riferita come un’ulteriore difficoltà, a causa della mancanza di un vero interlocutore:

«A me è mancato un interlocutore con cui arrabbiarmi, perché non lo individuavo. [...] Un’azienda è un’entità astratta» (vittima di farmaci emoderivati infetti).

Le vittime hanno quasi sempre dichiarato di avere poca fiducia nelle *corporations*, percepite come soggetti mossi solo da finalità di profitto e vantaggio.

«Mentre le persone si ammalavano e morivano, voi [imprese] facevate profitti» (vittima di farmaci emoderivati infetti)

Una particolare forma di tensione riportata nel corso delle attività di ricerca riguarda il frequente conflitto tra sicurezza sul lavoro e tutela dell’ambiente, da un lato, e i lavoratori che temono di ‘perdere il posto’, dall’altro. Nel caso Eternit, simile tensione ha influenzato i modi in cui il problema è stato affrontato nel corso di decenni. I professionisti intervistati hanno riferito della persistenza e gravità di tale problema, come dimostra il caso ILVA, tuttora in corso.

Una preoccupazione comune, condivisa sia dalle vittime sia dai professionisti che hanno partecipato alla ricerca, è il bisogno di protezione e la conseguente necessità di prevenzione. Le vittime, in particolare, vivono la protezione e la prevenzione come compito e dovere in capo allo Stato e, in generale, ai cosiddetti organismi pubblici di controllo. I professionisti hanno segnalato la necessità che gli organismi di controllo collaborino fra loro e ‘facciano rete’, al fine di meglio valutare i rischi, intercettare i segnali di allarme, adottare le necessarie precauzioni e le misure di protezione adeguate.

«Se poi voi pensate ai casi di morti numerose [legate a] una sola causa, quando si scatena la rabbia? Quando qualcuno pensa che si poteva far qualcosa...» (vittima di farmaci emoderivati infetti).

Conforto e sollievo sono riferiti da tutti gli intervistati e dai partecipanti ai *focus group* quando le tragiche esperienze di cui sono stati protagonisti sono servite da lezione e hanno quindi contribuito ad avviare iniziative istituzionali volte a prevenire altre esperienze simili o a migliorare il sistema: è il caso della legge che ha messo al bando l’amianto, dei nuovi protocolli di controllo sui donatori di sangue, dei cambiamenti nella produzione di emoderivati, della nascita dell’agenzia nazionale per il farmaco e della rete nazionale di farmacovigilanza.

I professionisti, e in particolare i pubblici ministeri e giudici ascoltati durante la ricerca, sottolineano le difficoltà nell'identificazione e nel riconoscimento tempestivi e corretti delle vittime delle imprese, a causa dell'incertezza scientifica, dei periodi di latenza, della mancanza di un rapido intervento da parte delle agenzie di controllo, della mancanza della prova della causalità. Essi sottolineano inoltre la necessità di porre attenzione all'informazione delle vittime circa i loro diritti nei procedimenti penali, nella gestione della loro presenza alle udienze, nel prepararli a partecipare al processo. Le informazioni alle vittime dovrebbero essere tali da non generare aspettative sbagliate circa il procedimento penale, il cui obiettivo principale non è, di per sé, la protezione delle vittime, e le cui garanzie fondamentali a favore degli imputati devono essere assicurate. La nascita di adeguati servizi di assistenza alle vittime – di tipo medico, psicologico e sociale – potrebbe utilmente dirottare le aspettative delle vittime dal processo penale verso un sistema di assistenza sociale più adatto a soddisfarle.

Infine, la ricerca empirica ha dato voce ad alcune interessanti proposte, provenienti soprattutto da professionisti. Fra le proposte ricordiamo:

- un migliore *networking* e un più stretto coordinamento tra le istituzioni, centrali e periferiche, incaricate della sicurezza sul lavoro, della tutela dell'ambiente, della previdenza sociale e dell'assicurazione contro gli infortuni sul lavoro, il sistema sanitario, l'autorità di pubblica sicurezza, la polizia giudiziaria e la magistratura;
- una migliore e più efficiente organizzazione del sistema giudiziario e in particolare degli uffici dei pubblici ministeri, al fine di promuovere maggiore consapevolezza e più attenzione nei confronti delle vittime di *corporate violence*;
- una migliore applicazione della normativa sulla responsabilità da reato delle persone giuridiche;
- il potenziamento di forme collettive e sociali di risarcimento per le vittime e per le comunità vittimizzate, da affiancare ai risarcimenti individuali;
- la creazione di un'autorità pubblica e indipendente di controllo dedicata alla *corporate violence* (simile all'attuale Autorità Nazionale Anticorruzione);
- l'istituzione di una procura nazionale *ad hoc* dedicata al *corporate crime*.



## PARTNERS



UNIVERSITÀ CATTOLICA del Sacro Cuore

**CSGP**

Centro Studi "Federico Stella"  
sulla Giustizia penale e la Politica criminale

**Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale (CSGP) – Università Cattolica del Sacro Cuore, Milano, Italia.** Il CSGP è l'ente coordinatore del Progetto. Il CSGP nasce nell'Università Cattolica di Milano con lo scopo di promuovere la ricerca teorica e applicata sui problemi della giustizia penale e della politica criminale in una prospettiva interdisciplinare, attenta a metodi e risultati dello studio criminologico e agli apporti delle scienze empirico-sociali, nonché all'attuazione dei principi costituzionali. Il CSGP si avvale di un autorevole comitato scientifico (di cui fanno parte magistrati ed esperti di chiara fama in materie giuridiche, economiche, psicologiche e filosofiche) e di un ampio gruppo di ricerca composto da professori, ricercatori, dottorandi.



**Leuven Institute of Criminology – Università di Lovanio, Lovanio, Belgio.**

L'Università di Lovanio (KU Leuven) è socio fondatore della LERU (League of European Research Universities); figura tra i primi dieci istituti universitarie nelle classifiche europee relative alla ricerca. Il Leuven Institute of Criminology (LINC) si compone di circa settanta professori e ricercatori impegnati nella ricerca criminologica e nell'insegnamento. Il LINC prosegue la tradizione dell'Università di Lovanio di combinare ricerca di qualità con un forte impegno verso la società, obiettivo perseguito attraverso ricerca sia di base che orientata alla politica criminale e sociale. Il LINC persegue otto 'filoni di ricerca' uno dei quali dedicato alla giustizia riparativa e alla vittimologia.



Max-Planck-Institut  
für ausländisches und  
internationales Strafrecht

**Max-Planck-Institut für ausländisches und internationales Strafrecht (MPICC), Friburgo in Br., Germania.**

I progetti di ricerca intrapresi dal MPICC sono di natura comparativa, internazionale e interdisciplinare, e si concentrano sullo studio empirico del diritto penale, della criminalità, della difesa sociale e delle vittime di reato. I campi di ricerca dell'Istituto includono altresì: armonizzazione e uniformazione del diritto penale e del diritto processuale penale negli Stati dell'Unione Europea; riforma del diritto penale alla luce delle migliori conoscenze disponibili sulle possibili soluzioni giuridiche ai problemi sociali e sulle alternative più funzionali all'interno e all'esterno dell'ordinamento penale.

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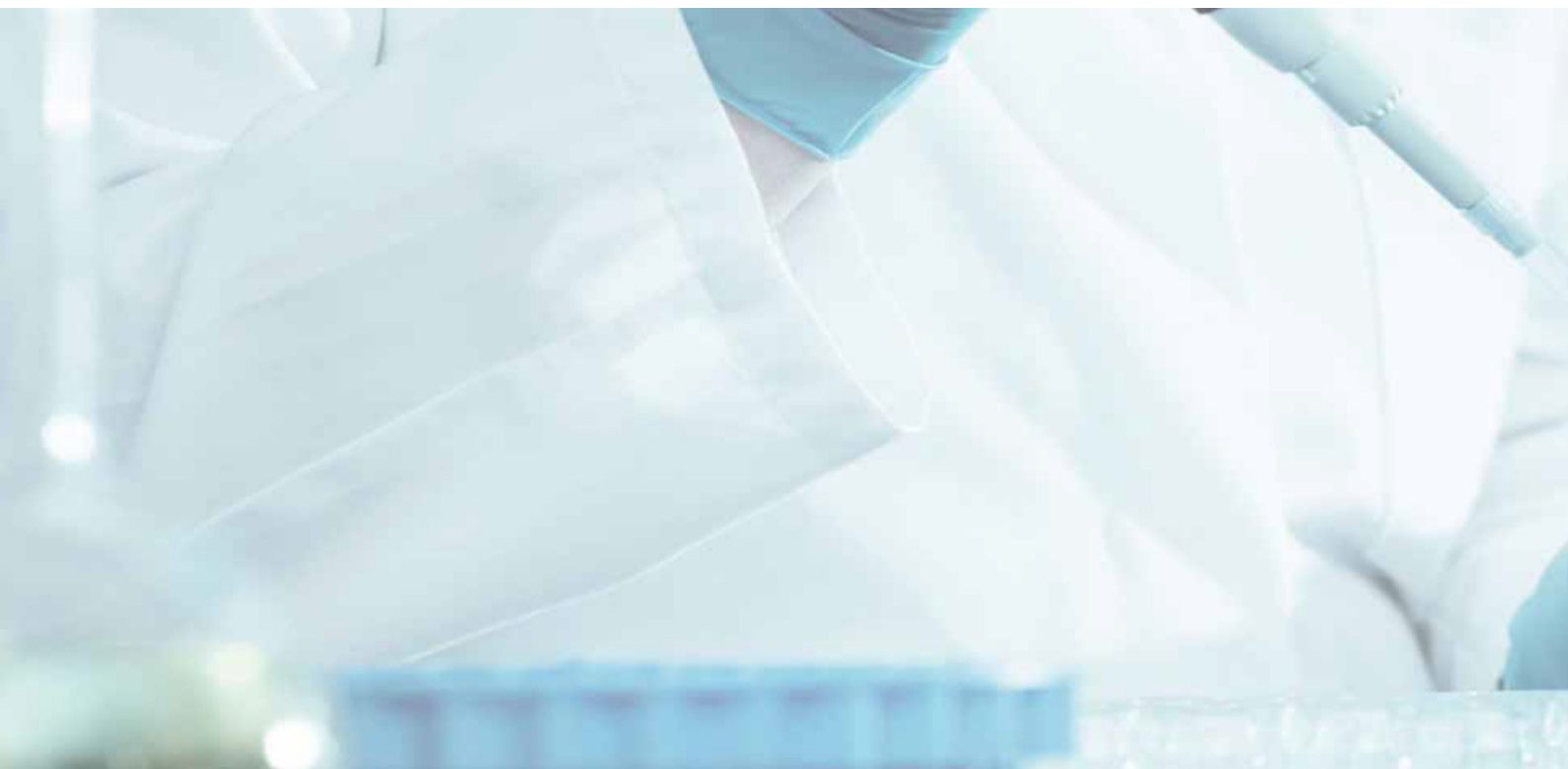


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This project is co-funded by  
the Justice Programme  
of the European Union



# VICTIMS AND CORPORATIONS

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence



## Linee guida per la valutazione individuale dei bisogni delle vittime di *corporate violence*

Maggio 2017



Queste *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence* costituiscono uno dei frutti del progetto *Victims and Corporations. Implementation of Directive 2012/29/EU for Victims of Corporate Crimes and Corporate Violence*, finanziato dal programma “Giustizia” dell’Unione Europea (Agreement number - JUST/2014/JACC/AG/VICT/7417)

**Coordinamento:**

Gabrio Forti (direttore del progetto) e (in ordine alfabetico) Stefania Giavazzi, Claudia Mazzucato, Arianna Visconti  
Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale

**Partners del progetto:**

Leuven Institute of Criminology, Catholic University of Leuven  
Max-Planck-Institut für ausländisches und internationales Strafrecht

**Gruppo di ricerca:**

Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Carolin Hillemanns, Katrien Lauwaert, Stefano Manacorda, Enrico Maria Mancuso

**Sito web:**

[www.victimsandcorporations.eu](http://www.victimsandcorporations.eu)

Questo documento è stato realizzato col sostegno finanziario del programma “Giustizia” dell’Unione Europea. La responsabilità dei contenuti dell’opera è da imputarsi interamente ai suoi autori; tali contenuti non possono in alcun modo essere intesi come espressione della posizione e delle opinioni della Commissione Europea.

Arianna Visconti

*Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence*

Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale,  
Milano, 2017

**ISBN 978-88-942229-3-7**

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Questo progetto è cofinanziato  
dal programma “Giustizia”  
della Commissione Europea



**“VICTIMS AND CORPORATIONS”**

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

**Linee guida**  
per la valutazione individuale  
dei bisogni delle vittime  
di *corporate violence*

Arianna Visconti

Maggio 2017



## RINGRAZIAMENTI

Queste *Linee guida* sono uno dei frutti di un grande sforzo collettivo.

Desideriamo quindi ringraziare tutti i membri del gruppo di ricerca e di coordinamento che hanno partecipato alla ricerca teorica e pratica del progetto 'Victims and Corporations. Implementation of Directive 2012/29/EU for victims of corporate crime and corporate violence' e hanno così reso possibile la redazione di questo documento: Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Gabrio Forti, Stefania Giavazzi, Carolin Hillemanns, Katrien Lauwaert, Stefano Manacorda, Enrico Maria Mancuso, Claudia Mazzucato, Alexandra Schenk e Arianna Visconti.

Soprattutto, però, vogliamo esprimere il nostro più sentito ringraziamento a tutte le vittime che hanno scelto di condividere con noi le loro storie, come pure ai professionisti che ci hanno permesso di imparare dalla loro esperienza di contatto e lavoro con le vittime, nelle interviste e nei *focus group* alla base della ricerca empirica. Senza la loro generosità e collaborazione la redazione di queste *Linee guida* non sarebbe stata possibile.





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## PREMESSA

La **Direttiva 2012/29/UE** reca in sé il potenziale di innescare grandi cambiamenti negli ordinamenti penali, sostanziali e processuali, dei Paesi membri dell'Unione. La Direttiva introduce, infatti (come meglio si vedrà nella **§ I** di queste *Linee guida*), un insieme di **norme minime in materia di diritti, assistenza e protezione delle vittime di reato** e di partecipazione di queste al procedimento penale, senza pregiudizio per i diritti dell'autore del reato (inteso, ai sensi della Direttiva, non solo come soggetto condannato per un fatto penalmente rilevante, ma anche come indagato e imputato: cons. 12).

Tra i soggetti che ricadono nella definizione di 'vittima' della (e dunque possono beneficiare delle innovazioni introdotte dalla) Direttiva, tuttavia, vi è un **gruppo molto numeroso** che per lo più non viene considerato in questi termini, e il cui effettivo accesso alla giustizia rischia dunque di essere particolarmente a rischio. Si tratta delle vittime dei *corporate crimes*, e più specificamente delle **vittime di corporate violence**, ovvero (v. **§ III**), di quei reati commessi da società commerciali nel corso della loro attività legittima e implicanti offese alla vita, all'integrità fisica o alla salute delle persone.

Nel corso delle fasi precedenti della ricerca (di cui il lettore potrà trovare una sintesi nel primo *report* di progetto, *Rights of Victims, Challenges for Corporations*, dicembre 2016, disponibile sul sito <http://www.victimsandcorporations.eu/publications/>), è emerso chiaramente come la *corporate violence* sia **altrettanto o più diffusa di altre forme di criminalità violenta 'convenzionale'**. Inoltre, questo tipo di vittimizzazione appare avere natura per lo più collettiva e assai spesso transnazionale, e si deve considerare che il numero di vittime sembra destinato a crescere drammaticamente nei prossimi anni, generando problemi sempre più complessi per la sua gestione da parte dell'amministrazione della giustizia, anche in ragione dei periodi di latenza spesso molto lunghi tipici dei danni derivanti dall'esposizione a sostanze tossiche (v. **§ IV**).

Il progetto 'Victims and Corporations. Implementation of Directive 2012/29/EU for victims of corporate crime and corporate violence' si concentra in particolare su tre tipologie di 'vittimizzazione d'impresa': reati ambientali, violazioni delle norme sulla sicurezza alimentare e reati legati

al settore farmaceutico-medicale. Per questa ragione, larga parte dei **dati empirici** raccolti, che hanno fornito le basi per l'elaborazione delle presenti *Linee guida*, provengono da interviste con vittime di questa tipologia di reati. Tuttavia, data la complessità intrinseca di ogni episodio di *corporate crime*, nel nostro lavoro abbiamo riscontrato spesso l'intrecciarsi, ad esempio, di illeciti relativi al settore della salute e sicurezza sul lavoro con altre tipologie di reati d'impresa.

Più in generale, come già accennato, le fasi più empiriche e 'operative' del progetto sono state precedute da un ampio e approfondito studio interdisciplinare (i cui esiti sono riassunti nel citato *report*) di ricognizione del panorama sia giuridico che criminologico e vittimologico nazionale (nei tre paesi coinvolti), comunitario e internazionale. Partendo dai risultati di tale analisi preliminare è stata organizzata una serie di **interviste e focus group** con vittime di *corporate violence* e con esperti chiamati a confrontarsi, per motivi professionali, con questa tipologia di reati e di persone offese. Tali interviste e *focus group* ci hanno consentito di raccogliere informazioni preziose sui bisogni delle vittime di *corporate violence*; informazioni a loro volta indispensabili per orientare quella delicata operazione di «**valutazione individuale delle vittime per individuarne le specifiche esigenze di protezione**» (v. § II) che l'**art. 22 della Direttiva** introduce come dovere primario ed essenziale nel contatto con vittime di reato.

In ragione dell'estrema delicatezza e sensibilità dei dati e delle vicende delle vittime coinvolte nella ricerca, l'esecuzione delle interviste e dei *focus group* è stata preceduta dalla predisposizione di un insieme di **linee guida etiche** (ad opera di *Claudia Mazzucato*), onde assicurare che questi venissero realizzati nel massimo rispetto per la dignità, la libertà morale, la riservatezza e gli specifici bisogni di tutte le persone coinvolte. Sulla base dei risultati della precedente ricerca teorica, sono inoltre state predisposte (da *Katrien Lauwaert* e *Claudia Mazzucato*) delle **linee guida per la conduzione delle interviste e dei focus group**, a supporto e orientamento della fase di ricerca 'sul campo'. Quest'ultima ha condotto, in seguito all'analisi delle informazioni raccolte (sulla base di un *coding tree* predisposto da *Katrien Lauwaert* e *Alexandra Schenk*), alla redazione di tre *report* nazionali sui risultati di un complesso di **26 interviste individuali e 8 focus group**, condotti in **Italia** (rapporto di ricerca di *Stefania Giavazzi*, *Claudia Mazzucato* e *Arianna Visconti*; codifica dei dati ad opera di *Eliana Greco* e *Marta Lamanuzzi*; interviste e moderazione dei *focus group* ad opera di *Claudia Mazzucato*, con l'assistenza di *Stefania Giavazzi*, *Alessandro Provera* e *Arianna Visconti*), **Germania** (interviste e *focus group*, codifica, analisi e rapporto di ricerca ad opera di *Marc Engelhart*, *Carolin Hillemans* e *Alexandra Schenk*) e **Belgio** (interviste e *focus group*,

codifica, analisi e rapporto di ricerca ad opera di *Katrien Lauwaert*)<sup>1</sup>. Tra i professionisti che hanno accettato di partecipare a interviste e *focus group* figurano magistrati giudicanti e requirenti, avvocati, personale dei servizi di supporto alle vittime, medici, mediatori, personale di un fondo di indennizzo per vittime di reati violenti, un rappresentante di una ONG impegnata sul fronte dei diritti umani e l'*ombudsman* di un'impresa privata.

La ricerca empirica ha confermato che le vittime di *corporate violence* sperimentano un estremo bisogno di ricevere (citando l'art. 1 della Direttiva) «informazione, assistenza e protezione adeguate» e di essere messe in grado di «partecipare ai procedimenti penali», giacché si rivelano essere un'ulteriore categoria – che va ad aggiungersi alle 'tradizionali' vittime di violenza domestica, abusi, traffico di esseri umani, terrorismo ecc. – di **soggetti estremamente vulnerabili**, anche (e spesso in ampia misura) perché frequentemente non vengono considerate, nel sentire comune ma anche da se stesse, come 'vittime di reato'.

Queste *Linee guida* mirano dunque a fornire a tutti i professionisti coinvolti nel contatto con, e nell'assistenza a, vittime di *corporate violence* uno strumento che li aiuti a meglio comprendere e valutare individualmente i **bisogni** di questa tipologia di vittime (v. in particolare § V), nella consapevolezza delle molte e complesse **specifiche problematiche** legate a questa particolare forma di vittimizzazione (v. § IV). Un diverso testo, di taglio più generale e natura trasversale, è disponibile in lingua inglese sul sito del progetto (*Individual Assessment of Corporate Violence Victims' Needs. A Practical Guide*, aprile 2017, compilato da *Katrien Lauwaert*, editing e cura di *Arianna Visconti*: <http://www.victimsandcorporations.eu/publications/>).

Partendo da queste *Linee guida* e dall'ulteriore dibattito con professionisti ed esperti che, confidiamo, aiuteranno ad alimentare, il gruppo di lavoro del progetto procederà inoltre all'elaborazione di un insieme di **linee guida specifiche per professionisti ed imprese**, con lo scopo di mettere a disposizione della collettività ulteriori strumenti, sempre più mirati ed efficaci, per un'effettiva applicazione della Direttiva 2012/29/UE alle vittime di *corporate crime* e *corporate violence*.

Per aggiornamenti sui prossimi risultati e attività del progetto, consultate il nostro sito internet: [www.victimsandcorporations.eu](http://www.victimsandcorporations.eu). Grazie!

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<sup>1</sup> Desideriamo ringraziare altresì Elena Agatensi, Davide Amato, Pierpaolo Astorina, Luc Boone, Davide Canzano, Nina Degel, Marina Di Lello, Eliana Greco, Carlo Novik, Alessandro Provera, Eliana Romanelli, Luca Schler, Marco Trinchieri e Mirijam Zubarev per l'aiuto prestato nella trascrizione delle interviste e dei *focus group*.



## I.

# LE INDICAZIONI DELLA DIRETTIVA 2012/29/UE CHE ISTITUISCE NORME MINIME IN MATERIA DI DIRITTI, ASSISTENZA E PROTEZIONE DELLE VITTIME DI REATO

La **valutazione individuale dei bisogni di protezione** delle vittime di reato si inserisce, con **importanza centrale**, nel complessivo quadro di principi e previsioni della **Direttiva 2012/29/UE** volti a **tutelare le vittime di reato** da ogni forma di **vittimizzazione secondaria o ripetuta**, di **intimidazione** e di **ritorsione**, e più in generale a garantirne un **trattamento «imparziale, rispettoso e professionale»** (art. 25). Può quindi essere utile richiamare preliminarmente le **principali indicazioni** rivolte dalla Direttiva stessa a **tutti i soggetti suscettibili, per motivi professionali, di entrare in contatto personale con le vittime**, rispetto ai quali viene sottolineata l'importanza che «abbiano accesso e ricevano un'adeguata formazione sia iniziale che continua, di livello appropriato al tipo di contatto che intrattengono con le vittime, cosicché siano in grado di **identificare le vittime e le loro esigenze e occuparsene in modo rispettoso**, sensibile, professionale e non discriminatorio» (cons. 61).

**Obiettivo della Direttiva è garantire che le vittime di reato ricevano informazione, assistenza e protezione adeguate e possano partecipare ai procedimenti penali (art. 1).**

Questo implica che il contatto e l'interazione con le vittime di reato devono essere improntati a:

- **riconoscimento della vittima** come tale, indipendentemente dal fatto che l'autore del reato sia identificato, catturato, perseguito o condannato (oltre che dall'eventuale relazione familiare tra loro), come pure dall'eventuale ritardo nella denuncia di un reato (per paura di ritorsioni, umiliazioni o stigmatizzazione);

- **rispetto per l'integrità fisica, psichica e morale della vittima**, sensibilità, professionalità ed **assenza di qualsivoglia discriminazione** (fondata su motivi quali razza, colore della pelle, origine etnica o sociale, caratteristiche genetiche, lingua, religione o convinzioni personali, opinioni politiche o di qualsiasi altra natura, appartenenza a una minoranza nazionale, patrimonio, nascita, disabilità, età, genere, espressione di genere, identità di genere, orientamento sessuale, status in materia di soggiorno o salute) nel contatto con la stessa;
- **considerazione della situazione personale** della vittima e delle sue necessità immediate, dell'età, del genere, di eventuali disabilità e della sua maturità;
- **protezione** dalla **vittimizzazione secondaria** (ovvero dalle eventuali conseguenze negative, dal punto di vista emotivo e relazionale, derivanti dal contatto tra la vittima e il sistema delle istituzioni in generale, e quello della giustizia penale in particolare: BANDINI 1991) o **ripetuta**, dall'**intimidazione** e dalle **ritorsioni**;
- **minimizzazione del numero di contatti non necessari con le autorità**, agevolando le interazioni tra queste e la vittima, prestando attenzione a **non causare sofferenze non necessarie**, adottando un approccio rispettoso, in modo da consentire alle vittime di stabilire un **clima di fiducia con le autorità**;
- impegno per un'**assistenza** adeguata, onde facilitare il **recupero** della vittima e garantirle un adeguato **accesso alla giustizia**;
- **protezione della vita privata** e della riservatezza della vittima;
- impegno a fornire **informazioni e consigli** con modalità quanto più possibile diversificate, con un linguaggio semplice e accessibile, in modo da **assicurarne la comprensione** da parte della vittima, e di **consentirle di prendere decisioni consapevoli** in merito alla partecipazione al procedimento;
- impegno a **garantire che la vittima sia compresa**, tenendo conto della sua conoscenza della lingua usata per dare le informazioni, dell'età, della maturità, della capacità intellettuale ed emotiva, del grado di alfabetizzazione e di eventuali menomazioni psichiche o fisiche;
- **considerazione anche per le eventuali vittime indirette del reato**, ovvero, ad es., familiari della vittima che a loro volta subiscono un danno a seguito del reato.



La Direttiva prevede quindi, in capo alle **vittime di reato**, un insieme di **diritti** così sinteticamente riassumibili:

- diritto di **comprendere** e di **essere compresi**, dal momento della denuncia e in ogni fase e grado del procedimento (artt. 3 e 5), incluso uno specifico diritto all'interpretazione e alla traduzione (art. 7);
- diritto di ottenere **informazioni**, fin dal primo contatto con un'autorità competente, sul tipo di assistenza che può ricevere e da chi, sull'accesso all'assistenza sanitaria e/o ad un'eventuale assistenza specialistica, anche psicologica, e su una sistemazione alternativa, sulle procedure per la presentazione della denuncia, sulle modalità e condizioni per ottenere protezione, sulle possibilità di accesso alle varie forme di assistenza di un legale, sulle modalità e condizioni per il risarcimento, sul diritto all'interpretazione e alla traduzione, sulle procedure attivabili in caso sia residente in un altro Stato membro, sulle procedure disponibili per denunciare casi di mancato rispetto dei propri diritti, sulla persona cui rivolgersi per comunicazioni sul proprio caso, sui servizi di giustizia riparativa disponibili, e su condizioni e modalità di rimborso delle spese sostenute in conseguenza della propria partecipazione al procedimento penale (art. 4), nonché sull'andamento del proprio caso in ogni fase e grado del procedimento (artt. 5 e 6);
- diritto di **accesso a servizi di assistenza alle vittime** riservati, gratuiti e operanti nell'interesse delle stesse, prima, durante e per un congruo periodo di tempo dopo il procedimento penale (artt. 8 e 9);
- diritto di **partecipare al procedimento penale** (diritto di essere sentiti, art. 10; diritto di chiedere il riesame di una decisione di non esercitare l'azione penale e diritti collegati, art. 11; diritto alla protezione anche in caso di accesso a servizi di giustizia riparativa, art. 12; diritto al patrocinio a spese dello Stato, art. 13; diritto al rimborso delle spese sostenute per la partecipazione al procedimento penale; art. 14; diritto alla restituzione dei beni sequestrati di spettanza alla vittima, art. 15; diritto ottenere una decisione in merito al risarcimento da parte dell'autore del reato, art. 16; diritto a che siano ridotte al minimo le difficoltà derivanti dal fatto che la vittima è residente in un altro Stato membro, art. 17);

- diritto alla **protezione** (della vittima e dei suoi familiari) da vittimizzazione secondaria e ripetuta, intimidazione e ritorsioni, compreso il rischio di danni emotivi o psicologici, e alla **salvaguardia della propria dignità** durante gli interrogatori o le testimonianze (incluso il diritto all'assenza di contatti con l'autore del reato, il diritto alla protezione nella fase delle indagini, il diritto alla protezione della vita privata, il **diritto a una tempestiva valutazione individuale** per individuare le specifiche esigenze di protezione e determinare se e in quale misura la vittima trarrebbe beneficio da misure speciali nel corso del procedimento penale, il diritto di accesso a tali misure speciali ove necessarie, lo specifico diritto di protezione per i soggetti minori: artt. 18-24).

Di fatto, la **capacità** di qualsiasi operatore che entri in contatto con vittime di reato di **identificare le vittime e le loro specifiche esigenze individuali** è **prerequisito** per garantire il **rispetto di ogni altra più puntuale indicazione** contenuta nella Direttiva, e dunque l'effettiva **garanzia dei diritti** da questa riconosciuti alle vittime, dalla trasmissione davvero efficace e comprensibile delle informazioni dovute, a una tutela effettiva delle specifiche esigenze di riservatezza del singolo individuo nel singolo caso, ecc. In questo contesto, naturalmente, tale capacità è **particolarmente necessaria** in vista dell'identificazione di eventuali **specifiche esigenze di protezione** delle vittime vulnerabili.



## II.

### LA VALUTAZIONE INDIVIDUALE DEI BISOGNI DI PROTEZIONE DELLE VITTIME DI REATO

Come si è avuto modo di osservare (v. sezione precedente), la **valutazione individuale dei bisogni di protezione** delle vittime di reato rappresenta un passaggio fondamentale per il riconoscimento e la garanzia effettivi dei diritti sanciti dalla Direttiva 2012/29/UE, in particolare in relazione al diritto di ogni **vittima vulnerabile**, in quanto «**particolarmente esposta al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni**» (art. 22), di accedere a misure di **protezione speciale** onde evitare tali occorrenze e proteggerne al meglio la vita privata e la riservatezza.

Né la Direttiva né il d. lgs. 15 dicembre 2015, n. 212, di recepimento e attuazione della Direttiva nell'ordinamento italiano, **individuano una specifica figura professionale** demandata a svolgere tale valutazione individuale. La Direttiva, tuttavia, stabilisce che la valutazione in questione dovrebbe essere effettuata in modo **tempestivo** per **tutte le vittime** (cons. 55), pur riconoscendo che la sua portata «può essere adattata secondo la gravità del reato e il grado di danno apparente subito dalla vittima» (art. 22 co. 5). In assenza di diverse indicazioni, il **compito** di effettuare tale valutazione ricade potenzialmente su una platea assai vasta di soggetti.

Qualsiasi operatore coinvolto in procedimenti penali che possano portare in contatto personale con vittime di reato è potenzialmente destinato a effettuare una valutazione individuale in rapporto agli specifici bisogni di protezione, e a questo fine dovrebbe ricevere una specifica e adeguata formazione.

Più specificamente, si desume dalla Direttiva (cons. 61, art. 25) che una «**formazione specifica sulle modalità di procedere alla valutazione**» individuale dei bisogni di protezione delle vittime, «**sia generale che specialistica**, di livello appropriato al tipo di contatto che intrattengono con le vittime», «**sia iniziale che continua**», dovrebbe essere fornita a

**tutti** i «funzionari» **potenzialmente coinvolti in via diretta in tale valutazione** (ovvero, nelle parole della Direttiva, soggetti «coinvolti in procedimenti penali che possono entrare in contatto personale con le vittime», quali «servizi di **polizia**» e «**personale giudiziario**», ma anche «**pubblici ministeri**» e «**giudici**»), come pure a tutti i soggetti potenzialmente implicati in tale valutazione **in via mediata e/o in assenza dell'instaurazione di un procedimento penale** («persone che possono essere implicate nella valutazione individuale per identificare le esigenze specifiche di protezione delle vittime e determinare la necessità di speciali misure di protezione», quali ad esempio «**avvocati**» e «operatori che forniscono alle vittime **sostegno** o servizi di **giustizia riparativa**»).

L'art. 22 della Direttiva, pur non scendendo nei dettagli su come debba essere eseguita tale valutazione individuale, fornisce indicazioni circa i **principali aspetti da indagare e tenere in considerazione**. Analogamente procede l'art. 90 *quater* c.p.p. (introdotto dal d.lgs. 212/2015) nel definire la «**condizione di particolare vulnerabilità**» di una vittima di reato.

**II.1. L'operatore che si trovi a effettuare la valutazione individuale dei bisogni di protezione di una vittima dovrà prestare particolare attenzione a:**

- **caratteristiche personali della vittima** (art. 22 co. 2 Dir.), tra cui rientrano l'**età**, l'eventuale stato di **infermità** o di **deficienza psichica** della vittima, nonché l'eventuale **dipendenza affettiva, psicologica o economica dall'autore del reato** (art. 90 *quater* c.p.p.), ma anche fattori come **appartenenza etnica o religiosa, orientamento sessuale, status in materia di soggiorno**, eventuali **difficoltà di comunicazione** (cons. 56 Dir.);
- **tipo e natura del reato** (art. 22 co. 2 e 3 Dir.; art. 90 *quater* c.p.p.), con specifica attenzione alla **gravità del reato in rapporto al danno subito dalla vittima** e all'eventuale impiego di **violenza**, ai reati d'odio o comunque motivati da **pregiudizio o discriminazione**, ai reati di **violenza o sfruttamento sessuale**, o di **violenza di genere**, o commessi **in una relazione stretta**, ai fatti di **terrorismo, tratta di esseri umani, criminalità organizzata**;
- **circostanze del reato** (art. 22 co. 2 Dir.; art. 90 *quater* c.p.p.), quali, ad esempio, il fatto che l'**autore del reato godesse di una posizione di autorità**, o che **la residenza della vittima sia in una zona ad elevata criminalità** o controllata da gruppi criminali, o che il paese d'origine della vittima non sia lo Stato membro in cui è stato commesso il reato (cons. 56 Dir.);

- **desideri della vittima** (art. 22 co. 6 Dir.), con la quale la valutazione deve essere effettuata in «stretta partecipazione» e che vanno tenuti in conto in particolare **nella scelta e nella modulazione delle misure speciali di protezione** da adottare (inclusa l'eventuale volontà della vittima di non avvalersi di tali misure); in questa prospettiva, «**le preoccupazioni e i timori delle vittime in relazione al procedimento** dovrebbero essere fattori chiave nel determinare l'eventuale necessità di misure particolari» (cons. 58 Dir.).

**II.2. La valutazione individuale dei bisogni di protezione non può considerarsi 'data' una volta per tutte, ma va adattata all'evolversi della situazione della vittima nel tempo, che deve quindi essere periodicamente rivalutata.**

La **Direttiva** prevede infatti (**art. 22 co. 7**) che la valutazione individuale dei bisogni di protezione della vittima venga «**aggiornata durante l'intero corso del procedimento penale**», qualora «gli elementi alla base della valutazione individuale siano mutati in modo sostanziale». Questo per garantire una protezione realmente individualizzata ed efficace in presenza (il che può considerarsi la norma) di situazioni personali e relazionali in continua evoluzione.



### III.

## CHE COS'È LA 'CORPORATE VIOLENCE'?

Con l'espressione 'corporate violence' si intendono i reati commessi da società commerciali nel corso della loro attività legittima e implicanti offese alla vita, all'integrità fisica o alla salute delle persone.

Il concetto di 'corporate violence' (che, come a breve meglio si preciserà, è nato nell'ambito delle scienze sociali) include, in termini più generali, qualsiasi **illecito** commesso da un'organizzazione d'impresa, e dunque da suoi dirigenti, rappresentanti legali, dipendenti ecc. (anche non individualmente identificati o identificabili) **nell'interesse o a vantaggio dell'ente** stesso nel corso della sua attività economica legittima, con **conseguenze dannose nella sfera psico-fisica delle persone**. In questa sede, naturalmente, interessano le sole condotte di cui sia ipotizzabile una natura **penalmente illecita**, tale da qualificare le persone affette come **'vittime di reato'** ai sensi della Direttiva (ovvero persone fisiche che abbiano «subito un danno, anche fisico, mentale o emotivo, o perdite economiche che sono stati causati direttamente da un *reato*», nonché i familiari «di una persona la cui morte è stata causata direttamente da un reato» e che hanno «subito un danno in conseguenza della morte di tale persona» - **art. 2 co. 1** - «*indipendentemente* dal fatto che l'autore del reato sia identificato, catturato, perseguito o condannato» - **cons. 19**).



Alcuni **esempi** tratti dalla ricerca teorica e pratica nel quadro di questo progetto (si veda la *Premessa*) possono dare un'idea della **casistica estremamente variegata** degli episodi riconducibili al concetto di *corporate violence*, utile anche in vista dell'analisi degli **specifici profili di danno** e delle **peculiari criticità** nella gestione di questo tipo di vittimizzazione (su cui v. meglio *infra § IV*):

- **Malattie e decessi asbesto-correlati (caso Eternit):** il trattamento industriale dell'asbesto per la produzione di fibrocementi, effettuato senza le dovute cautele, ha condotto a **migliaia di casi** di malattia e decesso legati all'inalazione di fibre di amianto, che hanno interessato **non solo i lavoratori** dello stabilimento, **ma anche la popolazione** civile nel comprensorio della fabbrica; il picco dei decessi non è ancora stato raggiunto, a causa del **lungo periodo di latenza** delle patologie asbesto-correlate, e i danni **continueranno dunque a manifestarsi** per i decenni a venire.
- **Esposizione a CVM da produzione petrolchimica (caso di Porto Marghera):** **centinaia di casi di malattia e decesso** tra i **lavoratori** di un impianto petrolchimico sono stati ricollegati all'esposizione, in assenza di adeguate cautele, al cloruro di vinile monomero, uno dei sottoprodotti di lavorazione dell'impianto, del cui scorretto smaltimento (implicante **rischi per l'ambiente e per la salute della popolazione locale**) la multinazionale proprietaria della fabbrica è stata inoltre accusata; il procedimento ha avuto esiti altalenanti, con assoluzione degli imputati in primo grado per **l'impossibilità di provare il nesso di causalità**, e dichiarazione dell'intervenuta **prescrizione** per quasi tutti i capi di imputazione nei gradi successivi.
- **Componentistica difettosa (disastro di Eschede):** il deragliamento di un treno ad alta velocità, causato da un difetto tecnico del materiale rotabile, ha causato **oltre cento morti e altrettanti feriti in un singolo episodio**.
- **Commercializzazione di farmaci con effetti teratogeni (caso Talidomide):** l'uso del farmaco, il cui principio attivo è in grado di causare **alterazioni del feto**, commercializzato come anti-nausea per le donne in gravidanza, ha causato **migliaia di casi di focomelia e amelia** (gravi alterazioni congenite dello sviluppo degli arti, fino alla completa assenza degli stessi) nei figli delle donne che lo avevano assunto, prodottisi nell'arco di **circa un decennio in oltre cinquanta paesi**.



- **Commercializzazione di farmaci emoderivati infetti:** la diffusione in commercio, **in tutto il mondo**, di prodotti emoderivati per il trattamento dell'emofilia ricavati da sangue non controllato, spesso prelevato da soggetti ad alto rischio, ha condotto a **migliaia di casi di infezione da HIV e HCV** in pazienti (molti dei quali bambini) **già portatori di altra grave patologia**, e a un conseguente **stillicidio di decessi negli anni** successivi (nella sola Italia si stimano tra i 2.500 e i 3.000 decessi).
- **Commercializzazione di protesi medicalmente inidonee (caso PIP):** l'impiego di silicone industriale (anziché di silicone a uso medico) nella realizzazione di protesi mammarie (ma anche, in minor misura, di altro tipo), commercializzate e impiantate **in tutto il mondo**, ha condotto a **migliaia di casi di lesioni di varia intensità** (nonché, asseritamente, ad alcuni decessi, anche da carcinoma mammario), incluse quelle determinate dalla **necessità di rimuovere chirurgicamente le protesi difettose**, prevalentemente in pazienti **donne**, molte delle quali **già pazienti oncologiche** necessitanti di mastoplastica ricostruttiva.
- **Epidemia di escherichia coli (caso 'Jack in the Box'):** la distribuzione di carne contaminata e non adeguatamente cotta in una catena di ristoranti americana ha condotto a **oltre 700 infezioni** da *e. coli*, con il **decesso** di quattro bambini e **lesioni permanenti** (inclusi danni renali, neurologici e cerebrali) per 178 vittime.

Va ribadito, anche alla luce degli esempi sopra illustrati, che il **concetto di corporate violence** è di **matrice criminologico-sociologica** e non presenta, pertanto, **perfetta sovrapposibilità** con le **categorie giuridiche** di **'violenza'** e neppure di **'responsabilità da reato dell'ente'**.



Sotto il primo profilo, infatti, la **corporate violence** include una **casistica al tempo stesso più ampia e più ristretta** rispetto al **concetto giuridico di violenza** come evolutosi anche recentemente nel nostro ordinamento:

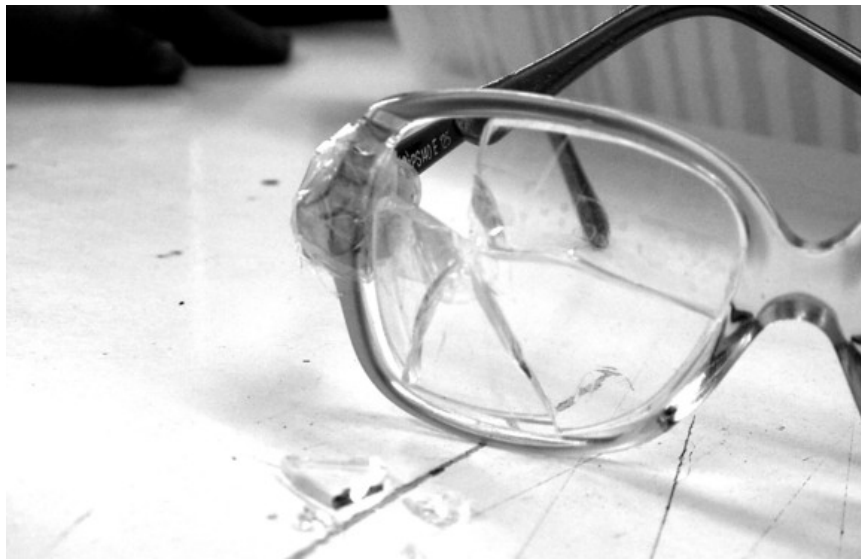
→ più ampia, perché **non** contiene alcuna **implicazione di intenzionalità** (il che per lo più la esclude, tra l'altro, dall'ambito di applicazione della Direttiva 2004/80/CE relativa al diritto di indennizzo per le vittime di reati violenti *intenzionali*), **né di interazione diretta tra autore e vittima;**

→ più ristretta, perché concepita in relazione a soli casi di **violenza 'materiale'**, implicante un **impatto su vita, integrità e salute psico-fisica delle persone**, e **non** anche in relazione a casi di **violenza puramente psicologica**, pure possibili in un contesto di *corporate crime* (si pensi ad es. al c.d. *mobbing*) e recentemente accomunati a pieno titolo al concetto di 'violenza' proprio in relazione alla ricostruzione della categoria delle 'vittime vulnerabili' (si veda Cass. SU 29 gennaio 2016, n. 10959, che ricava tale ampliamento del tradizionale concetto di violenza, in relazione alle disposizioni del codice di procedura penale riferite alle persone offese in condizione di particolare vulnerabilità, proprio da una lettura dell'ordinamento interno alla luce di quello comunitario e internazionale).

Sotto il secondo profilo, certamente il concetto di **corporate violence** si presta a coprire un **novero di reati molto più ampio** di quelli *lato sensu* violenti (o potenzialmente conduttivi a reati violenti o comunque a lesioni alla vita e all'integrità psicofisica delle persone) attualmente inseriti nel **catalogo** degli illeciti che possono dare luogo a **responsabilità amministrativa da reato degli enti ex d. lgs. 231/2001** (ovvero, allo stato, delitti di criminalità organizzata e delitti con finalità di terrorismo o di eversione, artt. 24 *ter* e 25 *quater*, mutilazione degli organi genitali femminili, art. 25 *quater*.1, delitti contro la personalità individuale, art. 25 *quinquies*, omicidio colposo o lesioni gravi o gravissime commesse con violazione delle norme sulla tutela della salute e sicurezza sul lavoro, art. 25 *septies*, e reati ambientali, art. 25 *undecies*).

Tale discrepanza discende, tuttavia, proprio dall'**origine empirico-sociale** della nozione di **corporate violence**, e si presta quindi a **meglio ricostruire** proprio i profili di **danno e sofferenza concreti** sperimentati dalle **vittime di questo tipo di reati**, nonché le **specifiche problematiche** relative ad una adeguata **protezione** di questo particolare gruppo di vittime. Appare dunque evidente come il concetto di *corporate violence*, e la sensibilità per la realtà empirico-sociale a questo sottostante, si rivelino **essenziali** proprio in vista di una **effettiva ed efficace implementazione della Direttiva**, e in particolare in relazione a una **corretta valutazione individuale dei bisogni di protezione** di queste vittime.

III.1. Nella valutazione individuale dei bisogni di protezione di una vittima di *corporate violence*, l'operatore non deve farsi condizionare dall'inquadramento giuridico-formale del fatto, ma concentrarsi sul suo effettivo impatto sulla vita, salute o integrità psico-fisica della vittima, individuato in termini di danno attuale o di pericolo, onde procedere a una valutazione concreta dei rischi di vittimizzazione secondaria o ripetuta, intimidazione o ritorsione, nello specifico caso.



Dalla precedente presentazione ed esemplificazione del concetto di *corporate violence* emerge un **tratto caratteristico** della **vittimizzazione** a questa collegata, che, se non invariabilmente presente, si connota comunque come nettamente prevalente sul piano statistico: la sua **natura generalmente collettiva**.

Gli esempi sopra citati, infatti, evidenziano come gli episodi di *corporate violence* coinvolgano quasi sempre una pluralità di vittime, che possono andare **dalle decine, alle centinaia, alle migliaia o decine di migliaia**; in **qualche caso** le vittime sono **più immediatamente e agevolmente identificabili**, per la natura 'istantanea' dell'episodio (v. disastro di Eschede, in cui per altro alcuni corpi restarono senza identificazione, non consentendo dunque di contattare i familiari) o per la tracciabilità del prodotto dannoso o pericoloso (v. caso PIP; tracciabilità per altro non uniforme nei diversi Paesi coinvolti), mentre in **altri casi** risulta praticamente **impossibile ricostruire numero esatto e identità delle vittime**, per l'estensione transfrontaliera del crimine, i lunghi periodi di latenza nell'emersione del danno, la difficoltà di ricostruzione dei nessi

causali ecc.; il coinvolgimento, in alcuni casi, di **individui neppure ancora nati** (v. caso Talidomide) contribuisce, da un lato, alla difficoltà di individuazione delle vittime (su cui v. anche *infra*, § IV) e, dall'altro, alla diffusività della vittimizzazione stessa.

**III.2. È necessario prestare specifica attenzione alla possibile presenza di numerose altre vittime dello stesso episodio di *corporate violence*, oltre a quella/e che si sono rivolte all'autorità.**

**Non tutti i casi** di *corporate violence* implicanti **vittimizzazione collettiva**, tuttavia, presentano la **stessa visibilità** e ricevono la **stessa attenzione**.

Sotto questo profilo, gli episodi che presentano natura di **disastro istantaneo** abitualmente ricevono **immediata attenzione** sia **mediatica e sociale**, sia da parte delle **forze di polizia** e della **magistratura**; le vittime possono normalmente contare su un **atteggiamento proattivo delle autorità** (dall'attivazione delle strutture della Protezione Civile, con i servizi di **supporto immediato**, almeno a breve termine, per le persone coinvolte, alla **celere raccolta di dati e dichiarazioni** in vista delle indagini da svolgere); per lo più tali casi ricevono diretta e immediata **attenzione anche dalle forze politiche**, con reazioni che possono includere provvedimenti risarcitori *ad hoc*, commissioni d'inchiesta, proposte di riforma normativa, istituzione di giornate commemorative, ecc.

**Viceversa**, i casi di vittimizzazione collettiva da *corporate violence* che implicano **dispersione territoriale e/o temporale nell'emersione delle persone colpite** o presumibilmente colpite (i quali, come vedremo meglio nella § IV, rappresentano per altro la maggioranza) ricevono **molta meno attenzione sociale e mediatica**, spesso non 'fanno notizia' e, anche qualora la facciano, spesso l'attenzione di pubblico e autorità viene risvegliata con anni di **ritardo** rispetto all'insorgenza dei primi danni; mancano, per lo più, strutture per un sostegno minimamente coordinato e mirato a questi gruppi di vittime; difficilmente questi casi inducono all'attivazione autonoma delle agenzie di *law enforcement*, il che può risultare in gravi ritardi nell'indagine e perseguimento dei reati e in un conseguente maggior rischio di prescrizione, con ripercussioni anche in termini di **oblio** sociale e politico; raramente le forze politiche si attivano per queste vittime (se non dietro lunghe e intense pressioni sociali e mediatiche, di solito attivate da associazioni delle vittime stesse), che soffrono quindi prima di tutto per l'**assenza di riconoscimento** della loro condizione a tutti i livelli: istituzionale, politico, sociale, mediatico.

III.3. Nella valutazione dei bisogni di una vittima di *corporate violence* è importante mantenere un atteggiamento obiettivo, che prescindendo dalla visibilità pubblica del caso e dall'intensità dell'attenzione e del sostegno da questo raccolti a livello mediatico, politico e sociale, concentrandosi invece sui concreti danni e sofferenze subiti dall'individuo e sugli specifici rischi connessi alle circostanze del caso concreto e della singola vittima.



La sezione seguente delle *Linee Guida* è dunque concepita per fornire all'operatore impegnato nella valutazione individuale dei bisogni di protezione della vittima di *corporate violence* alcune informazioni di base sulle specificità di questa tipologia di reati, dal punto di vista sia delle modalità di presentazione delle relative conseguenze dannose, sia delle particolari problematiche incontrate da queste vittime nell'accedere alla giustizia.

## IV.

### CONSEGUENZE E PROFILI PROBLEMATICI DELLA VITTIMIZZAZIONE DA CORPORATE VIOLENCE

Come si è già avuto modo di accennare (v. *supra* § III), la Direttiva qualifica la **vittima** come tale alla luce del suo aver «**subito un danno**, anche **fisico**, **mentale** o **emotivo**, o **perdite economiche** che sono stati causati direttamente da un reato» (art. 2 co. 1)

Come per quasi tutti i reati gravi, i danni conseguenti a una vittimizzazione da *corporate violence* tendono a essere sia fisici, sia psicologici, sia economici. La generale complessità di questi crimini contribuisce a far sì che la vittima non sperimenti tali profili di danno come entità separate, ma come aspetti di un'unica esperienza traumatica che si potenziano l'un l'altro. È inoltre frequente una mancanza iniziale di percezione del danno e una sua emersione solo ritardata e/o graduale, come pure un profilo di 'tradimento della fiducia' della vittima particolarmente gravoso sul piano psicologico.

- Il **danno fisico** può andare dalla **morte** (istantanea o a seguito di malattia più o meno lunga) alle **lesioni personali di diversa entità e durata**, incluse **condizioni gravemente invalidanti** e/o sfiguranti implicanti, tra l'altro, consistenti ripercussioni negative sulla vita lavorativa, affettiva e di relazione (v. sotto); può riguardare anche **feti o neonati**; può **emergere nell'immediatezza** del crimine o con **consistente ritardo**, anche nel corso di decenni, a causa dei **lungi periodi di latenza** di molte malattie correlate all'esposizione ad agenti tossici; può presentarsi con **sintomatologia e/o eziologia non chiara**, fino a impedirne la riconduzione certa all'atto illecito.

- Il **danno psicologico ed emotivo** può derivare **da un singolo evento traumatico** (ad es. in caso di disastri) o essere principalmente la **conseguenza dei danni fisici ed economici** e del relativo stress. In entrambi i casi, sia la letteratura che i risultati della ricerca empirica evidenziano come possa presentarsi **con intensità e in forme non diverse da quello derivante dai reati violenti ‘comuni’** (PTSD, depressione, disturbi d’ansia, ecc.). Quasi sempre presente è uno specifico **senso di ‘tradimento’** (che contribuisce ad acuire gli esiti psicologici negativi appena citati) nei confronti dell’ente e dei suoi rappresentanti, cui la vittima è generalmente legata da un **necessitato rapporto di fiducia delegata o implicita** (consumatore nei confronti del produttore, paziente nei confronti dell’industria farmaceutica, dipendente nei confronti del datore di lavoro, ecc.), in qualche caso potenziato da una vera e propria **relazione di dipendenza** che lega vittima e perpetratore (si pensi al soggetto emofiliaco dipendente da farmaci emoderivati salvavita, o a lavoratori o intere comunità economicamente dipendenti da impianti produttivi non sicuri). Senso di tradimento spesso esteso alle istituzioni pubbliche, quando la vittima ne percepisca l’inerzia nel provvedere ai controlli che avrebbero potuto impedire il reato o nel procedere al suo contrasto una volta scoperto. Lo stress psicologico può essere approfondito dal **timore di un aggravamento o reiterazione del danno** (si pensi, in un caso come quello dell’Eternit, alla sofferenza psicologica legata alla certa evoluzione letale in caso di diagnosi di mesotelioma pleurico, o all’esperienza del decesso di famigliari e conoscenti esposti agli stessi fattori ambientali cui la vittima, attuale o potenziale, è esposta), spesso aggravato da una situazione di **incertezza scientifica**, come pure dal **timore di ritorsioni** da parte del *corporate offender*, rispetto al quale la **disparità di forze** è generalmente evidente alla vittima. Inoltre, poiché in questo ambito molti sono i **casi** che possono considerarsi **in qualche misura ‘concausati’ o ‘precipitati’ dalla vittima** (scelta di uno specifico prodotto, scelta di una determinata occupazione, decisione di sottoporsi a un intervento estetico, e simili), non infrequenti sono sentimenti di **vergogna e autocolpevolizzazione** dal grave impatto emotivo sulla vittima. Qualora la vittima sia costretta e/o possa permettersi di abbandonare un luogo di residenza gravemente compromesso (come in casi di severo inquinamento ambientale) vi è spesso un **danno alla vita di relazione** dovuto al forzato sradicamento; analogo danno può derivare dallo sviluppo di **malattie gravemente invalidanti e/o deturpanti** (v. il caso delle vittime del Talidomide) e più in generale dallo **stress causato alla vittima e/o ai suoi famigliari** dall’episodio criminoso e dalle sue conseguenze di medio e lungo periodo.

- Il **danno economico**, in questi casi, è per lo più ricollegabile a fattori come **spese mediche** sostenute in relazione al danno fisico riportato (spesso ingenti, in relazione alla gravità e durata delle patologie contratte), **perdita del posto di lavoro** o comunque **diminuzione della capacità lavorativa**, perdita di un congiunto costituente l'unica o primaria fonte di reddito della famiglia, **costi sostenuti per cambiare residenza**, quando possibile (ad es. abbandonando un'area gravemente inquinata), **o per ridurre con mezzi propri il rischio** di vittimizzazione ripetuta (bonifiche, acquisto di protezioni, ecc.).

Da questa sintesi emerge con evidenza come, rispetto alle **vittime di corporate violence**, sia **frequente** la **compresenza** di **plurimi fattori di vulnerabilità** (su cui v. in generale *supra* § II), potenzialmente legati a

- **caratteristiche personali della vittima**, quali **malattie e infermità antecedenti o conseguenti al reato** (a volte in combinazione tra loro: si pensi all'emblematico caso dei soggetti emofiliaci contagiati da malattie infettive a seguito della somministrazione di farmaci contaminati), o una situazione di **dipendenza economica o di altro genere** dall'autore del reato;
- **tipo e natura del reato**, spesso implicante **danni estremamente gravi e pervasivi** con ricadute su ogni aspetto della vita lavorativa, personale, familiare e sociale della vittima;
- **circostanze del reato**, per lo più implicante una **grande sproporzione di risorse**, informazioni e potere a vantaggio della *corporation*, nonché spesso connotato da una **natura transnazionale** legata sia al carattere multinazionale di molte imprese, sia alla natura diffusa della vittimizzazione da prodotto o da reato ambientale (o a una combinazione dei due fattori); a ciò si aggiunga la frequente **impossibilità per la vittima di abbandonare un luogo di lavoro e/o residenza** che lo mantiene esposto agli stessi rischi di vittimizzazione.

IV.1. Nella valutazione dei bisogni di protezione di una vittima di *corporate violence* l'operatore deve tenere conto della frequente compresenza di plurimi fattori di vulnerabilità e verificare quindi accuratamente se una tale combinazione si dia nel caso in esame.

Nel contatto con vittime di *corporate violence* gli operatori dovrebbero inoltre tenere conto di tutti quei particolari **profili problematici**, connaturati a questa tipologia criminale, che possono avere (e nella prassi quasi sempre hanno) un **impatto negativo** sulle effettive possibilità di **accesso alla giustizia** – latamente inteso – di questi particolari soggetti, in relazione in particolare a:

- **Accesso alla giustizia penale:** l'**estrema complessità tecnica e/o scientifica** della maggioranza dei casi di *corporate violence*, la **natura quasi sempre collettiva** della vittimizzazione e i **tempi spesso molto lunghi per l'emersione del danno** sono i **principali elementi critici** che influenzano negativamente la possibilità delle vittime di vedere soddisfatte le loro aspettative di giustizia da parte di un procedimento penale. Aspettative spesso molto elevate, dal momento che (anche per la mancanza di adeguate strutture di supporto e di meccanismi di indennizzo e mediazione strutturati e facilmente accessibili) quello penale rappresenta per molte di queste vittime una sorta di 'ultimo giudice', non solo per l'accertamento della responsabilità degli autori di reato e il riconoscimento della propria condizione di vittime, ma anche per la ricostruzione della verità dei fatti e la prevenzione di futuri episodi di *corporate violence*. A fronte di questo, tuttavia, le **possibilità realistiche** di pervenire a un esito di condanna, o almeno a un pieno accertamento dei fatti, sono **particolarmente scarse**, in ragione dei **problemi di accertamento del nesso di causalità** tra condotta e offesa e della più generale **necessità di complesse consulenze tecniche** (rispetto alle quali le *corporations* sono in posizione avvantaggiata), delle **maggiori risorse degli imputati per la difesa tecnica**, delle **strategie difensive talora molto aggressive** (con conseguenze negative, ad es., anche sulla *privacy* delle vittime), del facile subentrare della **prescrizione**. Ancora più a monte, **la stessa identificazione di tutte le vittime coinvolte può risultare estremamente ardua** (v. *supra* § III.2) e, in rapporto a quelle identificate, i **numeri** delle parti civili possono risultare così grandi da creare **problemi di gestione pratica del procedimento** e di **allungamento dei tempi** dello stesso.





- **Accesso alla giustizia civile:** per i procedimenti civili valgono in larga misura le **stesse difficoltà riscontrate per quelli penali** (solo in parte compensate dallo standard probatorio meno elevato), con l'aggiunta di una generale **maggiore lunghezza** degli stessi e dei **maggiori costi gravanti sulle vittime**, per la mancanza, da un lato, di un 'attore' pubblico, e dall'altro di un modello di *class action* equiparabile a quello presente in altri ordinamenti (come è noto, l'art. 140 bis del Cod. consumo ha introdotto nel nostro ordinamento una 'azione di classe' secondo un modello *opt-in* e a struttura bifasica, per cui, in esito alla decisione favorevole nell'azione di accertamento collettiva, ciascuno dovrà poi agire singolarmente per la liquidazione del danno, caratteristiche che, insieme all'esclusione dei c.d. *punitive damages*, hanno presumibilmente influito sulla fin qui pressoché nulla utilizzazione dell'istituto; senza contare che si dubita, allo stato, dell'applicabilità di tale azione collettiva ad es. ai casi di danno ambientale). In tale contesto, lo stesso «**diritto di ottenere una decisione in merito al risarcimento** da parte dell'autore del reato» (art. 16 Dir.) appare **strutturalmente compromesso**.
- **Accesso a fondi di indennizzo:** la **posizione delle vittime di corporate violence appare particolarmente problematica**, sotto questo profilo, **sia a livello comunitario sia a livello interno**. Se da un lato, infatti, **l'Italia non ha neppure dato adeguata attuazione alla Direttiva 2004/80/CE** in tema di indennizzo per le vittime di reati violenti (si vedano la condanna inflitta al nostro Paese dalla Corte di Giustizia, GS, 11 ottobre 2016, C-601/14, e la sostanziale non conformità alla Direttiva delle limitazioni contenute nella successiva l. 7 luglio 2016, n. 122), va segnalato che **quest'ultima limita**, per parte sua (v. *supra* § III), la propria operatività ai **reati violenti intenzionali**, categoria in cui difficilmente ricadono gli episodi di **corporate violence**, di natura **quasi invariabilmente colposa**. Eventuali **fondi ad hoc** si sono dimostrati **estremamente ardui da ottenere** e, anche quando concessi (con grande ritardo), connotati da **significative limitazioni all'accesso** e/o **forti ritardi nelle erogazioni** (emblematica la vicenda del fondo per i danneggiati da Talidomide, istituito solo nel 2007 dalla l. n. 244, a circa cinquant'anni dal picco delle malformazioni, e che inizialmente – fino alla modifica con d.l. n. 113/2016 – si applicava ai soli nati dal 1959 al 1965, con esclusione di quelli del 1958 e 1966, come pure quella del fondo per i danneggiati da trasfusioni o somministrazione di emoderivati, istituito, dopo molte pressioni, nel 1992, con l. n. 210, per il cui ritardato pagamento l'Italia è stata recentemente condannata dalla Corte EDU, sentenza *D.A. e altri c. Italia*, sez. I, 14 gennaio 2016).

- **Accesso ai servizi di assistenza alle vittime:** va segnalato in tema che il **d.lgs. 212/2015**, di attuazione della Direttiva 2012/29/UE, **non ha in alcun modo preso in considerazione l'istituzione** di «specifici **servizi di assistenza** riservati, gratuiti e operanti nell'interesse della vittima, prima, durante e per un congruo periodo di tempo dopo il procedimento penale», inclusi «servizi di assistenza specialistica gratuiti e riservati in aggiunta a, o come parte integrante di, servizi generali di assistenza alle vittime», il diritto di accesso ai quali è esplicitamente sancito dalla Direttiva (**art. 8 co. 1 e 3**), la quale individua altresì le **prestazioni minime** che questi dovrebbero garantire alle vittime (**art. 9**: «informazioni, consigli e assistenza in materia di diritti delle vittime, fra cui le possibilità di accesso ai sistemi nazionali di risarcimento delle vittime di reato, e in relazione al loro ruolo nel procedimento penale, compresa la preparazione in vista della partecipazione al processo»; «informazioni su eventuali pertinenti servizi specialistici di assistenza in attività o il rinvio diretto a tali servizi»; «sostegno emotivo e, ove disponibile, psicologico»; «consigli relativi ad aspetti finanziari e pratici derivanti dal reato»; «salvo ove diversamente disposto da altri servizi pubblici o privati, consigli relativi al rischio e alla prevenzione di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni»; a tali prestazioni si aggiungono, per i servizi di assistenza specialistica, anche «alloggi o altra eventuale sistemazione temporanea a vittime bisognose di un luogo sicuro a causa di un imminente rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni» e «assistenza integrata e mirata a vittime con esigenze specifiche»).



- **Accesso ai servizi di giustizia riparativa:** per quanto la **giustizia riparativa** (definita, all'art. 2 co. 2.d, come «qualsiasi procedimento che permette alla vittima e all'autore del reato di partecipare attivamente, se vi acconsentono liberamente, alla risoluzione delle questioni risultanti dal reato con l'aiuto di un terzo imparziale») appaia in linea generale un metodo **molto promettente** in vista di un più efficace soddisfacimento delle istanze di riconoscimento della vittima, di riparazione delle conseguenze del reato e di prevenzione sia di danni ulteriori, sia di altri futuri episodi di *corporate violence*, va segnalato come, al di fuori dell'ambito minorile, la **possibilità di accesso** a servizi di mediazione penale sia **molto disomogenea sul territorio nazionale**. A questa specifica problematica strutturale italiana, si aggiunge il fatto che, **anche laddove presenti**, i **servizi di giustizia riparativa** allo stato affrontano **essenzialmente casi di criminalità 'comune'**: le specifiche complessità e criticità dei casi di *corporate violence* richiedono adattamenti particolari dei programmi di giustizia riparativa (come definiti dalle Nazioni Unite) e una formazione *ad hoc* dei mediatori, anche al fine di assolvere alle garanzie imposte in materia dalla Direttiva stessa (**art. 9**).



- **Accesso all'assistenza legale:** la Direttiva stabilisce, all'art. 13, che «le **vittime** che sono **parti del procedimento penale**» hanno **diritto** di «accesso al **patrocinio a spese dello Stato**», le cui condizioni e norme procedurali sono demandate alla legislazione nazionale. Allo stato attuale (ai sensi dell'art. 76 d.P.R. n. 115/2002, come da ultimo modificato dal d.l. 93/2015), i **limiti di reddito** per l'accesso al gratuito patrocinio sono **estremamente restrittivi** (reddito imponibile personale e familiare non superiore a 11.528,41 Euro), e i **reati integranti ipotesi di corporate violence non rientrano tra quelli per cui la persona offesa viene ammessa ex lege**, senza limiti di reddito (reati di cui agli artt. 572, 583 *bis*, 609 *bis*, 609 *quater*, 609 *octies* e 612 *bis*, nonché, ove commessi in danno di minori, reati di cui agli artt. 600, 600 *bis*, 600 *ter*, 600 *quinqies*, 601, 602, 609 *quinqies* e 609 *undecies* c.p.). A fronte di ciò, la già ricordata **complessità tecnica** dei procedimenti per questo tipo di reati usualmente richiederebbe (per aumentare le *chances* della vittima nel processo) **ingenti spese** per una difesa tecnica lunga, altamente specializzata e corredata da consulenze tecniche costose.



Esistono poi **ulteriori profili problematici** propri della *corporate violence* e suscettibili di **incidere negativamente sulla posizione della vittima dentro e fuori il procedimento penale**, di cui l'operatore che entri in contatto con essa e debba effettuare la valutazione dei suoi bisogni di protezione dovrebbe essere consapevole, in particolare in relazione a:

- **Rapporti con la corporation e atteggiamento di questa verso le vittime:** in generale, **l'atteggiamento delle corporations** coinvolte in casi di *corporate violence* è **fortemente orientato** dalla considerazione delle **possibili conseguenze legali e finanziarie**. **Quando l'offesa e la responsabilità dell'ente appaiono difficilmente contestabili** (almeno nei loro tratti essenziali), l'impresa può adottare misure, prevalentemente finalizzate a un **recupero della propria immagine**, per **venire incontro almeno a parte delle aspettative delle vittime** (costituzione di un fondo di emergenza per le vittime o donazioni alle stesse, dichiarazioni pubbliche di scuse e/o iniziative di commemorazione per le vittime, istituzione di un *ombudsman* o simile figura di contatto interna, ecc.). **Negli altri casi**, tuttavia, l'esperienza delle vittime è generalmente di **indifferenza od ostilità**, in ragione, ad esempio di **campagne di stampa manipolative e talora denigratorie**, totale **negazione della responsabilità e/o dei danni**, uso di **tattiche difensive aggressive e dilatorie**. Motivazioni di convenienza (*in primis* **l'interesse a evitare la costituzione di parte civile** delle vittime) possono indurre l'ente a **offerte di risarcimento** (spesso accompagnate dalla richiesta di rinuncia a ogni ulteriore pretesa e/o di un esonero da responsabilità dell'ente), frequentemente **avvertite** dalle vittime, con grande amarezza, come **tentativi di 'corromperle'** e 'comprare' il loro dolore, ma drammatiche da rifiutare in caso di situazioni economiche precarie (magari in conseguenza del reato: v. *supra*).



- **Rapporti con le istituzioni pubbliche:** nell'esperienza delle vittime di *corporate crime* il ruolo giocato dalle istituzioni pubbliche è spesso **negativo**. Forti sentimenti di **delusione e amarezza** (accentuati dal sentirsi 'doppiamente' traditi, come persone e come cittadini) nascono, ad esempio, dalla **percepita inerzia** degli organi pubblici competenti nella prevenzione del reato subito e/o nel perseguimento dei responsabili, dalla sensazione che esistano forti **conflitti di interessi** tra istituzioni pubbliche e imprese private (quando non una vera **State capture**), dall'**indisponibilità o farraginosità delle misure pubbliche di sostegno**, economico e non, alle vittime, dalla **mancanza di impegno** dello Stato, anche quando fondi di indennizzo pubblici vengano creati, **nel recuperare dai soggetti responsabili del danno le somme stanziare**, ecc. Se, come accennato (v. *supra* § III), nel **caso di disastri** la **mobilitazione di autorità politiche e amministrative** è, invece, almeno nell'immediato, quasi sempre la regola, l'atteggiamento di tali autorità **può tuttavia essere percepito in modo negativo** dalle vittime, come **tentativo di acquistare visibilità e 'capitale elettorale'** sulla loro pelle, in particolare se a tali iniziali 'fiammate' di attenzione seguono (come frequentemente accade) inerzia e/o indifferenza e insensibilità nella gestione successiva delle conseguenze dannose del reato.
- **Rapporti coi media:** se in nessun caso il rapporto di una vittima di reato coi media può considerarsi facile, le **vittime di corporate crime** sembrano sperimentare **difficoltà aggiuntive**. Da un lato, attirare **l'attenzione dei mezzi di informazione** costituisce spesso **l'unico possibile strumento di pressione** da contrapporre all'inerzia e indifferenza di strutture organizzative potenti e burocratiche (le *corporations*, ma anche le istituzioni pubbliche: v. *supra*); dall'altro, **con l'eccezione dei casi di disastro**, la **copertura mediatica** del *corporate crime* e della *corporate violence* è **decisamente inferiore rispetto a quella riservata alla criminalità comune** e, quando presente, tende a seguire gli stilemi di quest'ultima, con **interesse solo per gli aspetti 'pietosi' e/o 'sensazionali'** dei casi trattati, il che genera nelle vittime, assai spesso, un senso di **umiliazione**, oltre che di **banalizzazione e strumentalizzazione** delle loro storie di sofferenza, senza contare i **rischi di invasione della sfera privata** delle vittime stesse.

- **Rapporti con i gruppi primari e la comunità di appartenenza:** in aggiunta ai già ricordati **gravi danni alla vita affettiva e di relazione** che possono conseguire alla **vittimizzazione da corporate violence** (minando quindi anche la possibilità della vittima di ricevere supporto dai propri gruppi primari), va rilevata la **frequente ambivalenza di atteggiamento** da parte **delle comunità e dei gruppi di appartenenza** di questo tipo di vittime. Quando infatti, ad esempio, la **denuncia della o delle vittime** venga **percepita come una minaccia alla sicurezza economica** dei colleghi di lavoro o dell'intera comunità (magari per la decisione, ventilata o attuata da parte dell'impresa, di chiudere o trasferire un impianto sotto accusa), la vittima può sperimentare **ostilità e ostracismo** da parte di soggetti sul cui sostegno sente che dovrebbe poter fare affidamento. In **casi** in cui il danno fisico presenta **una sintomatologia e/o un'eziologia poco chiare**, inoltre, la vittima può trovarsi nella condizione di **non essere creduta** in merito alla serietà o alla causa dei suoi sintomi, tanto da persone della sua cerchia familiare, amicale e/o lavorativa, quanto, talora, dallo stesso personale medico e sanitario interpellato.

**L'insieme delle problematiche** fin qui brevemente ripercorse è in grado di produrre, come evidente, un **effetto cumulativo** superiore alla semplice somma di tali criticità, che invece appaiono potenziarsi l'un l'altra in un circolo vizioso dall'**impatto esistenziale potenzialmente devastante**. Il trascinarsi dei procedimenti, con la correlata, frequente mancata rimozione dei **rischi di vittimizzazione ripetuta**, cui la vittima può rimanere esposta anche per anni o decenni, e la **vittimizzazione secondaria** nascente da un contatto spesso estremamente frustrante con le istituzioni pubbliche in generale, e con quelle dell'amministrazione della giustizia in particolare, hanno generalmente un impatto negativo durevole sulle vittime di *corporate violence*.

**IV.2. Nel contatto con una vittima di corporate violence l'operatore deve tenere conto della particolare difficoltà oggettiva, in genere vissuta da queste vittime, di raggiungere un senso di 'closure' in relazione al reato subito. È inoltre particolarmente importante una effettiva rivalutazione periodica dei bisogni di protezione della vittima, in ragione del rischio particolarmente alto di accumulo nel tempo di fattori di vittimizzazione secondaria e/o ripetuta.**

## V.

### I BISOGNI DELLE VITTIME DI CORPORATE VIOLENCE E LA LORO VALUTAZIONE

A conclusione dell'analisi delle peculiarità e criticità dei fenomeni di *corporate violence* discussi nelle due sezioni precedenti, si procederà ora a fornire alcune **indicazioni pratiche** utili alla corretta **valutazione individuale dei bisogni di questa tipologia di vittime**.

Particolare attenzione sarà, naturalmente, dedicata ai **bisogni di protezione** della persona offesa, alla cui individuazione la Direttiva, come si è visto (v. *supra* § II), specificamente destina la valutazione individuale. Tuttavia, dal momento che la **Direttiva** stessa prende in considerazione **una serie ulteriore di possibili bisogni delle vittime di reato** (onde garantirne un trattamento «rispettoso, sensibile, personalizzato, professionale e non discriminatorio»: art. 1 co. 1), tanto da **raccomandare agli Stati membri** «lo sviluppo di 'punti unici d'accesso' o '**sportelli unici**', **che si occupino dei molteplici bisogni delle vittime** allorché sono coinvolte in un procedimento penale, compreso il bisogno di ricevere informazioni, assistenza, sostegno, protezione e risarcimento» (cons. 62), anche queste *Linee guida* prenderanno in considerazione una più **ampia panoramica di bisogni essenziali**.

Le **vittime di corporate violence**, infatti, spesso necessitano di **informazioni e assistenza altamente specialistiche** di varia natura: non solo **legale** (in relazione alla complessità tecnica e giuridica dei loro casi), ma anche **scientifica** (in relazione, ad es., ai ricordati problemi di prova del nesso di causalità e, più ingenerale, alla frequente incertezza scientifica in merito ai rischi cui possono essere esposte), **medica** (alcune patologie sviluppate da queste vittime, come ad esempio il mesotelioma pleurico nei casi di esposizione ad amianto, sono a tutti gli effetti malattie rare nella popolazione generale) e **psicologica**. Inoltre, **i diversi bisogni** delle vittime sono in genere **strettamente intrecciati** tra loro, e tutti in parte riconducibili al più **fondamentale bisogno di riconoscimento** per le sofferenze subite e per la loro dignità di esseri umani e vittime di un'offesa ingiusta.



## RICONOSCIMENTO

**Sentirsi riconosciuti, come persona e come vittima di un reato**, costituisce di fatto il **bisogno primario** per la maggior parte delle vittime in generale, e per quelle di *corporate violence* in particolare, parte integrante di quel «rispetto» che l'**art. 1 della Direttiva** pone alla base dei diritti delle vittime da questa enucleati e sanciti.

Le **vittime di corporate violence** lamentano con particolare frequenza di **non sentirsi affatto riconosciute** come tali, né dall'impresa autrice del reato, né da molti professionisti con cui entrano in contatto a causa del reato subito, né dall'opinione pubblica, né (il che risulta ancora più doloroso) dalle autorità e addirittura, in alcuni casi, da loro famigliari, colleghi o membri dei loro gruppi di riferimento.

Contribuiscono a tale situazione tutte le criticità precedentemente evidenziate, dall'incertezza scientifica su sintomatologia e/o eziologia delle loro patologie, alla parcellizzazione territoriale e temporale dell'emersione del danno, alla minore gravità, sul piano giuridico, dei reati da loro subiti (quasi sempre colposi, e per lo più di natura contravvenzionale quando a essere fatta valere non sia la verifica di un evento di danno, ma la produzione di un pericolo per l'incolumità o la salute delle persone interessate), ecc.

V.1. Nella complessiva valutazione dei bisogni di una vittima di *corporate violence* occorre tenere conto della possibilità che il rispetto di sé e l'autostima della persona siano stati gravemente compromessi da una ripetuta negazione dell'ingiustizia subita, oltre che dal senso di 'tradimento' implicito in questo tipo di reati e da un possibile senso di vergogna e/o colpa nei casi in cui la vittima abbia in qualche misura 'contribuito' al verificarsi del fatto.



## PROTEZIONE

Come già ricordato (v. supra § I), la **Direttiva** riconosce in capo alla **vittima** e a suoi **famigliari** un fondamentale «**diritto alla protezione**» da «vittimizzazione secondaria e ripetuta, intimidazione e ritorsioni, compreso il rischio di danni emotivi o psicologici», nonché alla salvaguardia della sua «dignità durante gli interrogatori o le testimonianze» (**art. 18**).

Come sopra evidenziato (v. § IV), il **frequente fallimento dello Stato e delle sue istituzioni** nel proteggere la vittima sia *dal* reato, sia *dopo* il reato, è un fattore che **contribuisce** grandemente alle **specifiche sofferenze psicologiche** delle vittime di *corporate crime*.

Tra le problematiche che queste si trovano ad affrontare in relazione alla vittimizzazione subita, non mancano casi di **ribaltamento del biasimo sulla vittima**, sottoposizione della stessa (quando dipendente dell'impresa accusata) a **misure disciplinari, demansionamenti o licenziamento illegittimi, mobbing**, minaccia di chiusura o effettiva **chiusura dello stabilimento senza bonifica e risarcimento**, ecc.

V.2. Il rischio di esposizione a intimidazioni e/o ritorsioni va sempre preso in considerazione in relazione alle vittime di *corporate violence*, in particolare in tutte le situazioni di dipendenza, economica o di altro tipo, dalla *corporation* coinvolta, sia questa una dipendenza individuale o estesa all'intera comunità di appartenenza. In generale, occorre tenere presente che intimidazione e ritorsione tenderanno per lo più ad assumere forme 'atipiche' se confrontate con i casi di crimini 'convenzionali'.



In tutti i casi in cui la **vittima** si trovi in una relazione di **dipendenza, economica o di altro genere, con la corporation** (si pensi ai casi di incidenti o malattie legati al posto di lavoro o alla necessità dei soggetti affetti da determinate patologie di continuare ad assumere i farmaci prodotti dall'impresa o da altre sospettate di seguire prassi analoghe), **oppure non abbia la possibilità di abbandonare un luogo di lavoro o di residenza pericoloso** (ad esempio per la contaminazione ambientale da sostanze tossiche) l'esposizione a una **vittimizzazione ripetuta** è implicita.

Proprio il **bisogno di protezione da forme di vittimizzazione ripetuta** e/o di prevenzione di danni ulteriori è **uno di quelli espressi con maggiore frequenza e urgenza dalle vittime di corporate crime**, che lo percepiscono come un preciso dovere – troppo spesso disatteso – dello Stato e delle istituzioni pubbliche. Le vittime, inoltre, annettono una **grande importanza psicologica e morale** alla possibilità che le **sofferenze da loro patite** servano per lo meno ad **evitare il ripetersi di episodi analoghi a danno di altri**, grazie a un intervento pubblico che operi in modo efficace su altre situazioni a rischio, per prevenire in modo tempestivo ulteriori casi di vittimizzazione.

**V.3. Nella valutazione individuale dei bisogni di protezione delle vittime di corporate violence occorre tenere presente che il permanere dell'esposizione della vittima ai fattori di rischio all'origine del reato lamentato, e dunque il pericolo di vittimizzazione ripetuta, è estremamente frequente, anche se tale esposizione può avvenire con modalità poco visibili, a causa della complessità di questo tipo di reati.**

I **casi di corporate violence**, implicando danni alla vita, alla salute e all'integrità psico-fisica delle persone offese, si presentano **generalmente molto delicati** dal punto di vista del **rispetto della privacy** delle vittime e della loro **dignità nel corso di interrogatori o testimonianze**. La partecipazione al processo penale le può esporre alla rivelazione di dati sensibili inerenti alla loro salute, alla loro vita familiare o sessuale, ecc., in qualche caso con forti **rischi di stigmatizzazione** sociale (si pensi, solo per fare un esempio, ai casi di contagio da HIV tramite assunzione di emoderivati infetti). Inoltre, quando, come spesso accade, il **numero di vittime che partecipano al procedimento è molto elevato**, aumenta il rischio di lesioni della sfera privata delle persone offese, qualora **esigenze di speditezza processuale siano privilegiate** a scapito di un'efficace tutela della riservatezza delle persone offese.

V.4. Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* occorre prestare particolare e specifica attenzione alle esigenze di tutela della vita privata, della riservatezza e della dignità della persona offesa e dei suoi famigliari, in relazione alla frequente natura sensibile di dati e informazioni indispensabili alle indagini e al processo.

Come già rilevato (v. *supra* § IV), **comunità e gruppi di appartenenza delle vittime di corporate violence** adottano spesso un atteggiamento ambivalente nei confronti di queste. In particolare, qualora la denuncia della o delle vittime venga percepita come una minaccia alla sicurezza economica dei colleghi di lavoro o dell'intera comunità, la vittima può sperimentare **ostilità e ostracismo** da parte di soggetti sul cui sostegno sente che dovrebbe poter contare.

V.5. Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* vanno prese in considerazione anche possibili minacce 'atipiche', provenienti non dall'autore del reato o dalla cerchia di questi, ma da soggetti vicini alla vittima e non coinvolti nel crimine, in relazione alle specifiche caratteristiche e circostanze del reato.



## INFORMAZIONE

Il **diritto di essere informati** non solo occupa un posto centrale nella Direttiva (artt. 4-6), ma è in genere **vissuto dalle vittime di corporate crime come un elemento vitale**, legato non solo a **esigenze pratiche** (*in primis* quella di «prendere decisioni consapevoli in merito alla loro partecipazione al procedimento»: cons. 26), **ma anche** alla possibilità di **riguadagnare una forma di controllo** sulla propria esistenza dopo il reato.

Sotto questo profilo, la **prima esigenza** delle vittime di corporate crime è spesso quella di ottenere **informazioni corrette, complete e comprensibili sulla loro situazione**, il che per lo più include il loro esatto stato di salute e la prevedibile evoluzione dello stesso, le prospettive future, le terapie praticabili ecc.

V.6. L'operatore dovrebbe valutare la misura dei bisogni di informazione della vittima di *corporate violence* in relazione alla sua situazione personale in esito al reato subito, in particolare riguardo all'entità e prevedibile evoluzione delle conseguenze dello stesso, e fornirle, per quanto possibile, indicazioni sui modi più agevoli per acquisire tali informazioni.

Le **vittime di corporate crime** in genere esprimono un **bisogno particolarmente intenso** di ottenere **piene e veritiere informazioni sul loro caso**, su cosa è esattamente accaduto e su chi siano i responsabili: è una conoscenza necessaria **tanto** a raggiungere un **senso di 'closure'** in relazione al reato subito, **quanto** in relazione al bisogno di sapere che **simili episodi non si ripeteranno** in futuro. Questo bisogno è **però molto spesso frustrato** dai già ricordati **problemi 'strutturali'** dei casi di *corporate violence*, dall'incertezza scientifica su eziologia ed evoluzione del danno, all'inferiorità di risorse e conoscenze rispetto alla difesa, rispetto alla quale l'**asimmetria informativa** è spesso incolmabile.

V.7. Occorre tenere sempre presente, nell'interazione con vittime di *corporate violence*, che queste si trovano generalmente ad affrontare grandi problemi conoscitivi in merito alla ricostruzione del fatto, ai processi causali dell'evento lesivo, all'esatto significato giuridico del danno subito, all'individuazione dei soggetti responsabili, ecc.

I **profili giuridici dei casi di corporate violence**, come si è visto (v. *supra* § IV), sono generalmente **oltremodo complessi**, i rischi di **prescrizione** sono alti, le **chances** per le vittime di ottenere una pronuncia a loro favore mediamente **basse**. Le vittime di *corporate violence* necessitano quindi di una **consulenza legale per lo più altamente specializzata** e, più in generale, di **informazioni accurate, comprensibili e obiettive** sulle opzioni giudiziali ed extragiudiziali loro disponibili, e sugli **esiti realisticamente ipotizzabili** per ciascuna di tali opzioni.

V.8. Nel valutare il bisogno di informazioni e consulenza legale di una vittima di *corporate violence* va tenuta presente l'abituale maggiore complessità di questi casi e il bisogno di indicazioni non solo complete, corrette e comprensibili, ma anche realistiche, rispetto alle diverse opzioni giudiziali ed extragiudiziali prospettabili.

Le vittime di *corporate violence* assai di frequente presentano **bisogni di assistenza e sostegno medico, psicologico e sociale** (v. *infra*) alquanto complessi, rispetto ai quali **l'accesso a informazioni adeguate può risultare difficile**. Parimenti complesso può essere per le persone offese orientarsi tra le diverse forme di sostegno economico ipotizzabili (sicurezza sociale, assicurazioni private, eventuali fondi di indennizzo specifici, richieste di risarcimento ecc.). Il **panorama** dei servizi di sostegno sociale, sanitario ed economico appare **particolarmente frammentato** nel nostro Paese, risultando per lo più confuso e/o opaco per le vittime di reato in generale, e per queste vittime in particolare.

V.9. Nel valutare il bisogno di informazioni delle vittime di *corporate violence* in merito possibili fonti di assistenza loro disponibili, vanno tenuti in considerazione sia le specifiche vulnerabilità di ciascuna persona offesa, sia le conoscenze e capacità di questa nell'orientarsi in un panorama per lo più frammentario e confuso, e occorre fornire informazioni il più possibile complete, chiare e comprensibili sui servizi disponibili (sistema sanitario, servizi sociali, ecc.) o sui soggetti cui rivolgersi per ottenere agevolmente tali informazioni.

## SUPPORTO

Come si è già avuto modo di sottolineare (v. *supra* § IV), il legislatore italiano **non ha ad oggi preso in considerazione l'istituzione** di «specifici **servizi di assistenza** riservati, gratuiti e operanti nell'interesse della vittima, prima, durante e per un congruo periodo di tempo dopo il procedimento penale» previsti dalla Direttiva (art. 8), nella cui prospettiva tali servizi dovrebbero garantire alle vittime di reato un certo numero di **prestazioni minime** (art. 9), ovvero: «**informazioni, consigli e assistenza in materia di diritti delle vittime**, fra cui le possibilità di accesso ai sistemi nazionali di risarcimento delle vittime di reato, e in relazione al loro ruolo nel procedimento penale, compresa la **preparazione in vista della partecipazione al processo**»; «**informazioni su eventuali pertinenti servizi specialistici** di assistenza in attività o il rinvio diretto a tali servizi»; «**sostegno emotivo** e, ove disponibile, psicologico»; «**consigli** relativi ad **aspetti finanziari e pratici** derivanti

dal reato»; «salvo ove diversamente disposto da altri servizi pubblici o privati, **consigli** relativi al rischio e alla **prevenzione di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni**». A tali prestazioni si dovrebbero aggiungere, per i **servizi di assistenza specialistica**, anche «alloggi o altra eventuale **sistemazione temporanea a vittime bisognose di un luogo sicuro** a causa di un imminente rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni» e «**assistenza integrata e mirata** a vittime con esigenze specifiche».

Data l'assenza, nel nostro Paese, di tali servizi, oltre a raccomandare agli operatori uno sforzo per indirizzare nel modo più efficace possibile le vittime alle strutture di *welfare* esistenti, che possano almeno in parte coprire le prestazioni citate (v. *supra*, § V.9), particolare attenzione va dedicata in questa sede al possibile ruolo delle **associazioni formali e informali di vittime**. Tali associazioni, la cui **spontanea costituzione** è frequente in casi di vittimizzazione collettiva come generalmente sono appunto quelli di *corporate violence* (v. *supra*, § III), sono, allo stato attuale, **per lo più l'unica fonte di supporto** «[al]la vittima affinché si ristabilisca e superi il potenziale danno o trauma subito a seguito del reato». Supporto e auto-supporto forniti essenzialmente attraverso l'**informazione** alle vittime sui loro diritti e la fornitura o lo scambio di **consigli**, «senza formalità eccessive» e generalmente con un «linguaggio semplice e accessibile», ove possibile fornendo anche indicazioni e informazioni in materia di «**assistenza medica**» specialistica, «**assistenza psicologica** a breve e lungo termine, trattamento del trauma, **consulenza legale, patrocinio legale**»; tutti compiti, indispensabili a quel trattamento della vittima «con dignità e in modo rispettoso e sensibile» che la Direttiva assegnerebbe appunto ai servizi di assistenza, generali e specialistici, per vittime di reato, in particolare per quelle «particolarmente vulnerabili» (cons. 21, 37 e 38).

**In aggiunta** a tale supplenza informale, queste associazioni spesso si fanno carico di promuovere un **approccio comune** nei confronti delle autorità, dei media e delle *corporations*, **promuovere azioni legali** nei confronti di queste, **supportare e coordinare la partecipazione delle vittime nel procedimento penale**, esercitare un'**azione 'politica'** in vista della rimozione, attraverso misure strutturali o normative, dei fattori di rischio di vittimizzazione ripetuta o di vittimizzazione di altre persone in episodi analoghi a quelli subiti dalle vittime costituite in associazione, ecc.

**V.10** Nell'assenza di servizi di supporto alle vittime in generale, e alle vittime di *corporate violence* in particolare, l'operatore che entri in contatto con questa tipologia di persone offese dovrebbe tenersi informato sull'eventuale esistenza di associazioni di vittime dello stesso o di analoghi reati, e delle eventuali forme di supporto e auto-aiuto che queste siano in grado di fornire ad altre vittime di *corporate violence*.





## Sommario delle linee guida

(illustrazione  
della linea guida)

- |               |  |           |
|---------------|--|-----------|
| <b>II.1.</b>  | L'operatore che si trovi a effettuare la valutazione individuale dei bisogni di protezione di una vittima dovrà prestare particolare attenzione a caratteristiche personali della vittima, tipo e natura del reato, circostanze del reato, desideri della vittima.   | pp. 16-17 |
| <b>II.2.</b>  | La valutazione individuale dei bisogni di protezione non può considerarsi 'data' una volta per tutte, ma va adattata all'evolversi della situazione della vittima nel tempo, che deve quindi essere periodicamente rivalutata.   | p. 17     |
| <b>III.1.</b> | Nella valutazione individuale dei bisogni di protezione di una vittima di <i>corporate violence</i> , l'operatore non deve farsi condizionare dall'inquadramento giuridico-formale del fatto, ma concentrarsi sul suo effettivo impatto sulla vita, salute o integrità psico-fisica della vittima, individuato in termini di danno attuale o di pericolo, onde procedere a una valutazione concreta dei rischi di vittimizzazione secondaria o ripetuta, intimidazione o ritorsione, nello specifico caso. | pp. 18-22 |
| <b>III.2.</b> | È necessario prestare specifica attenzione alla possibile presenza di numerose altre vittime dello stesso episodio di <i>corporate violence</i> , oltre a quella/e che si sono rivolte all'autorità.   | pp. 22-23 |
| <b>III.3.</b> | Nella valutazione dei bisogni di una vittima di <i>corporate violence</i> è importante mantenere un atteggiamento obiettivo, che prescindendo dalla visibilità pubblica del caso e dall'intensità dell'attenzione e del sostegno da questo raccolti a livello mediatico, politico e sociale, concentrandosi invece sui concreti danni e sofferenze subiti dall'individuo e sugli specifici rischi connessi alle circostanze del caso concreto e della singola vittima.                                     | pp. 23-24 |
| <b>IV.1.</b>  | Nella valutazione dei bisogni di protezione di una vittima di <i>corporate violence</i> l'operatore deve tenere conto della frequente compresenza di plurimi fattori di vulnerabilità e verificare quindi accuratamente se una tale combinazione si dia nel caso in esame.   | pp. 25-27 |

(illustrazione  
della linea guida)

- IV.2.** Nel contatto con una vittima di *corporate violence* l'operatore deve tenere conto della particolare difficoltà oggettiva, in genere vissuta da queste vittime, di raggiungere un senso di 'closure' in relazione al reato subito. È inoltre particolarmente importante una effettiva rivalutazione periodica dei bisogni di protezione della vittima, in ragione del rischio particolarmente alto di accumulo nel tempo di fattori di vittimizzazione secondaria e/o ripetuta. pp. 28-35
- V.1.** Nella complessiva valutazione dei bisogni di una vittima di *corporate violence* occorre tenere conto della possibilità che il rispetto di sé e l'autostima della persona siano stati gravemente compromessi da una ripetuta negazione dell'ingiustizia subita, oltre che dal senso di 'tradimento' implicito in questo tipo di reati e da un possibile senso di vergogna e/o colpa nei casi in cui la vittima abbia in qualche misura 'contribuito' al verificarsi del fatto. pp. 36-37
- V.2.** Il rischio di esposizione a intimidazioni e/o ritorsioni va sempre preso in considerazione in relazione alle vittime di *corporate violence*, in particolare in tutte le situazioni di dipendenza, economica o di altro tipo, dalla *corporation* coinvolta, sia questa una dipendenza individuale o estesa all'intera comunità di appartenenza. In generale, occorre tenere presente che intimidazione e ritorsione tenderanno per lo più ad assumere forme 'atipiche' se confrontate con i casi di crimini 'convenzionali'. p. 38
- V.3.** Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* occorre tenere presente che il permanere dell'esposizione della vittima ai fattori di rischio all'origine del reato lamentato, e dunque il pericolo di vittimizzazione ripetuta, è estremamente frequente, anche se tale esposizione può avvenire con modalità poco visibili, a causa della complessità di questo tipo di reati. p. 39
- V.4.** Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* occorre prestare particolare e specifica attenzione alle esigenze di tutela della vita privata, della riservatezza e della dignità della persona offesa e dei suoi famigliari, in relazione alla frequente natura sensibile di dati e informazioni indispensabili alle indagini e al processo. pp. 39-40

(illustrazione  
della linea guida)

- V.5.** Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* vanno prese in considerazione anche possibili minacce 'atipiche', provenienti non dall'autore del reato o dalla cerchia di questi, ma da soggetti vicini alla vittima e non coinvolti nel crimine, in relazione alle specifiche caratteristiche e circostanze del reato. p. 40
- V.6.** L'operatore dovrebbe valutare la misura dei bisogni di informazione della vittima di *corporate violence* in relazione alla sua situazione personale in esito al reato subito, in particolare riguardo all'entità e prevedibile evoluzione delle conseguenze dello stesso, e fornirle, per quanto possibile, indicazioni sui modi più agevoli per acquisire tali informazioni. pp. 40-41
- V.7.** Occorre tenere sempre presente, nell'interazione con vittime di *corporate violence*, che queste si trovano generalmente ad affrontare grandi problemi conoscitivi in merito alla ricostruzione del fatto, ai processi causali dell'evento lesivo, all'esatto significato giuridico del danno subito, all'individuazione dei soggetti responsabili, ecc. p. 41
- V.8.** Nel valutare il bisogno di informazioni e consulenza legale di una vittima di *corporate violence* va tenuta presente l'abituale maggiore complessità di questi casi e il bisogno di indicazioni non solo complete, corrette e comprensibili, ma anche realistiche, rispetto alle diverse opzioni giudiziali ed extragiudiziali prospettabili. pp. 41-42
- V.9.** Nel valutare il bisogno di informazioni delle vittime di *corporate violence* in merito possibili fonti di assistenza loro disponibili, vanno tenuti in considerazione sia le specifiche vulnerabilità di ciascuna persona offesa, sia le conoscenze e capacità di questa nell'orientarsi in un panorama per lo più frammentario e confuso, e occorre fornire informazioni il più possibile complete, chiare e comprensibili sui servizi disponibili (sistema sanitario, servizi sociali, ecc.) o sui soggetti cui rivolgersi per ottenere agevolmente tali informazioni. p. 42
- V.10.** Nell'assenza di servizi di supporto alle vittime in generale, e alle vittime di *corporate violence* in particolare, l'operatore che entri in contatto con questa tipologia di persone offese dovrebbe tenersi informato sull'eventuale esistenza di associazioni di vittime dello stesso o di analoghi reati, e delle eventuali forme di supporto e auto-aiuto che queste siano in grado di fornire ad altre vittime di *corporate violence*. p. 42-43



## PARTNERS



UNIVERSITÀ CATTOLICA del Sacro Cuore  
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sulla Giustizia penale e la Politica criminale

**Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale (CSGP) – Università Cattolica del Sacro Cuore, Milano, Italia.** Il CSGP è l'ente coordinatore del Progetto. Il CSGP nasce nell'Università Cattolica di Milano con lo scopo di promuovere la ricerca teorica e applicata sui problemi della giustizia penale e della politica criminale in una prospettiva interdisciplinare, attenta a metodi e risultati dello studio criminologico e agli apporti delle scienze empirico-sociali, nonché all'attuazione dei principi costituzionali. Il CSGP si avvale di un autorevole comitato scientifico (di cui fanno parte magistrati ed esperti di chiara fama in materie giuridiche, economiche, psicologiche e filosofiche) e di un ampio gruppo di ricerca composto da professori, ricercatori, dottorandi.



**Leuven Institute of Criminology – Università di Lovanio, Lovanio, Belgio.**

L'Università di Lovanio (KU Leuven) è socio fondatore della LERU (League of European Research Universities); figura tra i primi dieci istituti universitarie nelle classifiche europee relative alla ricerca. Il Leuven Institute of Criminology (LINC) si compone di circa settanta professori e ricercatori impegnati nella ricerca criminologica e nell'insegnamento. Il LINC prosegue la tradizione dell'Università di Lovanio di combinare ricerca di qualità con un forte impegno verso la società, obiettivo perseguito attraverso ricerca sia di base che orientata alla politica criminale e sociale. Il LINC persegue otto 'filoni di ricerca' uno dei quali dedicato alla giustizia riparativa e alla vittimologia.



Max-Planck-Institut  
für ausländisches und  
internationales Strafrecht

**Max-Planck-Institut für ausländisches und internationales Strafrecht (MPICC), Friburgo in Br., Germania.**

I progetti di ricerca intrapresi dal MPICC sono di natura comparativa, internazionale e interdisciplinare, e si concentrano sullo studio empirico del diritto penale, della criminalità, della difesa sociale e delle vittime di reato. I campi di ricerca dell'Istituto includono altresì: armonizzazione e uniformazione del diritto penale e del diritto processuale penale negli Stati dell'Unione Europea; riforma del diritto penale alla luce delle migliori conoscenze disponibili sulle possibili soluzioni giuridiche ai problemi sociali e sulle alternative più funzionali all'interno e all'esterno dell'ordinamento penale.

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This project is co-funded by  
the Justice Programme  
of the European Union



# VICTIMS AND CORPORATIONS

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

Implementazione della Direttiva 2012/29/UE  
per le vittime di *corporate crime* e *corporate violence*

**Linee guida nazionali**  
per la polizia giudiziaria,  
le Procure della Repubblica  
e i magistrati giudicanti

Luglio 2017



Queste *Linee guida nazionali per la polizia giudiziaria, le Procure della Repubblica e i magistrati giudicanti* costituiscono uno dei frutti del progetto *Victims and Corporations. Implementation of Directive 2012/29/EU for Victims of Corporate Crimes and Corporate Violence*, finanziato dal programma “Giustizia” dell’Unione Europea (Agreement number - JUST/2014/JACC/AG/VICT/7417)

**Coordinamento:**

Gabrio Forti (direttore del progetto) e (in ordine alfabetico) Stefania Giavazzi, Claudia Mazzucato, Arianna Visconti  
Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale

**Partners del progetto:**

Leuven Institute of Criminology, Catholic University of Leuven  
Max-Planck-Institut für ausländisches und internationales Strafrecht

**Gruppo di ricerca:**

Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Carolin Hillemanns, Katrien Lauwaert, Stefano Manacorda, Enrico Maria Mancuso

**Sito web:**

[www.victimsandcorporations.eu](http://www.victimsandcorporations.eu)

Questo documento è stato realizzato col sostegno finanziario del programma “Giustizia” dell’Unione Europea. La responsabilità dei contenuti dell’opera è da imputarsi interamente ai suoi autori; tali contenuti non possono in alcun modo essere intesi come espressione della posizione e delle opinioni della Commissione Europea.

Redazione delle linee guida ad opera di Stefania Giavazzi (§ VIII), Enrico Maria Mancuso (§§ IV, VI e VII), Claudia Mazzucato (§§ III, V, IX, X e XII) e Arianna Visconti (§§ I, II e XI).  
Curatela e Premessa di Arianna Visconti.

Università Cattolica del Sacro Cuore, Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale,  
Milano, 2017

**ISBN 978-88-942229-7-5**

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Questo progetto è cofinanziato  
dal programma “Giustizia”  
della Commissione Europea





## **“VICTIMS AND CORPORATIONS”**

**Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence**

**Implementazione della Direttiva 2012/29/UE  
per le vittime di *corporate crime*  
e *corporate violence***

# **Linee guida nazionali per la polizia giudiziaria, le Procure della Repubblica e i magistrati giudicanti**

Stefania Giavazzi, Enrico Maria Mancuso,  
Claudia Mazzucato, Arianna Visconti

con la collaborazione di Giovanna Ichino

A cura di Arianna Visconti

**Luglio 2017**

(versione aggiornata ad agosto 2017)



## RINGRAZIAMENTI

Queste *Linee guida* sono uno dei frutti di un grande sforzo collettivo.

Desideriamo quindi ringraziare tutti i membri del gruppo di ricerca e di coordinamento che hanno partecipato alla ricerca teorica e pratica del progetto ‘Victims and Corporations. Implementation of Directive 2012/29/EU for victims of corporate crime and corporate violence’ e hanno così reso possibile la redazione di questo documento: Ivo Aertsen, Gabriele Della Morte, Marc Engelhart, Gabrio Forti, Stefania Giavazzi, Carolin Hillemanns, Katrien Lauwaert, Stefano Manacorda, Enrico Maria Mancuso, Claudia Mazzucato, Alexandra Schenk e Arianna Visconti.

Soprattutto, però, vogliamo esprimere il nostro più sentito ringraziamento a tutte le vittime che hanno scelto di condividere con noi le loro storie, come pure ai professionisti che ci hanno permesso di imparare dalla loro esperienza di contatto e lavoro con le vittime, nelle interviste e nei *focus group* alla base della ricerca empirica. Un particolare ringraziamento va inoltre agli esperti – magistrati, avvocati, dirigenti della Polizia di Stato e dell’Amministrazione penitenziaria – che hanno accettato di discutere con noi gli specifici contenuti di questo documento. Tra questi, desideriamo esprimere particolare gratitudine a Giovanna Ichino, per il fondamentale ed entusiastico apporto di riflessione e idee fin dalle prime fasi dell’elaborazione della bozza di discussione. Senza la generosità e collaborazione di tutti loro, la redazione di queste *Linee guida* non sarebbe stata possibile.



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## PREMESSA

La **Direttiva 2012/29/UE** reca in sé il potenziale per innescare grandi cambiamenti negli ordinamenti penali, sostanziali e processuali, dei Paesi membri dell'Unione. La Direttiva introduce, infatti (come meglio si vedrà nella **§ I** di queste *Linee guida*), un insieme di **norme minime in materia di diritti, assistenza e protezione delle vittime di reato** e di partecipazione di queste al procedimento penale, senza pregiudizio per i diritti dell'autore del reato (inteso, ai sensi della Direttiva, non solo come soggetto condannato per un fatto penalmente rilevante, ma anche come indagato e imputato: cons. 12).

Tra i soggetti che ricadono nella definizione di 'vittima' della (e dunque possono beneficiare delle innovazioni introdotte dalla) Direttiva, tuttavia, vi è un **gruppo molto numeroso** che per lo più non viene considerato in questi termini, e il cui effettivo accesso alla giustizia rischia dunque di essere particolarmente difficoltoso. Si tratta delle vittime dei *corporate crimes*, e più specificamente delle **vittime di corporate violence**, ovvero (v. **§ II**) di quei reati commessi da società commerciali nel corso della loro attività legittima e implicanti offese alla vita, all'integrità fisica o alla salute delle persone.

Nel corso delle fasi precedenti della ricerca (di cui il lettore potrà trovare una sintesi nel primo *report* di progetto, *Rights of Victims, Challenges for Corporations*, dicembre 2016, disponibile sul sito <http://www.victimsandcorporations.eu/publications/>), è emerso chiaramente come la *corporate violence* sia **altrettanto o più diffusa di altre forme di criminalità violenta 'convenzionale'**. Inoltre, questo tipo di vittimizzazione appare avere natura per lo più collettiva e assai spesso transnazionale, e si deve considerare che il numero di vittime sembra destinato a crescere drammaticamente nei prossimi anni (con gli immaginabili, correlati complessi problemi sia di identificazione delle persone offese, sia di gestione del relativo carico processuale da parte dell'amministrazione della giustizia), anche in ragione dei periodi di latenza spesso molto lunghi tipici dei danni derivanti dall'esposizione a sostanze tossiche (v. **§ III**).

Il progetto 'Victims and Corporations. Implementation of Directive 2012/29/EU for victims of corporate crime and corporate violence' si concentra in particolare su tre tipologie di 'vittimizzazione d'impresa': reati ambientali, violazioni delle norme sulla sicurezza alimentare e reati legati al

settore farmaceutico-medicale. Per questa ragione, larga parte dei **dati empirici** raccolti, che hanno fornito le basi per l'elaborazione di un insieme di *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence* (maggio 2017, disponibili sul sito <http://www.victimsandcorporations.eu/publications/>), provengono da interviste con vittime di questa tipologia di reati. Tuttavia, data la complessità intrinseca di ogni episodio di *corporate crime*, nel nostro lavoro abbiamo riscontrato spesso l'intrecciarsi, ad esempio, di illeciti relativi al settore della salute e sicurezza sul lavoro (cui, dunque, queste *Linee guida* possono pure intendersi riferite) con altre tipologie di reati d'impresa.

Proprio alle citate ***Linee guida per la valutazione individuale***, oltre che al **rapporto di ricerca nazionale** (*I bisogni delle vittime di corporate violence: risultati della ricerca empirica in Italia*, luglio 2017, a breve disponibile sul sito <http://www.victimsandcorporations.eu/publications/>), il lettore potrà fare riferimento per maggiori informazioni su specificità e criticità della vittimizzazione da *corporate violence* e per indicazioni puntuali sulla valutazione individuale dei bisogni delle vittime in generale e di questi specifici soggetti in particolare, qui semplicemente riassunte in riferimento alle esigenze di protezione contro rischi di vittimizzazione secondaria o ripetuta, intimidazione e ritorsione (v. § II).

La ricerca empirica ha confermato che le vittime di *corporate violence* sperimentano un estremo bisogno di ricevere (citando l'art. 1 della Direttiva) «informazione, assistenza e protezione adeguate» e di essere messe in grado di «partecipare ai procedimenti penali», giacché si rivelano essere (almeno nella maggioranza dei casi) un'ulteriore categoria – che va ad aggiungersi alle 'tradizionali' vittime di violenza domestica, abusi, traffico di esseri umani, terrorismo ecc. – di **soggetti estremamente vulnerabili**, anche (e spesso in ampia misura) perché frequentemente non vengono considerate, nel sentire comune ma anche da se stesse, come 'vittime di reato'.

Queste *Linee guida*, elaborate sulla base delle acquisizioni della ricerca preliminare e attraverso il puntuale **confronto e discussione con un gruppo di esperti altamente qualificati** (magistrati, avvocati, dirigenti della Polizia di Stato, assistenti sociali e dirigenti dell'Amministrazione Penitenziaria), mirano dunque a fornire a esponenti della polizia giudiziaria, ausiliari del giudice e del pubblico ministero, Procure della Repubblica e magistrati giudicanti, nel rispetto dell'indipendenza e dell'autonomia della magistratura, **indicazioni pratiche** utili per una migliore attuazione della Direttiva 2012/29/UE in relazione alle specificità dei reati inquadrabili come episodi di *corporate violence* e delle vittime di questi, a partire da una loro corretta **individuazione** e relativo **riconoscimento** (v. § III). Il

soddisfacimento dei doveri di **informazione** alla vittima (§ IV), la garanzia di un'effettiva ed efficace **protezione** di vittime dalla peculiare vulnerabilità (§ V), anche in relazione alla tutela della loro **riservatezza e vita privata** (§ VI), l'accesso a un'adeguata **assistenza legale** (§ VII) e, più in generale, le garanzie inerenti alla **partecipazione di queste vittime al procedimento penale** (§ VIII) sono questioni centrali per l'attuazione della Direttiva, tutte bisognose di essere affrontate con un approccio mirato alle specificità delle diverse tipologie di persona offesa. L'individuazione di linee guida focalizzate sulle vittime di *corporate violence* vuole quindi rispondere proprio a questo bisogno, ancora più forte in un ambito, come quello in esame, che, a differenza di altri, non ha fin qui ricevuto alcuna specifica attenzione – neppure rapsodica e/o parziale – dal nostro legislatore. Proprio per questo, anche in considerazione della mancata attuazione, nel nostro Paese, dei profili della Direttiva attinenti al diritto di accesso a servizi di assistenza alle vittime (artt. 8-9), un'apposita sezione di queste *Linee guida* è dedicata a fornire indicazioni pratiche agli operatori in merito alle forme di **assistenza e sostegno al di fuori del procedimento penale** disponibili per queste vittime (§ X). Nella stessa prospettiva, specifica attenzione viene dedicata alle potenzialità di un'estensione – con tutti gli opportuni adattamenti e cautele – a questa tipologia di reati dell'accesso ai **programmi di giustizia riparativa** (§ IX). Il tutto nella consapevolezza della centrale importanza che un'adeguata **formazione** di tutti i soggetti pubblici in questione (dalla polizia giudiziaria ai magistrati) riveste per assicurare, nelle parole della Direttiva (cons. 61), che essi «siano in grado di identificare le vittime e le loro esigenze e occuparsene in modo rispettoso, sensibile, professionale e non discriminatorio» (§ XI), e della **estrema delicatezza** delle molteplici questioni nascenti dall'**integrazione di una disciplina europea così innovativa nell'ordinamento nazionale** (§ XII).

Ci auguriamo che **queste e le altre *Linee guida*** già elaborate o in corso di elaborazione contribuiscano, sia nel corso delle future **attività di formazione** promosse nel quadro di questo progetto, sia attraverso la loro pubblicazione e diffusione, a disseminare una **migliore conoscenza della Direttiva** e degli obblighi da essa nascenti in capo a tutti gli operatori della giustizia penale (e non solo) e a promuovere una **cultura maggiormente sensibile ai bisogni delle vittime** in generale e di soggetti particolarmente vulnerabili, quali sono le vittime di *corporate violence*, in particolare.

Per aggiornamenti sui prossimi risultati e attività del progetto, consultate il nostro sito internet: [www.victimsandcorporations.eu](http://www.victimsandcorporations.eu). Grazie!

#### ELENCO DELLE PUBBLICAZIONI DEL PROGETTO 'VICTIMS AND CORPORATIONS':

- *Rights of Victims, Challenges for Corporations. Project's first findings*, dicembre 2016 (e relativa Appendice: *European and International Selected Legal Resources and Case Law*)
- *Needs of Victims of Corporate Violence: Empirical Findings. National Report: Italy*, marzo 2017 (di prossima pubblicazione)
- *I bisogni delle vittime di corporate violence: risultati della ricerca empirica in Italia*, luglio 2017 (di prossima pubblicazione)
- *Individual Assessment of Corporate Violence Victims' Needs. A Practical Guide*, aprile 2017
- *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence*, maggio 2017
- *Implementazione della Direttiva 2012/29/UE per le vittime di corporate crime e corporate violence. Linee guida nazionali per la polizia giudiziaria, le Procure della Repubblica e i magistrati giudicanti*, luglio 2017
- *Implementazione della Direttiva 2012/29/UE per le vittime di corporate crime e corporate violence. Linee guida nazionali per gli avvocati*, luglio 2017 (di prossima pubblicazione)
- *Implementazione della Direttiva 2012/29/UE per le vittime di corporate crime e corporate violence. Linee guida nazionali per servizi sociali, organizzazioni che offrono assistenza alle vittime e centri di giustizia riparativa*, luglio 2017 (di prossima pubblicazione)
- *Implementation of Directive 2012/29/EU for Victims of Corporate Crimes and Corporate Violence. Guidelines for Corporations*, agosto 2017 (di prossima pubblicazione)
- *Implementazione della Direttiva 2012/29/UE per le vittime di corporate crime e corporate violence. Linee guida nazionali per le imprese*, agosto 2017 (di prossima pubblicazione)

## I.

# LA DIRETTIVA 2012/29/UE CHE ISTITUISCE NORME MINIME IN MATERIA DI DIRITTI, ASSISTENZA E PROTEZIONE DELLE VITTIME DI REATO\*

Per un migliore **inquadramento delle specifiche indicazioni pratiche** contenute nelle sezioni successive di queste *Linee guida*, può essere utile richiamare preliminarmente le **principali indicazioni** rivolte dalla **Direttiva 2012/29/UE** a **tutti i soggetti suscettibili, per motivi professionali, di entrare in contatto personale con le vittime**, rispetto ai quali la Direttiva stessa sottolinea l'importanza che «abbiano accesso e ricevano un'adeguata formazione sia iniziale che continua, di livello appropriato al tipo di contatto che intrattengono con le vittime, cosicché siano in grado di **identificare le vittime e le loro esigenze e occuparsene in modo rispettoso**, sensibile, professionale e non discriminatorio» (cons. 61; v. anche più specificamente *infra*, § XI).

**Obiettivo della Direttiva è garantire che le vittime di reato ricevano informazione, assistenza e protezione adeguate e possano partecipare ai procedimenti penali (art. 1).**

Questo implica che il contatto e l'interazione con le vittime di reato devono essere improntati a:

- **riconoscimento della vittima** come tale, indipendentemente dal fatto che l'autore del reato sia identificato, catturato, perseguito o condannato (oltre che dall'eventuale relazione familiare tra loro), come pure dall'eventuale ritardo nella denuncia di un reato (per paura di ritorsioni, umiliazioni o stigmatizzazione);

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\* Redazione a cura di ARIANNA VISCONTI

- **rispetto per l'integrità fisica, psichica e morale della vittima**, sensibilità, professionalità ed **assenza di qualsivoglia discriminazione** (fondata su motivi quali razza, colore della pelle, origine etnica o sociale, caratteristiche genetiche, lingua, religione o convinzioni personali, opinioni politiche o di qualsiasi altra natura, appartenenza a una minoranza nazionale, patrimonio, nascita, disabilità, età, genere, espressione di genere, identità di genere, orientamento sessuale, status in materia di soggiorno o salute) nel contatto con la stessa;
- **considerazione della situazione personale** della vittima e delle sue necessità immediate, dell'età, del genere, di eventuali disabilità e della sua maturità;
- **protezione** dalla **vittimizzazione secondaria** (ovvero dalle eventuali conseguenze negative, dal punto di vista emotivo e relazionale, derivanti dal contatto tra la vittima e il sistema delle istituzioni in generale, e quello della giustizia penale in particolare: BANDINI 1991) o **ripetuta**, dall'**intimidazione** e dalle **ritorsioni**;
- **minimizzazione del numero di contatti non necessari con le autorità**, agevolando le interazioni tra queste e la vittima, prestando attenzione a **non causare sofferenze non necessarie**, adottando un approccio rispettoso, in modo da consentire alle vittime di stabilire un **clima di fiducia con le autorità**;
- impegno per un'**assistenza** adeguata, onde facilitare il **recupero** della vittima e garantirle un adeguato **accesso alla giustizia**;
- **protezione della vita privata** e della riservatezza della vittima;
- impegno a fornire **informazioni e consigli** con modalità quanto più possibile diversificate, con un linguaggio semplice e accessibile, in modo da **assicurarne la comprensione** da parte della vittima, e di **consentirle di prendere decisioni consapevoli** in merito alla partecipazione al procedimento;
- impegno a **garantire che la vittima sia compresa**, tenendo conto della sua conoscenza della lingua usata per dare le informazioni, dell'età, della maturità, della capacità intellettuale ed emotiva, del grado di alfabetizzazione e di eventuali menomazioni psichiche o fisiche;
- **considerazione anche per le eventuali vittime indirette del reato**, ovvero, ad esempio, familiari della vittima che a loro volta subiscono un danno a seguito del reato.

La Direttiva prevede quindi, in capo alle **vittime di reato**, un insieme di **diritti** così sinteticamente riassumibili:

- diritto di **comprendere** e di **essere compresi**, dalla denuncia e in ogni fase e grado del procedimento (artt. 3 e 5), incluso uno specifico diritto all'interpretazione e alla traduzione (art. 7);
- diritto di ottenere **informazioni**, fin dal primo contatto con un'autorità competente, sul tipo di assistenza che la vittima può ricevere e da chi, sull'accesso all'assistenza sanitaria e/o ad un'eventuale assistenza specialistica, anche psicologica, e su una sistemazione alternativa, sulle procedure per la presentazione della denuncia, sulle modalità e condizioni per ottenere protezione, sulle possibilità di accesso alle varie forme di assistenza di un legale, sulle modalità e condizioni per il risarcimento, sul diritto all'interpretazione e alla traduzione, sulle procedure attivabili in caso sia residente in un altro Stato membro, sulle procedure disponibili per denunciare casi di mancato rispetto dei propri diritti, sulla persona cui rivolgersi per comunicazioni sul proprio caso, sui servizi di giustizia riparativa disponibili, e su condizioni e modalità di rimborso delle spese sostenute in conseguenza della propria partecipazione al procedimento penale (art. 4), nonché sull'andamento del proprio caso in ogni fase e grado del procedimento (artt. 5 e 6);
- diritto di **accesso a servizi di assistenza alle vittime** riservati, gratuiti e operanti nell'interesse delle stesse, prima, durante e per un congruo periodo di tempo dopo il procedimento penale (artt. 8 e 9);
- diritto di **partecipare al procedimento penale** (diritto di essere sentiti, art. 10; diritto di chiedere il riesame di una decisione di non esercitare l'azione penale e diritti collegati, art. 11; diritto alla protezione anche in caso di accesso a servizi di giustizia riparativa, art. 12; diritto al patrocinio a spese dello Stato, art. 13; diritto al rimborso delle spese sostenute per la partecipazione al procedimento penale, art. 14; diritto alla restituzione dei beni sequestrati di spettanza alla vittima, art. 15; diritto di ottenere una decisione in merito al risarcimento da parte dell'autore del reato, art. 16; diritto a che siano ridotte al minimo le difficoltà derivanti dal fatto che la vittima è residente in un altro Stato membro, art. 17);

- diritto alla **protezione** (della vittima e dei suoi familiari) da vittimizzazione secondaria e ripetuta, intimidazione e ritorsioni, compreso il rischio di danni emotivi o psicologici, e alla **salvaguardia della propria dignità** durante gli interrogatori o le testimonianze (incluso il diritto all'assenza di contatti con l'autore del reato, il diritto alla protezione nella fase delle indagini, il **diritto alla protezione della vita privata**, il **diritto a una tempestiva valutazione individuale** per individuare le specifiche esigenze di protezione e determinare se e in quale misura la vittima trarrebbe beneficio da misure speciali nel corso del procedimento penale, il diritto di accesso a tali misure speciali ove necessarie, lo specifico diritto di protezione per i soggetti minori: artt. 18-24).

Di fatto, la **capacità** di qualsiasi operatore che entri in contatto con vittime di reato di **identificare le vittime e le loro specifiche esigenze individuali** è **prerequisito** per garantire il **rispetto di ogni altra più puntuale indicazione** contenuta nella Direttiva, e dunque l'effettiva **garanzia dei diritti** da questa riconosciuti alle vittime, dalla trasmissione davvero efficace e comprensibile delle informazioni dovute, a una tutela effettiva delle specifiche esigenze di riservatezza del singolo individuo nel singolo caso, ecc. Di questi profili, dunque, si occuperanno le due sezioni seguenti.



## II.

### LE VITTIME DI *CORPORATE VIOLENCE* E I LORO BISOGNI\*

#### 1. Il concetto di corporate violence e la sua utilità pratica

Con l'espressione 'corporate violence' si intendono i reati commessi da società commerciali nel corso della loro attività legittima e impicanti offese alla vita, all'integrità fisica o alla salute delle persone.

Per una esemplificazione di questa tipologia di reato si rinvia principalmente al rapporto nazionale sulla ricerca empirica (*I bisogni delle vittime di corporate violence: i risultati della ricerca empirica in Italia*) e alle *Linee guida per la valutazione individuale* citati in premessa. Basti qui ricordare che rientrano nell'ambito della Direttiva e della sua attuazione anche le semplici ipotesi di reato corrispondenti alla tipologia della corporate violence, come si desume dalla definizione di 'vittima di reato' da questa adottata: persone fisiche che abbiano «subito un danno, anche fisico, mentale o emotivo, o perdite economiche che sono stati causati direttamente da un reato», nonché i familiari «di una persona la cui morte è stata causata direttamente da un reato» e che hanno «subito un danno in conseguenza della morte di tale persona» (art. 2 co. 1), «independentemente dal fatto che l'autore del reato sia identificato, catturato, perseguito o condannato» (cons. 19).

È opportuno tuttavia precisare che il concetto di corporate violence è di matrice criminologico-sociologica e non presenta, pertanto, perfetta sovrapposibilità con le categorie giuridiche di 'violenza' e neppure di 'responsabilità da reato dell'ente'.

Sotto il primo profilo, infatti, la corporate violence include una casistica al tempo stesso più ampia e più ristretta rispetto al concetto giuridico di violenza come evolutosi anche recentemente nel nostro ordinamento:

→ più ampia, perché non contiene alcuna implicazione di intenzionalità (il che per lo più la esclude, tra l'altro, dall'ambito di applicazione della Direttiva 2004/80/CE relativa al diritto di indennizzo

\* Redazione a cura di ARIANNA VISCONTI

per le vittime di reati violenti *intenzionali*), né di **interazione diretta tra autore e vittima**;

→ più ristretta, perché concepita in relazione a soli casi di **violenza ‘materiale’**, implicante un **impatto su vita, integrità e salute psico-fisica delle persone**, e **non** anche in relazione a casi di **violenza puramente psicologica**, pure possibili in un contesto di *corporate crime* (si pensi ad esempio al c.d. *mobbing*) e recentemente accomunati a pieno titolo al concetto di ‘violenza’ proprio in relazione alla ricostruzione della categoria delle ‘vittime vulnerabili’ (si veda Cass. SU 16 marzo 2016, n. 10959, che ricava tale ampliamento del tradizionale concetto di violenza, in relazione alle disposizioni del codice di procedura penale riferite alle persone offese in condizione di particolare vulnerabilità, proprio da una lettura dell’ordinamento interno alla luce di quello comunitario e internazionale).

Sotto il secondo profilo, certamente il concetto di **corporate violence** si presta a coprire un **novero di reati molto più ampio** di quelli *lato sensu* violenti (o potenzialmente conduttivi a reati violenti o comunque a lesioni alla vita e all’integrità psicofisica delle persone) attualmente inseriti nel **catalogo** degli illeciti che possono dare luogo a **responsabilità amministrativa da reato degli enti ex d.lgs. 231/2001** (ovvero, allo stato, delitti di criminalità organizzata e delitti con finalità di terrorismo o di eversione, artt. 24 *ter* e 25 *quater*, mutilazione degli organi genitali femminili, art. 25 *quater*.1, delitti contro la personalità individuale, art. 25 *quinquies*, omicidio colposo o lesioni gravi o gravissime commesse con violazione delle norme sulla tutela della salute e sicurezza sul lavoro, art. 25 *septies*, e reati ambientali, art. 25 *undecies*).

Tale discrepanza discende, tuttavia, proprio dall’**origine empirico-sociale** della nozione di **corporate violence**, e si presta quindi a **meglio ricostruire** proprio i profili di **danno e sofferenza concreti** sperimentati dalle **vittime di questo tipo di reati**, nonché le **specifiche problematiche** relative a una adeguata **protezione** di questo particolare gruppo di vittime. Appare dunque evidente come il concetto di *corporate violence*, e la sensibilità per la realtà empirico-sociale a questo sottostante, si rivelino **essenziali** proprio in vista di una **effettiva ed efficace implementazione della Direttiva**, e in particolare in relazione a una **corretta valutazione individuale dei bisogni di protezione** di queste vittime.

Pur nella (o, meglio, proprio in ragione della) **attuale assenza di ‘poli’ o ‘agenzie’ interdisciplinari deputati alla prima accoglienza e all’assistenza** delle vittime di reato – i quali, nell’ottica della Direttiva, avrebbero rappresentato la soluzione migliore «per prestare alle vittime di reato assistenza, sostegno e protezione adeguate» (in questo senso il cons. 62, secondo il quale «è opportuno che i servizi pubblici operino in maniera

coordinata e intervengano a tutti i livelli amministrativi [...]. Le vittime andrebbero assistite individuando le autorità competenti e indirizzandole ad esse al fine di evitare la ripetizione di questa pratica. Gli Stati membri dovrebbero prendere in considerazione lo sviluppo di 'punti unici d'accesso' o 'sportelli unici', che si occupino dei molteplici bisogni delle vittime allorché sono coinvolte in un procedimento penale, compreso il bisogno di ricevere informazioni, assistenza, sostegno, protezione e risarcimento») – risulta ancor più **essenziale** che gli operatori pubblici destinati a entrare in contatto con le vittime (**polizia giudiziaria, magistrati, ausiliari del giudice e del pubblico ministero**) acquisiscano un'adeguata **consapevolezza** – anche grazie all'indispensabile **specifico formazione** (su cui v. più diffusamente *infra*, § XI) – della **complessa realtà empirica** della **vittimizzazione da corporate violence**, a integrazione delle loro competenze giuridiche **in vista di una più efficace valutazione individuale dei bisogni** delle singole vittime potenzialmente rientranti in questa tipologia.

**II.1. Nella valutazione individuale dei bisogni di protezione di una vittima di corporate violence, l'operatore non deve farsi condizionare dall'inquadramento giuridico-formale del fatto, ma concentrarsi sull'effettivo impatto di questo sulla vita, salute o integrità psico-fisica della vittima, individuato in termini di danno attuale o di pericolo, onde procedere a una valutazione concreta dei rischi di vittimizzazione secondaria o ripetuta, intimidazione o ritorsione, nello specifico caso.**

## **2. Profili problematici della vittimizzazione da corporate violence: sintesi**

Dal momento che le specifiche problematiche della vittimizzazione da *corporate violence* che si ripercuotono sulle possibilità e modalità di efficace attuazione dei vari diritti sanciti dalla Direttiva verranno esposte nelle sezioni successive di queste *Linee guida*, in rapporto a ciascuno specifico punto toccato, ci si limiterà qui a fornire una **panoramica essenziale dei peculiari profili di lesività** di queste condotte e a illustrare quindi le **specifiche problematiche** inerenti alla fase della **valutazione individuale dei bisogni di protezione** di questa tipologia di vittime.

Come è noto, la Direttiva qualifica la **vittima** come tale alla luce del suo aver «**subito un danno, anche fisico, mentale o emotivo, o perdite economiche** che sono stati causati direttamente da un reato» (**art. 2 co. 1**)

Come per quasi tutti i reati gravi, i danni conseguenti a una vittimizzazione da *corporate violence* tendono a essere sia fisici, sia psicologici, sia economici. La generale complessità di questi crimini contribuisce a far sì che la vittima non sperimenti tali profili di danno come entità separate, ma come aspetti di un'unica esperienza traumatica che si potenziano l'un l'altro. È inoltre frequente una mancanza iniziale di percezione del danno e una sua emersione solo ritardata e/o graduale, come pure un profilo di 'tradimento della fiducia' della vittima particolarmente gravoso sul piano psicologico.

- Il **danno fisico** può andare dalla **morte** (istantanea o a seguito di malattia più o meno lunga) alle **lesioni personali di diversa gravità e durata**, incluse **condizioni gravemente invalidanti e/o sfiguranti** impicanti, tra l'altro, gravi ripercussioni negative sulla vita lavorativa, affettiva e di relazione (v. sotto); può riguardare anche **feti o neonati** (si pensi ai casi di focomelia legati all'assunzione di Talidomide in gravidanza); può **emergere nell'immediatezza** del crimine **o con consistente ritardo**, anche nel corso di decenni, a causa dei **lunghi periodi di latenza** di molte malattie correlate all'esposizione ad agenti tossici; può presentarsi con **sintomatologia e/o eziologia non chiara**, fino a impedirne la riconduzione certa all'atto illecito.
- Il **danno psicologico ed emotivo** può derivare **da un singolo evento traumatico** (ad es. in caso di disastri) o essere principalmente la **conseguenza dei danni fisici ed economici** e del relativo stress. In entrambi i casi, sia la letteratura che i risultati della ricerca empirica condotta nel quadro del progetto evidenziano come possa presentarsi **con intensità e in forme non diverse da quello derivante dai reati violenti 'comuni'** (PTSD, depressione, disturbi d'ansia, ecc.). Quasi sempre presente è uno specifico **senso di 'tradimento'** (che contribuisce ad acuire gli esiti psicologici negativi appena citati) nei confronti dell'ente e dei suoi rappresentanti. A costoro, infatti, la vittima è generalmente legata da un **necessitato rapporto di fiducia delegata o implicita** (consumatore nei confronti del produttore, paziente nei confronti dell'industria farmaceutica, dipendente nei confronti del datore di lavoro, ecc.), in qualche caso potenziato da una vera e propria **relazione di dipendenza** che lega vittima e perpetratore (si pensi al soggetto emofiliaco dipendente da farmaci emoderivati salvavita, o a lavoratori o intere comunità economicamente dipendenti da impianti produttivi non sicuri).

Senso di tradimento spesso esteso alle istituzioni pubbliche, quando la vittima ne percepisce l'inerzia nel provvedere ai controlli che avrebbero potuto impedire il reato o nel procedere al suo contrasto una volta scoperto. Lo stress psicologico può essere approfondito dal **timore di un aggravamento o reiterazione del danno** (si pensi, in un caso come quello dell'Eternit, alla sofferenza psicologica legata alla certa evoluzione letale in caso di diagnosi di mesotelioma pleurico, o all'esperienza del decesso di familiari o conoscenti esposti agli stessi fattori ambientali cui la vittima, attuale o potenziale, è esposta), spesso aggravato da una situazione di **incertezza scientifica**, come pure dal **timore di ritorsioni** da parte del *corporate offender*, rispetto al quale la **disparità di forze e conoscenze** è generalmente evidente alla vittima. Inoltre, poiché in questo ambito molti sono i **casi** che possono considerarsi **in qualche misura 'concausati' o 'precipitati' dalla vittima** (scelta - magari reiterata - di uno specifico prodotto, scelta di una determinata occupazione, decisione di sottoporsi a un intervento estetico, e simili), non infrequenti sono sentimenti di **vergogna e autocolpevolizzazione** dal grave impatto emotivo sulla vittima. Qualora la vittima sia costretta e/o possa permettersi di abbandonare un luogo di residenza gravemente compromesso (come in casi di severo inquinamento ambientale) vi è spesso un **danno alla vita di relazione** dovuto al forzato sradicamento; analogo danno può derivare dallo sviluppo di **malattie gravemente invalidanti e/o deturpanti** (si veda ad esempio il caso delle vittime del Talidomide) e più in generale dallo **stress causato alla vittima e/o ai suoi familiari** dall'episodio criminoso e dalle sue conseguenze di medio e lungo periodo.

- Il **danno economico**, in questi casi, è per lo più ricollegabile a fattori come **spese mediche** sostenute in relazione al danno fisico riportato (spesso ingenti, in relazione alla gravità e durata delle patologie contratte), **perdita del posto di lavoro** o comunque **diminuzione della capacità lavorativa**, perdita di un congiunto costituente l'unica o primaria fonte di reddito della famiglia, **costi sostenuti per cambiare residenza**, quando possibile (ad es. abbandonando un'area gravemente inquinata), **o per ridurre con mezzi propri il rischio** di vittimizzazione ripetuta (bonifiche, acquisto di protezioni, ecc.).

Già da questa sintesi emerge con evidenza come, rispetto alle **vittime di corporate violence**, sia **frequente** la **presenza** di **plurimi fattori di vulnerabilità** (su cui v. meglio *infra*) da tenere in considerazione, singolarmente e nella loro interazione reciproca, nel momento della **valutazione individuale dei bisogni di protezione** di ciascuna vittima di *corporate violence* – valutazione che ci si avvia ora ad affrontare sinteticamente.

**II.2. Nella valutazione dei bisogni di protezione di una vittima di *corporate violence* l'operatore deve tenere conto della frequente compresenza di plurimi fattori di vulnerabilità e verificare quindi accuratamente se una tale combinazione si dia nel caso in esame.**

### **3. La valutazione individuale dei bisogni di protezione delle vittime di *corporate violence***

#### **Cons. 56 Dir.**

Le valutazioni individuali dovrebbero tenere conto delle caratteristiche personali della vittima, quali età, genere, identità o espressione di genere, appartenenza etnica, razza, religione, orientamento sessuale, stato di salute, disabilità, status in materia di soggiorno, difficoltà di comunicazione, relazione con la persona indagata o dipendenza da essa e precedente esperienza di reati. Dovrebbero altresì tenere conto del tipo o della natura e delle circostanze dei reati, ad esempio se si tratti di reati basati sull'odio, generati da danni o commessi con la discriminazione quale movente, violenza sessuale, violenza in una relazione stretta, se l'autore del reato godesse di una posizione di autorità, se la residenza della vittima sia in una zona ad elevata criminalità o controllata da gruppi criminali o se il paese d'origine della vittima non sia lo Stato membro in cui è stato commesso il reato.

#### **Cons. 58 Dir.**

È opportuno che le vittime identificate come vulnerabili al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni possano godere di adeguate misure di protezione durante il procedimento penale. Il preciso carattere di queste misure dovrebbe essere determinato attraverso la valutazione individuale, tenendo conto dei desideri della vittima. [...] Le preoccupazioni e i timori delle vittime in relazione al procedimento dovrebbero essere fattori chiave nel determinare l'eventuale necessità di misure particolari.

#### **Art. 22 Dir.**

1. Gli Stati membri provvedono affinché le vittime siano tempestivamente oggetto di una valutazione individuale, conformemente alle procedure nazionali, per individuare le specifiche esigenze di protezione e determinare se e in quale misura trarrebbero beneficio da misure speciali nel corso del procedimento penale, come previsto a norma degli articoli 23 e 24, essendo particolarmente esposte al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni.

2. La valutazione individuale tiene conto, in particolare, degli elementi seguenti:

- a) le caratteristiche personali della vittima;
- b) il tipo o la natura del reato; e
- c) le circostanze del reato.

3. Nell'ambito della valutazione individuale è rivolta particolare attenzione alle vittime che hanno subito un notevole danno a motivo della gravità del reato, alle vittime di reati motivati da pregiudizio o discriminazione che potrebbero essere correlati in particolare alle loro caratteristiche personali, alle vittime che si trovano particolarmente esposte per la loro relazione e dipendenza nei confronti dell'autore del reato. [...]

5. La portata della valutazione individuale può essere adattata secondo la gravità del reato e il grado di danno apparente subito dalla vittima.

6. La valutazione individuale è effettuata con la stretta partecipazione della vittima e tiene conto dei suoi desideri, compresa la sua eventuale volontà di non avvalersi delle misure speciali secondo il disposto degli articoli 23 e 24.

**Art. 90 quater c.p.p.**

Agli effetti delle disposizioni del presente codice, la condizione di particolare vulnerabilità della persona offesa è desunta, oltre che dall'età e dallo stato di infermità o di deficienza psichica, dal tipo di reato, dalle modalità e circostanze del fatto per cui si procede. Per la valutazione della condizione si tiene conto se il fatto risulta commesso con violenza alla persona o con odio razziale, se è riconducibile ad ambiti di criminalità organizzata o di terrorismo, anche internazionale, o di tratta degli esseri umani, se si caratterizza per finalità di discriminazione, e se la persona offesa è affettivamente, psicologicamente o economicamente dipendente dall'autore del reato.

La **valutazione individuale dei bisogni di protezione** delle vittime di reato rappresenta un passaggio fondamentale per il riconoscimento e la garanzia effettivi dei diritti sanciti dalla Direttiva 2012/29/UE, in particolare in relazione al diritto di ogni **vittima vulnerabile**, in quanto **«particolarmente esposta al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni» (art. 22)**, di accedere a misure di **protezione speciale** onde evitare tali occorrenze e proteggerne al meglio la vita privata e la riservatezza.

**Né la Direttiva né il d.lgs. 15 dicembre 2015, n. 212**, di recepimento e attuazione della stessa nell'ordinamento italiano, **individuano una specifica figura professionale** demandata a effettuare tale valutazione individuale. La Direttiva, tuttavia, stabilisce che la valutazione in questione dovrebbe essere effettuata in modo **tempestivo per tutte le vittime** (cons. 55), pur riconoscendo che la sua portata «può essere adattata secondo la gravità del reato e il grado di danno apparente subito dalla vittima» (art. 22 co. 5). In assenza di diverse indicazioni, il **compito** di effettuare tale valutazione ricade potenzialmente su una **platea assai vasta** di soggetti, interessati **o in via diretta** («funzionari coinvolti in procedimenti penali che possono entrare in contatto personale con le vittime», dunque essenzialmente «servizi di **polizia**», «**personale giudiziario**», «**pubblici ministeri**» e «**giudici**») **o in via mediata e/o in assenza dell'instaurazione di un procedimento penale** («persone che possono essere implicate nella valutazione individuale per identificare le esigenze specifiche di protezione delle vittime», quali, in particolare, «**avvocati**» e «**operatori** che forniscono alle vittime **sostegno** o servizi di **giustizia riparativa**»).

**Qualsiasi operatore coinvolto in procedimenti penali che possano portare in contatto personale con vittime di reato è potenzialmente destinato a effettuare una valutazione individuale in rapporto agli specifici bisogni di protezione, e a questo fine dovrebbe ricevere una specifica e adeguata formazione (cons. 61; art. 25; in tema v. anche *infra*, § XI).**

L'art. 22 della Direttiva, pur non scendendo nei dettagli su come debba essere eseguita tale valutazione individuale, fornisce indicazioni circa i **principali aspetti da indagare e tenere in considerazione**. Analogamente procede l'art. 90 *quater* c.p.p. (introdotto dal d.lgs. 212/2015) nel definire la «**condizione di particolare vulnerabilità**» di una vittima di reato.

**II.3.1. L'operatore che si trovi a effettuare la valutazione individuale dei bisogni di protezione di una vittima di *corporate violence* dovrà prestare particolare attenzione a:**

- **caratteristiche personali della vittima**, quali **malattie e infermità antecedenti o conseguenti al reato** (a volte in combinazione tra loro: si pensi all'emblematico caso dei soggetti emofiliaci contagiati da malattie infettive a seguito della somministrazione di farmaci contaminati), o una situazione di **dipendenza economica o di altro genere** dall'autore del reato;
- **tipo e natura del reato**, spesso, come si è visto, implicante, nei casi di *corporate violence*, **danni estremamente gravi e pervasivi** con ricadute su ogni aspetto della vita lavorativa, personale, familiare e sociale della vittima;
- **circostanze del reato**, per lo più connotato da una **grande sproporzione di risorse, informazioni e potere** a vantaggio della *corporation*, nonché spesso caratterizzato da una **natura transnazionale** legata sia al carattere multinazionale di molte imprese, sia alla natura diffusa della vittimizzazione da prodotto o da reato ambientale (o a una combinazione dei due fattori); a ciò si aggiunga la frequente **impossibilità per la vittima di abbandonare un luogo di lavoro e/o residenza** che la mantiene esposta agli stessi rischi di vittimizzazione;
- **desideri della vittima** (v. cons. 58 e art. 22 co. 6 Dir.).

Tra le **specifiche problematiche** che le vittime di *corporate violence* si trovano ad affrontare non mancano casi di **ribaltamento del biasimo sulla vittima** (in particolare in relazione a casi di 'compartecipazione' nella causazione del danno – v. sopra – e/o di eziologia incerta dello stesso), e/o di sottoposizione della stessa (quando dipendente dell'impresa accusata) a **misure disciplinari, demansionamenti o licenziamenti illegittimi, mobbing**, minaccia di chiusura o effettiva **chiusura dello stabilimento in assenza di bonifica e risarcimento**, ecc.



**II.3.2.** Il rischio di esposizione a intimidazioni e/o ritorsioni va sempre preso in considerazione in relazione alle vittime di *corporate violence*, in particolare in tutte le situazioni di dipendenza, economica o di altro tipo, dalla *corporation* coinvolta, sia questa una dipendenza individuale o estesa all'intera comunità di appartenenza. In generale, occorre tenere presente che intimidazione e ritorsione tenderanno per lo più ad assumere forme 'atipiche' se confrontate con i casi di crimini 'convenzionali'.

In tutti i casi in cui la vittima si trovi in una relazione di **dipendenza, economica o di altro genere, con la *corporation*** (si pensi ai casi di incidenti o malattie legati al posto di lavoro o alla necessità dei soggetti affetti da determinate patologie di continuare ad assumere i farmaci prodotti dall'impresa o da altre sospettate di seguire prassi analoghe), **oppure non abbia la possibilità di abbandonare un luogo di lavoro o di residenza pericoloso** (ad esempio per la contaminazione ambientale da sostanze tossiche), l'esposizione a una **vittimizzazione ripetuta** è implicita.

Proprio il **bisogno di protezione da forme di vittimizzazione ripetuta** e/o di prevenzione di danni ulteriori è **uno di quelli espressi con maggiore frequenza e urgenza dalle vittime di *corporate crime***, che lo percepiscono come un preciso dovere – troppo spesso disatteso – dello Stato e delle istituzioni pubbliche. Le vittime, inoltre, annettono una **grande importanza psicologica e morale** alla possibilità che le **sofferenze da loro patite** servano per lo meno ad **evitare il ripetersi di episodi analoghi a danno di altri**, grazie a un intervento pubblico che operi in modo efficace su altre situazioni a rischio, per prevenire in modo tempestivo altri casi di vittimizzazione.

**II.3.3.** Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* occorre tenere presente che il permanere dell'esposizione della vittima ai fattori di rischio all'origine del reato lamentato, e dunque il pericolo di vittimizzazione ripetuta, è estremamente frequente, anche se tale esposizione può avvenire con modalità poco visibili, a causa della complessità di questo tipo di reati.

I casi di *corporate violence*, implicando danni alla vita, alla salute e all'integrità psico-fisica delle persone offese, si presentano **generalmente molto delicati** dal punto di vista del **rispetto della *privacy*** delle vittime e della loro **dignità nel corso di interrogatori o testimonianze** (art. 18). La

partecipazione al processo penale può esporre queste vittime alla rivelazione di dati sensibili inerenti alla loro salute, alla loro vita familiare o sessuale, ecc., in qualche caso con forti **rischi di stigmatizzazione** sociale (si pensi, solo per fare un esempio, ai casi di contagio da HIV tramite assunzione di emoderivati infetti). Inoltre, quando, come spesso accade, il **numero di vittime che partecipano al procedimento è molto elevato**, aumenta il rischio di lesioni della sfera privata delle persone offese, qualora **esigenze di speditezza processuale siano privilegiate** a scapito di un'efficace tutela della riservatezza delle persone offese.

**II.3.4.** Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* occorre prestare particolare e specifica attenzione alle esigenze di tutela della vita privata, della riservatezza e della dignità della persona offesa e dei suoi familiari, in relazione alla frequente natura sensibile di dati e informazioni indispensabili alle indagini e al processo.

Nei casi di *corporate violence* può accadere che **comunità e gruppi di appartenenza delle vittime** adottino un **atteggiamento ambivalente** nei confronti di queste ultime. In particolare, **qualora** la **denuncia** della o delle vittime venga **percepita come una minaccia alla sicurezza economica** dei colleghi di lavoro o dell'intera comunità (tipicamente, in relazione alla stretta dipendenza di questi soggetti, per il proprio sostentamento, da un impianto produttivo alla cui chiusura tali denunce potrebbero, direttamente o indirettamente, condurre), la vittima può sperimentare **ostilità e ostracismo** da parte di soggetti sul cui sostegno sente che dovrebbe poter contare.

**II.3.5.** Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* vanno prese in considerazione anche possibili minacce 'atipiche', provenienti non dall'autore del reato o dalla cerchia di questi, ma da soggetti vicini alla vittima e non coinvolti nel crimine, in relazione alle specifiche caratteristiche e circostanze del reato.

Art. 22 co. 7 Dir.

Qualora gli elementi alla base della valutazione individuale siano mutati in modo sostanziale, gli Stati membri provvedono affinché questa sia aggiornata durante l'intero corso del procedimento penale.

La **protezione** garantita alla vittima deve essere **realmente individualizzata ed efficace**, anche in presenza (il che può considerarsi la norma) di **situazioni personali e relazionali in continua evoluzione**.

Da questo punto di vista, la posizione delle **vittime di corporate violence** si rivela particolarmente delicata. Si riscontra frequentemente **l'accumularsi di problematiche** relative all'ottenimento di adeguate **informazioni**, a difficoltà di **accesso effettivo** alle misure speciali di **protezione** e a un'**assistenza legale** qualitativamente valida ed economicamente sostenibile, alla possibilità di una **partecipazione al procedimento penale** veramente garantita (anche sotto il profilo della **privacy**) ed efficace, e alla (in)disponibilità 'servizi di assistenza' che, in Italia, si presentano, in verità, non specializzati e oltremodo frammentati (**tutti aspetti su cui si tornerà puntualmente nelle sezioni seguenti**). L'**effetto cumulativo** di tutte queste criticità è, evidentemente, superiore alla loro semplice somma. Esse finiscono dunque per **potenziarsi l'un l'altra** in un circolo vizioso dall'**impatto esistenziale potenzialmente devastante**.

Il **trascinarsi dei procedimenti**, con la correlata, **frequente mancata rimozione dei rischi di vittimizzazione ripetuta**, cui la vittima può rimanere esposta anche per anni o decenni, e la **vittimizzazione secondaria** nascente da un **contatto spesso estremamente frustrante** con le istituzioni pubbliche in generale, e con quelle dell'amministrazione della giustizia in particolare, hanno generalmente un impatto negativo durevole sulle vittime di *corporate violence*.

**II.3.6.** La valutazione individuale dei bisogni di protezione non può considerarsi 'data' una volta per tutte, ma va adattata all'evolversi della situazione della vittima nel tempo. Per le vittime di *corporate violence* è particolarmente importante una effettiva rivalutazione periodica dei bisogni di protezione, in ragione del rischio particolarmente elevato di accumulo nel tempo di fattori di vittimizzazione secondaria e/o ripetuta.

### III.

## INDIVIDUARE E RICONOSCERE LE VITTIME DI *CORPORATE VIOLENCE*\*

### 1. Individuare le vittime: la definizione di ‘vittima’ e la vittima ‘del reato’

#### Cons. 13 Dir.

La presente direttiva si applica in relazione ai reati commessi nell’Unione e ai procedimenti penali che si svolgono nell’Unione. Essa conferisce diritti alle vittime di reati extraterritoriali solo in relazione a procedimenti penali che si svolgono nell’Unione. Le denunce presentate ad autorità competenti al di fuori dell’Unione, quali le ambasciate, non fanno scattare gli obblighi previsti dalla presente direttiva.

#### Art. 2 co. 1 Dir.

Ai fini della presente direttiva si intende per [...] «vittima»:

- i) una persona fisica che ha subito un danno, anche fisico, mentale o emotivo, o perdite economiche che sono stati causati direttamente da un reato;
- ii) un familiare di una persona la cui morte è stata causata direttamente da un reato e che ha subito un danno in conseguenza della morte di tale persona; [...].

L’approvazione della Direttiva 2012/29/UE e il suo *incompleto* recepimento nell’ordinamento italiano pongono un immediato problema ‘teorico’ che ha ripercussioni pratiche non secondarie: **chi sono le vittime?** E nel nostro caso: **chi sono le vittime di *corporate violence* e *corporate crime*?**

La categoria dogmatica di ‘**soggetto passivo**’ del reato e le nozioni di ‘**persona offesa dal reato**’ e ‘**danneggiato dal reato**’, presenti nell’ordinamento nazionale, **non coincidono** infatti con il concetto di ‘**vittima**’ scolpito alla Direttiva:

- ai sensi della **Direttiva**, è vittima **solo la persona fisica**;
- vittima, per il diritto europeo, è **però anche** la persona (fisica) **danneggiata direttamente da un reato**, seppure non tecnicamente ‘persona offesa’ e soggetto passivo dell’illecito.

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\* Redazione a cura di CLAUDIA MAZZUCATO

Sotto la vigenza della Decisione Quadro 220/GAI/2001 (relativa alla posizione della vittima nel procedimento penale), la **Corte di Giustizia UE** (CGUE) si è pronunciata, da un lato, nel senso di **escludere le persone giuridiche** dal concetto di **vittima** rilevante per l'ordinamento europeo (CGUE *Eredics - Sápi*, 21 ottobre 2010, C-205/09; CGUE *Dell'Orto*, 28 giugno 2007, C-467/05) e, dall'altro, nel senso di ritenere *compatibile* con il diritto dell'Unione la mancata previsione della costituzione di parte civile nel procedimento ex d.lgs. 231/2001, argomentando a partire dalla natura 'non penale' di detto procedimento deducibile dal regime 'amministrativo' della responsabilità 'da reato' dell'ente (CGUE *Giovanardi*, 12 luglio 2012, C-79/11).

Il **d.lgs. 212/2015** di (insoddisfacente) recepimento della Direttiva, **mantiene ferme le categorie del diritto nazionale**, richiamando la figura della «**persona offesa**», con l'effetto al tempo stesso di **escludere e includere soggetti presi invece in esame dalla Direttiva**.

Diversa è stata, invece, l'opzione del legislatore nazionale nel disciplinare – mediante la **l. 7 luglio 2016 n. 122** e a seguito di procedura di infrazione – il «diritto all'**indennizzo** in favore delle **vittime di reati intenzionali violenti**»: gli artt. 11 e ss. fanno infatti costante riferimento testuale alla «**vittima del reato**».

D'altra parte, la **locuzione «vittima»** compare in talune **altre disposizioni dell'ordinamento, scarsamente coordinate con il resto del sistema penale (sostanziale e processuale) e poco coerenti** con la terminologia di cui si era finora 'sistematicamente' avvalso il legislatore. È il caso, fra altri, dell'**art. 498 co. 4-ter c.p.p.** in tema di **esame testimoniale protetto** del «minore *vittima* del reato» e del «maggiormente infermo di mente *vittima* del reato», quando si procede per taluni delitti tassativamente indicati, **salvo** apparire nella **medesima norma**, nel comma immediatamente successivo, di nuovo la «**persona offesa** che versa in condizioni di particolare vulnerabilità» (**co. 4-quater**). Anche nella disciplina in materia di **atti persecutori e violenza domestica** (d.l. 23 febbraio 2009 n. 11 convertito, con modificazioni, in **l. 23 aprile 2009 n. 38**, *Misure urgenti in materia di sicurezza pubblica e di contrasto alla violenza sessuale, nonché in tema di atti persecutori*, e successive modifiche, incluse quelle apportate nel 2013 dal cosiddetto «pacchetto antiviolenza») **coesistono** il riferimento alla «**persona offesa**» in certe norme e alla «**vittima**» o alle «vittime» in altre: è significativo, per gli scopi di queste *Linee guida*, notare come gli **artt. 11** (*Misure a sostegno delle vittime*) e **12** (*Numero verde*) delle disposizioni appena citate facciano espresso riferimento a quest'**ultima categoria**, anziché a quella di persona offesa.

Simile **manca**za di **sistematicità** e **coerenza terminologica** ha **ripercussioni operative** non trascurabili, **non essendo possibile** talvolta **determinare con precisione chi sia il soggetto** a cui, di volta in volta, **le norme si applicano**. E ciò è fonte di **particolari problemi** specialmente nelle ipotesi in cui il **riferimento alla «vittima»** rileva non tanto ai fini di un generico (ma non secondario) accesso all'assistenza sociale, bensì concerne la **partecipazione al procedimento penale** o, in ipotesi, la **legittimazione a beneficiare di fondi di indennizzo**, di particolari provvidenze (pensioni, indennità) o altre prestazioni economiche, previdenziali e sociali (cfr. ad es. la **l. 3 agosto 2004, n. 206** recante le norme *in favore delle vittime del terrorismo e delle stragi di tale matrice*).

Ai sensi della Direttiva, «vittima» è la persona fisica che ha subito un danno direttamente causato da un reato. «Vittima» è altresì il familiare danneggiato di una persona deceduta in diretta conseguenza di un reato. I concetti di 'persona offesa dal reato' e 'danneggiato dal reato', previsti dall'ordinamento nazionale, non coincidono con la nozione di 'vittima' prevista dalla Direttiva. La non sovrapponibilità delle tre categorie crea problemi applicativi e di rapporto tra il diritto interno e il diritto dell'Unione.

Le cose si complicano ulteriormente, con pesanti riflessi sull'effettiva **individuazione** e sul conseguente **riconoscimento delle vittime**, alla luce della **connessione diretta**, operata dalla Direttiva, **tra la vittima (persona offesa e danneggiato) e il reato**: alla luce, in altre parole, della **dipendenza logica** dell'esistenza della prima dalla sussistenza del secondo.

Non è questa la sede per affrontare una delle più dense questioni criminologiche e legali, cioè il rapporto (anche definitorio) esistente tra il '**crimine**' (il fenomeno empirico) e il '**reato**' in senso stretto. Basti qui soltanto ricordare come fatti pur gravemente offensivi di beni giuridici possono non essere – o non essere *ancora* – criminalizzati in astratto, magari a motivo anche della lentezza del legislatore nell'avvedersi dell'emersione di fenomenologie 'criminali' *nuove* e nel provvedere di conseguenza. Indicatori significativi di simile scarto logico e normativo sono la locuzione «abuse of power» nella Dichiarazione ONU del 1985, recante i *Basic Principles of Justice* per le vittime, e il riferimento, nell'ambito del filone noto come '**Business & Human Rights**', agli **human rights abuses nell'esercizio dell'attività economica** (abusi o violazioni non necessariamente, o non ancora, tutti penalmente rilevanti; sul punto si rinvia al primo *report* del presente progetto, *Rights of Victims, Challenges for Corporations. Project's First Findings*, dicembre 2016, <http://www.victimsandcorporations.eu/publications/>, e in particolare ai saggi di G. Della Morte e M. Engelhart).

La **Direttiva** lega invece – espressamente e direttamente – la **vittima al reato**, cioè all’esistenza nell’ordinamento di una *fattispecie* penale in senso stretto e alla sussistenza di un fatto sussumibile sotto tale fattispecie. I casi anzidetti di *abuse of power* (per definizione) o di *human rights abuse* (ove non corrispondenti a norme incriminatrici nazionali) esulano pertanto dall’ambito di applicazione della Direttiva.

Di più: il **raggio d’azione della Direttiva** è limitato, ai sensi del **cons. 13**, ai soli «**reati commessi nell’Unione e ai procedimenti penali che si svolgono nell’Unione**».

**III.1.1.** Ai fini dell’applicazione di queste *Linee guida* sono ‘vittime’ le persone fisiche rientranti nella definizione di cui all’art. 2 della Direttiva 2012/29/UE, le quali hanno subito un danno – fisico, mentale, emotivo, economico – causato direttamente da un fatto preveduto come reato dalla legge nazionale, commesso nell’Unione Europea o per cui si procede penalmente nell’Unione Europea.

## **2. Riconoscere le vittime: uno spazio di riconoscimento indipendente dal procedimento penale**

### **Cons. 19 Dir.**

Una persona dovrebbe essere considerata vittima indipendentemente dal fatto che l'autore del reato sia identificato, catturato, perseguito o condannato e indipendentemente dalla relazione familiare tra loro. [...]

### **Art. 1 co. 1 Dir.**

[...] Gli Stati membri assicurano che le vittime siano riconosciute e trattate in maniera rispettosa, sensibile, personalizzata, professionale e non discriminatoria, in tutti i contatti con servizi di assistenza alle vittime o di giustizia riparativa o con un’autorità competente operante nell’ambito di un procedimento penale. I diritti previsti dalla presente direttiva si applicano alle vittime in maniera non discriminatoria, anche in relazione al loro status in materia di soggiorno.

### **Cons. 9 Dir.**

[...] Le vittime di reato dovrebbero essere riconosciute e trattate in maniera rispettosa, sensibile e professionale, senza discriminazioni di sorta [...]. In tutti i contatti con un'autorità competente operante nell'ambito di un procedimento penale e con qualsiasi servizio che entri in contatto con le vittime, quali i servizi di assistenza alle vittime o di giustizia riparativa, si dovrebbe tenere conto della situazione personale delle vittime e delle loro necessità immediate, dell'età, del genere, di eventuali disabilità e della maturità delle vittime di reato, rispettandone pienamente l'integrità fisica, psichica e morale. Le vittime di reato dovrebbero essere protette dalla vittimizzazione secondaria e ripetuta, dall'intimidazione e dalle ritorsioni, dovrebbero ricevere adeguata assistenza per facilitarne il recupero e dovrebbe essere garantito loro un adeguato accesso alla giustizia.

Nessun reato, nessuna vittima, dunque?

Tale apparente ovvietà nasconde invece dense questioni filosofico-giuridiche e **problemi operativi immensi**, specialmente in un settore complesso come quello dei 'crimini' (*rectius*: reati) di impresa e, all'interno di questo, a maggior ragione nelle ipotesi di reato fenomenologicamente riferibili alla nozione criminologica di *corporate violence* (v. *supra*, § II).

Se la vittima 'nasce' al momento della commissione del (fatto di) reato, l'**individuazione** e la **riconoscibilità** della **vittima** sembrerebbero **dipendere dall'esistenza del reato** stesso, **non** già **dalla sua scoperta** e tanto meno **dal suo accertamento**.

#### 'Esiste' la vittima solo se e quando viene 'accertato' il fatto di reato?

- «Si diventa vittime dopo che c'è il reato. Il punto è che il reato è una sorta di realtà mitologica stranissima». - «È che dovrete andare alla fine, all'accertamento definitivo». - «No, il fatto di reato sussiste anche se nessuno lo scopre o lo accerta». - «Va be'..., allora diciamo che il reato deve essere almeno ipotizzato. Ma il danno deve esserci ed essere già subito». - «E cosa si fa allora nei casi in cui c'è un periodo di latenza prima che si verifichi l'evento lesivo...?» (adattamento di un dialogo fra professionisti nel corso di un *focus group* di progetto).

Una prima risposta della Direttiva 2012/29/UE alla domanda anzidetta (seppure circoscritta al solo contesto di seguito precisato) è negativa. La **Direttiva**, infatti, pare **slegare la vittima non dal reato, bensì dalla giustizia penale e dai suoi esiti**. Ai sensi della Direttiva, **una persona dovrebbe essere considerata vittima indipendentemente dal procedimento penale** e da ciò che giudizialmente accade alla persona a cui il fatto è attribuito (**cons. 19**).

**I principi e le garanzie del giusto processo**, inclusi (necessariamente) i rigorosi **standard probatori** relativi all'accertamento del fatto e della responsabilità colpevole, **proteggono l'innocente ed evitano l'errore giudiziario**. Diverse disposizioni della Direttiva fanno ovviamente salvi i diritti di difesa e le garanzie a favore della persona cui il fatto è attribuito (cons. 12, artt. 7, 18, 20 e 23), pur all'interno di un mai facile bilanciamento con gli interessi e la posizione della vittima.

Al di fuori del perimetro del procedimento penale – doverosamente attento alle garanzie dell'indagato e dell'imputato – la Direttiva costruisce uno 'spazio' in cui sono possibili il trattamento rispettoso, il riconoscimento e la considerazione della persona (fisica) che afferma di essere vittima di reato.



Gli artt. 1 cpv., 4, 8 co. 5 e 22 e, *fra gli altri*, i **considerando 9, 19, 26, 34, 37, 38, 55 della Direttiva** disegnano i contenuti di questo spazio, imponendo una serie di doveri a tutti gli operatori che entrino in contatto con ‘vittime di reato’ come sopra individuate.

**III.2.1.** Ogni operatore, nel contatto con ‘vittime di reato’ ai sensi della Direttiva, dovrà attenersi ai principi da questa espressi in relazione a:

- ▶ **considerazione della persona come vittima**, da accordarsi **indipendentemente** dall’**identificazione, cattura, rinvio a giudizio o condanna** della persona a cui il fatto è attribuito (**cons. 19**);
- ▶ **riconoscimento e trattamento rispettoso**, sensibile, personalizzato, professionale, non discriminatorio, i quali sono **dovuti alla persona che afferma di essere vittima in tutti i contatti con l’autorità** competente, inclusa l’autorità operante nell’ambito di un procedimento penale (**art. 1 cpv. Dir.; cons. 9 e 38**);
- ▶ **riconoscimento, fin dal primo contatto con un’autorità competente** e **indipendentemente dalla presentazione della denuncia**, alla **persona che afferma di essere vittima**, dei diritti di base sanciti dalla Direttiva, ovvero **diritto di ottenere informazioni** (**art. 4 Dir., art. 90 bis c.p.p.**; v. anche *infra*, § IV); **diritto di accesso ai servizi di assistenza** alle vittime (**art. 8 Dir., cons. 37**; v. anche *infra*, § X); diritto a un **ascolto** attento e discreto che consenta alla persona di spiegarsi adeguatamente (**cons. 34**);
- ▶ **riconoscimento della vulnerabilità della persona che afferma di essere vittima**, il quale deve essere **assicurato** in occasione di **tutti i contatti con un’autorità competente**, inclusa l’autorità operante nel procedimento penale (cons. 9), unitamente alla **tempestiva valutazione individualizzata delle esigenze di protezione** (**art. 22, cons. 55**). Tale valutazione (su cui v. anche *supra*, § II, oltre alle specifiche *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence*, <http://www.victimsandcorporations.eu/publications/>) è espletata anche alla luce degli indicatori di cui all’**art. 90 quater c.p.p.**, norma che, significativamente, non fa alcun **riferimento** al ‘reato’, bensì al «**fatto per cui si procede**».

Il trattamento rispettoso, sensibile, personalizzato, professionale e non discriminatorio, il diritto a ottenere informazioni e l'accesso ai servizi di assistenza riguardano ogni persona fisica che affermi di essere vittima di reato, indipendentemente dall'eventuale procedimento penale e dai suoi esiti e fatti salvi i diritti e le garanzie della persona (fisica o giuridica) a cui il fatto è attribuito.

Nel settore della *corporate violence*, gli **squilibri informativi** e di posizione tra la *corporation* e la persona fisica (consumatore, lavoratore, comune cittadino), l'eventuale **dipendenza** economica della persona fisica (tipicamente, il lavoratore) dall'impresa, altre forme di **dipendenza** della persona fisica (leggi: consumatore) dall'impresa, l'incidenza del **sapere scientifico** (e talvolta dell'**incertezza scientifica**), l'insorgenza di **pericoli 'nuovi'** nell'esercizio dell'attività di impresa e il particolare **contesto lecito** in cui si svolge tale attività fanno sì che **le vittime, reali o potenziali, per lo più non si rivolgano in primo luogo all'autorità giudiziaria**, bensì **di regola ad altri soggetti pubblici** (sistema sanitario, previdenza sociale, ecc.) o **privati** (sindacati, associazioni di consumatori, ecc.).

Nell'ambito del fenomeno della *corporate violence*, difficilmente le persone che temono o lamentano di aver subito un'offesa derivante dalla condotta illecita di un'impresa si rivolgono in prima battuta all'autorità giudiziaria.

III.2.2. Gli operatori che, a qualsiasi titolo, entrano in contatto con persone che affermano di essere vittime di reato, e a maggior ragione con persone potenzialmente lese da un episodio di *corporate violence* ma ignare di esserlo, devono essere in grado di garantire un'idonea attitudine all'ascolto e una elevata capacità di prestare attenzione alle storie riferite e alle esigenze riportate, come meglio di seguito precisato:

- **rispetto, sensibilità e personalizzazione** dell'intervento, ai fini del **riconoscimento** e del conseguente **trattamento** delle vittime, **presuppongono** in tutti gli **operatori** che entrano in contatto con **persone che affermano di essere vittime di reato**, e a maggior ragione con **vittime ignare** di esserlo, una marcata **attitudine all'ascolto delle narrazioni individuali** e la **capacità di prestare attenzione** (art. 9 co. 2 Dir.; cfr. anche i **cons. 16 e 57** rispettivamente in tema di vittime del terrorismo e di tratta) alle **esigenze** e alle **storie** riferite anche – e soprattutto – ove sia difficile ricavarne immediatamente l'eventuale rilevanza penale e/o l'inquadramento giuridico pertinente;

- ▶ **ascolto** e **attenzione** vanno di pari passo con la necessità di una **gestione non burocratica** degli **adempimenti** connessi alla funzione rivestita dal **singolo operatore**, sia essa giudiziaria (ufficiale o agente di polizia giudiziaria, pubblico ministero, giudice) o amministrativa (personale di pubblica sicurezza, medico del pronto soccorso, medico del lavoro, assistente sociale, ecc.);
- ▶ tale **capacità di ‘prestare attenzione’** risulta essere di **importanza cruciale** in particolare nel caso della **vittimizzazione d’impresa**, dove il **riconoscimento tempestivo** delle vittime e la loro **protezione** passano dalla **capacità di diversi operatori** (presso organi pubblici di controllo, servizi sociali, servizi sanitari, ecc.), nei rispettivi ambiti di competenza, di:
  - **rilevare i segnali d’allarme** (relativi, per es., alla nocività di una certa sostanza o alla non sicurezza di un certo prodotto),
  - leggere precocemente e **valutare i rischi** con particolare riferimento ai **rischi ‘nuovi’** (relativi, per es., a nuovi processi industriali o nuove metodiche produttive, ovvero all’utilizzo di nuove sostanze di sintesi, ecc.),
  - mettere **in circolazione le informazioni rilevanti**,**consentendo** così anche alla **polizia giudiziaria** e al **pubblico ministero**, ove occorra, di **esercitare le rispettive funzioni** in ordine all’acquisizione della **notizia di reato**, all’**impedimento di conseguenze lesive o pericolose ulteriori**, all’**esercizio dell’azione penale**, ecc. (v. *infra*, § III.3).

### 3. Riconoscimento delle vittime e procedimento penale: tra ruolo proattivo e ruolo reattivo dell’autorità procedente

#### Cons. 63 Dir.

Al fine di incoraggiare e agevolare la segnalazione di reati e di permettere alle vittime di rompere il ciclo della vittimizzazione ripetuta, è essenziale che siano a loro disposizione servizi di sostegno affidabili e che le autorità competenti siano pronte a rispondere alle loro segnalazioni in modo rispettoso, sensibile, professionale e, non discriminatorio. Ciò potrebbe accrescere la fiducia delle vittime nei sistemi di giustizia penale degli Stati membri e ridurre il numero dei reati non denunciati. Gli operatori preposti a raccogliere denunce di reato presentate da vittime dovrebbero essere adeguatamente preparati ad agevolare la segnalazione di reati, e dovrebbero essere poste in essere misure che consentano a parti terze, comprese le organizzazioni della società civile, di effettuare le segnalazioni. [...]

**Art. 26 Dir.**

1. Gli Stati membri adottano azioni adeguate per facilitare la cooperazione tra Stati membri al fine di migliorare l'accesso delle vittime ai diritti previsti dalla presente direttiva e dal diritto nazionale. Tale cooperazione persegue almeno i seguenti obiettivi:

- a) scambio di migliori prassi;
- b) consultazione in singoli casi; e
- c) assistenza alle reti europee che lavorano su questioni direttamente pertinenti per i diritti delle vittime.

2. Gli Stati membri adottano azioni adeguate, anche attraverso internet, intese a sensibilizzare circa i diritti previsti dalla presente direttiva, riducendo il rischio di vittimizzazione e riducendo al minimo gli effetti negativi del reato e i rischi di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni, in particolare focalizzandosi sui gruppi a rischio come i minori, le vittime della violenza di genere e della violenza nelle relazioni strette. Tali azioni possono includere campagne di informazione e sensibilizzazione e programmi di ricerca e di istruzione, se del caso in cooperazione con le pertinenti organizzazioni della società civile e con altri soggetti interessati.

«A prescindere dalle forme con cui riceve la notizia di reato, vi è una straordinaria responsabilità del pubblico ministero nell'iscrizione della notizia nel registro. È vittima, in questo senso, chi è indicato come persona offesa nel corso dell'indagine, con la possibilità di un aggiornamento progressivo dell'iscrizione ai sensi dell'art. 335 c.p.p.» (focus group di progetto con magistrati e altri esperti).

«Come pubblici ministeri e soprattutto come polizia giudiziaria siamo abituati ad andare a individuare il potenziale autore di reato, ma non ci preoccupiamo tanto di individuare le vittime» (focus group di progetto con magistrati e altri esperti).

**Il tempestivo riconoscimento delle vittime è condizione di accesso alla giustizia da parte di queste ultime. Nell'accesso alla giustizia e nell'instaurazione del procedimento penale, però, il riconoscimento delle vittime si complica, entrando in contatto con le finalità proprie del procedimento penale, le garanzie del giusto processo e i diritti della persona cui il fatto è attribuito.**

Per quanto concerne le **dimensioni** più 'innocue' del trattamento – quali l'ottenimento di **informazioni** e l'**indirizzamento** a **servizi di assistenza** –, una **persona deve** in ogni caso **essere trattata 'da vittima'** – se vogliamo: deve essere **presunta tale** – fin dal primo contatto e in tutti i successivi contatti con un'autorità competente.

**I confini del riconoscimento delle vittime** diventano **più rigorosi** (in un certo senso: *si restringono*), invece, in occasione dell'accesso alla giustizia penale e della effettiva instaurazione del **procedimento penale**.

Ferma restando la necessità di **proteggere dalla vittimizzazione secondaria** e di trattare comunque ogni persona in modo rispettoso, il riconoscimento di chi lamenta di aver subito un reato si accompagna in questo caso ad **altri interessi (potenzialmente confliggenti)** e al **riconoscimento di altri soggetti** coinvolti, *in primis* ovviamente l'**indagato** e l'**imputato**, titolari di **diritti** fondamentali e beneficiari di **garanzie di rango costituzionale**.

Rispetto agli atti che danno **avvio a un procedimento penale** è dunque necessaria una certa **ponderazione nell'interazione con la persona che si dichiara vittima**, fatto **salvo il dovere di trattamento rispettoso**.

La questione assume **contorni diversi** a seconda che la **polizia giudiziaria** o il **pubblico ministero**, nel rispetto delle rispettive attribuzioni, prendano **notizia del reato di propria iniziativa** (ruolo **proattivo**) o la ricevano a seguito di presentazione da parte del **privato** o di **pubblici ufficiali e incaricati di pubblico servizio** (ruolo **reattivo**) (**artt. 330 ss. c.p.p.**).

Innanzitutto, specialmente nel caso di reati commessi nell'esercizio dell'attività di impresa, il **ruolo proattivo** della polizia giudiziaria è di **importanza cruciale**: la natura organizzativa del *corporate crime*, gli svantaggi informativi e conoscitivi, gli squilibri di potere tra la persona fisica e la *corporation* rappresentano altrettanti aspetti dalla specifica **vulnerabilità** di queste vittime, aspetti che incidono sulla **possibilità e credibilità della denuncia** e sulla **propensione alla denuncia da parte del privato** (v. *supra*, **§ III.2**).

Le autonome attività di **vigilanza, prevenzione e indagine** svolte dall'**autorità di pubblica sicurezza** (e in particolare dai nuclei operativi specializzati delle **forze di polizia**) e da altri eventuali **organi di vigilanza aventi poteri di accertamento** sono **essenziali**, per esempio, nei settori **ambientale**, della **sicurezza del lavoro** e della **sicurezza dei prodotti** (con specifico riguardo alla sicurezza alimentare e farmaceutica).

Importanti, in tali settori, sono altresì la **capacità di riconoscere i rischi**, la **vigilanza**, i **controlli**, la **propensione alla denuncia** e la **tempestività della denuncia** da parte degli **organi pubblici di controllo** (quali, ad es., Ispettorato Nazionale del Lavoro, ASL, ARPA ecc.). Ciò anche al fine di evitare che, come espresso da un magistrato nel corso di un *focus group* del progetto, «la consapevolezza [per esempio] della nocività di una sostanza sia acquista nella maniera più tragica» e tardiva: cioè quando insorgono le malattie o si verificano le morti.

L'**adempimento degli obblighi di denuncia e referto** e, in generale, di **ogni altro obbligo sanzionato di informazione o segnalazione** all'autorità giudiziaria o ad altra autorità, previsti dall'ordinamento in capo a **pubblici ufficiali, incaricati di pubblico servizio, persone esercenti le professioni sanitarie, sociali, ecc.**, risulta essere decisivo per l'**individuazione tempestiva delle vittime** e il **contrasto dei reati** connessi alla *corporate violence*, anche al fine di **evitare** che questi ultimi vengano portati a **conseguenze ulteriori** o siano **ripetuti** (v. anche *infra*, **§ V.3**). Il **perseguimento** delle relative **omissioni** di denuncia, referto, segnalazione appare rilevante nel quadro di una **politica criminale di prevenzione della corporate violence** consapevole di una più ampia **corresponsabilità**

**sociale** nella genesi e nella diffusione della **criminalità d'impresa** e dunque capace di individuare e riconoscere le vittime (attuali e potenziali/future) prima che sia troppo tardi.

Anche gli eventuali **obblighi giuridici di impedimento di eventi lesivi**, ai sensi dell'art. 40 cpv. c.p., e le **posizioni di garanzia** che ne derivano, gravanti su **soggetti pubblici o privati**, dentro e fuori l'impresa, si iscrivono all'interno di simile politica criminale preventiva, il che chiama l'autorità giudiziaria ad **accertare i pertinenti reati omissivi impropri**.

Nella medesima logica si inserisce altresì la capacità di **intervenire sui cosiddetti 'reati spia'** da parte dell'**autorità di pubblica sicurezza** o di **altri organi pertinenti** (per es. ANAC) e successivamente, sussistendone i presupposti, da parte dell'**autorità giudiziaria**. A mero titolo di esempio, i **fenomeni corruttivi**, gli **illeciti in materia di appalti pubblici**, i **reati di falso alterano il corretto svolgimento dell'attività d'impresa** e il suo **controllo**, introducendo **fattori ulteriori di rischio criminale** nei sistemi economici, per esempio nella produzione o commercializzazione di beni (si pensi, fra gli altri, ai prodotti farmaceutici, alle forniture a ospedali, mense scolastiche, ecc.).

Nella tutela dell'ambiente, della sicurezza del lavoro o della sicurezza alimentare, il **legislatore** ha costruito un **sistema progressivo di tutela dei beni giuridici**, prevedendo una 'scala' di illeciti di gravità crescente: **illeciti amministrativi, contravvenzioni e delitti**. Appare importante superare la possibile inattività delle Procure nei confronti delle fattispecie considerate 'minori'. La **'criminalizzazione' in concreto degli illeciti amministrativi e contravvenzionali** non va trascurata, poiché essa può rappresentare un **primo valido presidio contro l'escalation e la diffusione della criminalità d'impresa** e una delle principali modalità per **intercettare i segnali d'allarme e intervenire sui rischi al loro esordio**.

Il tema si intreccia fortemente con la questione della **protezione dalla vittimizzazione**, che ne costituisce **l'altra faccia della medaglia** (ed è trattato *infra*, § VI).

**III.3.1.** L'autorità giudiziaria, unitamente alle altre autorità competenti, è chiamata a contribuire a una strategia di prevenzione della *corporate violence* che miri alla responsabilizzazione di tutti i soggetti rilevanti.

Ai fini di **tale strategia di prevenzione 'responsabilizzante'** rispetto a **tutti i soggetti interessati**, pubblici e privati (a partire da quelli deputati appunto alla vigilanza, ai controlli e, sussistendone i relativi obblighi giuridici, all'impedimento di eventi dannosi o pericolosi), risulta

dunque importante il **contributo proattivo** degli **organi pubblici di controllo**, dell'**autorità di pubblica sicurezza** e dell'**autorità giudiziaria**, secondo le rispettive attribuzioni e funzioni.

**III.3.2.** La preparazione degli operatori, lo scambio di informazioni, la capacità di lettura dei segnali d'allarme, la corretta valutazione dei rischi e l'efficienza 'integrata' dei sistemi di vigilanza, prevenzione e repressione – a livello degli organi pubblici preposti al controllo, dell'autorità di pubblica sicurezza e della magistratura – sono fattori cruciali per il tempestivo e corretto riconoscimento delle vittime di *corporate violence* e *corporate crime*, nel rispetto delle garanzie del giusto processo e dei diritti delle persone indagate, imputate, condannate. In particolare, gli uffici competenti dovrebbero dedicare specifica attenzione a:

- ▶ **Formazione e preparazione degli operatori** (su cui v. anche *infra*, § XI), unitamente a **organizzazione** ed **efficienza dell'attività degli uffici**. Questi costituiscono una chiave di volta anche ai fini della **corretta identificazione e del riconoscimento tempestivo delle vittime**, particolarmente di fronte alla complessità scientifica e giuridica dei casi di *corporate violence*.
  - Ciò vale in special modo per gli ufficiali e gli agenti di **polizia giudiziaria** e per i **pubblici ministeri**, dalla cui preparazione possono dipendere la **corretta acquisizione e iscrizione della notizia di reato** e il successivo, **eventuale, mutamento della qualificazione giuridica** del fatto (artt. 335, 347 c.p.p.). Tali aspetti si riflettono sull'individuazione, identificazione e riconoscimento delle vittime. Il **Procuratore della Repubblica** può impartire in proposito le necessarie **direttive** (d.lgs. 20 febbraio 2006 n. 106 e succ. modif.). A maggior ragione nelle **sedi giudiziarie medio-piccole**, dove non è possibile una specializzazione, è opportuno dotare la **polizia giudiziaria** e i **pubblici ministeri** di appositi **protocolli**, distinti **per tipologie di reato e settori di intervento** (ambientale, alimentare, sicurezza sul lavoro ecc.), anche per facilitare l'**attivazione, ove necessario, di eventuali altre autorità competenti** e la scelta dei consulenti (v. anche *infra*, § VIII).

- Per quanto concerne l'**organizzazione degli uffici giudicanti**, i reati riconducibili ai casi di *corporate violence* dovrebbero essere tenuti in particolare considerazione nell'individuare i **criteri di priorità** nella trattazione degli affari penali ai sensi, ove applicabile, dell'art. 132 *bis* disp. att. c.p.p. **Al di là dei criteri prioritari ex lege**, dovrebbe essere **tenuta in considerazione** l'importanza della **trattazione** di quelle **contravvenzioni** – per es. in materia ambientale e di lavoro ecc. – il cui **accertamento** funge in pratica da **barriera anticipata di fatti criminosi più gravi**, nella consapevolezza, riconosciuta da talune risoluzioni del CSM, che deve essere ritenuta «impraticabile qualsiasi iniziativa organizzativa che produca un automatismo degli effetti estintivi per prescrizione, conseguente ad un 'accantonamento', autorizzato o anche solo tollerato di fatto, di intere categorie di procedimenti» (CSM, Risoluzione 7.07.2014; in queste *Linee guida* v. anche *infra*, § VIII).
- ▶ È opportuno che gli **organi preposti alla vigilanza** e, ove occorra, l'**autorità giudiziaria** prestino **attenzione alle informazioni e ai segnali di allarme** disponibili grazie, per esempio, a:
  - **indagini epidemiologiche**;
  - **segnalazioni** da parte di sindacati, enti esponenziali di interessi diffusi, organizzazioni non governative, comitati di cittadini, organi di informazione;
  - **elementi ricorrenti risultanti dalle indagini** svolte dalle forze di polizia **nell'ambito delle attività di prevenzione**.
- ▶ Al fine di porre in essere **azioni preventive e repressive 'di sistema'**, **necessarie** anche alla **individuazione e protezione precoce delle vittime**, sono particolarmente utili e importanti:
  - **indagini collegate** tra uffici diversi del pubblico ministero ai sensi dell'**art. 371 c.p.p.**;
  - **scambi documentali e informativi**
    - **tra le pubbliche amministrazioni** (organi pubblici di controllo e vigilanza),
    - tra queste, le **forze di polizia** e l'**autorità giudiziaria**,



- **tra gli uffici giudiziari**, specialmente le Procure della Repubblica, avvalendosi anche, ove opportuno, dello strumento delle *Buone prassi* del Consiglio Superiore della Magistratura ('macro aree' rilevanti ai fini del progetto: «Cooperazione con il territorio» - Macro area 1 - e «Organizzazione del processo penale» - Macro area 2);
- ▶ **Creazione di banche dati, registri ecc.** anche al fine di favorire la **circolazione di informazioni** tra gli operatori e una corretta informazione degli utenti (variamente: le vittime di reato, i consumatori, i lavoratori, i cittadini in generale).

Tornando sul terreno del singolo **procedimento penale**, è importante rilevare come, fin dal **primo contatto** con la **persona che afferma di essere vittima di corporate violence**, la **polizia giudiziaria** e il **pubblico ministero** debbano procedere a una attenta **verifica**, nei termini consentiti in quella fase, dello **status fondante la richiesta di apertura del procedimento**, effettuando i **riscontri possibili** in sede di identificazione e di prima indagine sugli elementi fattuali desumibili dalla descrizione della fattispecie fornita dal soggetto e sulle fonti di prova indicate o allegate (si pensi, per esempio, alla verifica dell'appartenenza a una coorte di lavoratori esposti a sostanze pericolose, o al principio di prova circa la riconducibilità dell'offesa patita a una attività d'impresa individuata/individuabile). In tal modo, l'autorità procedente potrà altresì attivarsi per la **successiva individuazione di eventuali altre vittime** che vertano in **analoghe condizioni**, per consentire l'esercizio dei poteri e delle facoltà riconosciute in sede giudiziaria.

L'attività di verifica suggerita appare utile non solo allo scopo di **riconoscere**, ove occorra, lo **status di vittima** (e i **diritti** e le **facoltà** che da esso di volta in volta possano dipendere), ma **altresì** allo scopo di **valutare eventuali bisogni di protezione** che la vittima possa manifestare o che altrimenti emergano dalla narrazione della vicenda ritenuta lesiva (su cui v. sia *supra*, § II, sia *infra*, § V).

L'anzidetta attività di verifica è volta altresì alla tutela dei soggetti altrimenti denunciati o indicati come autori dei fatti descritti da notizie di reato pretestuose o prive di ragionevolezza.

III.3.3. Fin dal primo contatto con la persona che afferma di essere vittima di *corporate violence*, la polizia giudiziaria e il pubblico ministero devono procedere a una verifica dello status fondante la richiesta di apertura del procedimento, effettuando gli opportuni riscontri, anche al fine di individuare altre possibili vittime e tutelare i soggetti denunciati.

In tema si veda anche *infra*, § IV, e in particolare la strettamente collegata raccomandazione al § IV.2.

#### 4. Difficoltà e cautele supplementari

L'individuazione e il riconoscimento delle vittime di *corporate violence* presentano difficoltà particolari dovute a una molteplicità di fattori, fra cui la tipologia di evento lesivo o pericoloso verificatosi *hic et nunc* e le sue caratteristiche (evento istantaneo, periodo di latenza, effetto di accumulo, evento catastrofico, ecc.); la possibile numerosità delle vittime; la distribuzione geografica delle vittime sul territorio nazionale, dell'UE, extra-UE; l'incertezza scientifica circa la pericolosità o nocività di una sostanza, di un tipo di fabbricazione, di un prodotto; le diverse tipologie di vittime (vittima-lavoratore, vittima-consumatore, vittima-cittadino, vittima minore di età, vittima con disabilità o malattia, ecc.).

III.4.1. Davanti alla specificità e complessità della vittimizzazione da *corporate violence*, al possibile numero delle vittime e al rango dei beni giuridici lesi dal reato, il riconoscimento di queste vittime e il loro trattamento rispettoso, sensibile, personalizzato, professionale e non discriminatorio esigono da parte degli operatori speciali attenzioni, che tengano conto in particolare del fatto che:

- le vittime di *corporate violence* hanno **frequentemente** subito «**un notevole danno per la gravità del reato**» (art. 8 co. 2 e cons. 37 Dir.), il quale, in questi casi, ha per definizione offeso i beni della vita, della incolumità individuale e/o della incolumità pubblica (v. anche *supra*, § II);

- le vittime di *corporate violence* potrebbero trovarsi «**particolarmente esposte per la loro relazione e dipendenza nei confronti dell'autore del reato**», specialmente nel caso delle vittime-lavoratori (art. 22 co. 3 Dir.; v. anche *supra*, § II, e *infra*, § V);
- l'esperienza di vittimizzazione da *corporate violence* può avere una **dimensione collettiva**, che in **taluni casi** si spinge fino al punto di coinvolgere **interesse comunità** (per es. Casale Monferrato); in **altri casi**, come nell'ipotesi di **singoli eventi con effetti catastrofici**, la dimensione collettiva può riguardare una **moltitudine irrelata di persone** il cui trattamento rispettoso da parte dell'autorità competente avviene in condizioni di **emergenza** e di particolare drammaticità (v. anche *supra*, § II, e *infra*, § VIII);
- l'**incertezza scientifica** può costellare le esperienze di *corporate violence* e implicare gravi ripercussioni sull'accesso alla giustizia (v. meglio *supra* in questa § e nel § II);
- è **necessario evitare qualsivoglia forma di colpevolizzazione** delle vittime, per esempio per l'uso di un certo prodotto alimentare o farmaceutico rivelatosi poi dannoso (v. anche *supra*, § II, e *infra*, § V).

## IV.

### INFORMAZIONE\*

#### Cons. 21 Dir.

Le autorità competenti [...] dovrebbero fornire informazioni e consigli con modalità quanto più possibile diversificate e in modo da assicurarne la comprensione da parte della vittima. Tali informazioni e consigli dovrebbero essere forniti in un linguaggio semplice e accessibile. [...]

#### Cons. 22 Dir.

Ai fini della presente direttiva si dovrebbe considerare che il momento in cui è presentata una denuncia rientra nell'ambito del procedimento penale. Ciò dovrebbe comprendere i casi in cui le autorità avviano d'ufficio il procedimento penale a seguito del reato subito da una vittima.

#### Cons. 26 Dir.

Le informazioni fornite dovrebbero essere sufficientemente dettagliate per garantire che le vittime siano trattate in maniera rispettosa e per consentire loro di prendere decisioni consapevoli in merito alla loro partecipazione al procedimento. [...]

#### Art. 90 bis c.p.p.

Alla persona offesa, sin dal primo contatto con l'autorità procedente, vengono fornite, in una lingua a lei comprensibile, informazioni in merito:

- a) alle modalità di presentazione degli atti di denuncia o querela, al ruolo che assume nel corso delle indagini e del processo, al diritto ad avere conoscenza della data, del luogo del processo e della imputazione e, ove costituita parte civile, al diritto a ricevere notifica della sentenza, anche per estratto;
- b) alla facoltà di ricevere comunicazione dello stato del procedimento e delle iscrizioni di cui all'articolo 335, commi 1 e 2;
- c) alla facoltà di essere avvisata della richiesta di archiviazione;
- d) alla facoltà di avvalersi della consulenza legale e del patrocinio a spese dello Stato;
- e) alle modalità di esercizio del diritto all'interpretazione e alla traduzione di atti del procedimento;
- f) alle eventuali misure di protezione che possono essere disposte in suo favore;
- g) ai diritti riconosciuti dalla legge nel caso in cui risieda in uno Stato membro dell'Unione europea diverso da quello in cui è stato commesso il reato;
- h) alle modalità di contestazione di eventuali violazioni dei propri diritti;
- i) alle autorità cui rivolgersi per ottenere informazioni sul procedimento;
- l) alle modalità di rimborso delle spese sostenute in relazione alla partecipazione al procedimento penale;
- m) alla possibilità di chiedere il risarcimento dei danni derivanti da reato;
- n) alla possibilità che il procedimento sia definito con remissione di querela di cui all'articolo 152 del codice penale, ove possibile, o attraverso la mediazione;
- o) alle facoltà ad essa spettanti nei procedimenti in cui l'imputato formula richiesta di sospensione del procedimento con messa alla prova o in quelli in cui è applicabile la causa di esclusione della punibilità per particolare tenuità del fatto;
- p) alle strutture sanitarie presenti sul territorio, alle case famiglia, ai centri antiviolenza e alle case rifugio.

→ Si veda inoltre l'**art. 4 Dir.**

\* Redazione a cura di ENRICO MARIA MANCUSO

**Art. 101 co. 1 c.p.p.**

La persona offesa dal reato, per l'esercizio dei diritti e delle facoltà ad essa attribuiti, può nominare un difensore nelle forme previste dall'articolo 96 comma 2. Al momento dell'acquisizione della notizia di reato il pubblico ministero e la polizia giudiziaria informano la persona offesa dal reato di tale facoltà. La persona offesa è altresì informata della possibilità dell'accesso al patrocinio a spese dello Stato ai sensi dell'articolo 76 del testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia, di cui al decreto del Presidente della Repubblica 30 maggio 2002, n. 115, e successive modificazioni.

**L'esercizio dei diritti di azione e difesa da parte delle vittime presuppone la consapevolezza dello status e dei poteri sollecitatori della giurisdizione.**

La **peculiare struttura** delle **fattispecie di corporate violence** – sovente caratterizzate da un'**offensività diffusa** – comporta la strutturale **difficoltà** di un puntuale censimento e della conseguente individuazione delle vittime (v. più diffusamente *supra*, § III). Ne deriva un frequente **deficit di informazione** in grado di **pregiudicare l'accesso alla tutela giurisdizionale** dei propri diritti (da intendersi anche come diritto di sollecitare e attivare la giurisdizione penale allo scopo di ottenere una verifica delle condotte inosservanti) e la partecipazione delle vittime al procedimento.

**IV.1. In occasione del primo contatto con la vittima, la polizia giudiziaria, il pubblico ministero e gli altri operatori (funzionari pubblici o incaricati di un pubblico servizio) coinvolti dovranno fornire le informazioni indicate dall'art. 90 bis c.p.p. in maniera comprensibile e calibrata sugli specifici bisogni delle vittime di corporate violence. Quando il primo contatto avvenga in occasione dell'udienza dibattimentale, il giudice dovrà spiegare alla vittima il suo ruolo, nei limiti in cui esso risulti compatibile con il sistema processuale.**

L'**art. 90 bis c.p.p.**, introdotto dal d.lgs. 15 dicembre 2015 n. 212, fornisce un '**catalogo di informazioni**' che la **persona offesa** dal reato (**nozione per altro diversa da quella di vittima del reato**: v. *supra*, § III, e *infra*) ha **diritto di ricevere** dall'autorità procedente, in una lingua a lei comprensibile, per esempio in merito alle modalità di presentazione degli atti di denuncia o querela, al ruolo che assume nel corso delle indagini e del processo, alla possibilità di chiedere il risarcimento dei danni derivanti da reato, alla facoltà di avvalersi della consulenza legale e del patrocinio a spese dello Stato (su cui v. specificamente *infra*, § VII), allo stato del procedimento penale.

In altre parole, la nuova norma **obbliga l'autorità a illustrare i diritti e le facoltà** che l'ordinamento riconosce alla **persona offesa** in relazione al **procedimento penale**, fin **dalla fase delle indagini preliminari e fino all'esito del procedimento**. Il disposto dell'art. 90 *bis* c.p.p. va letto in combinazione con il generale dettato dell'**art. 101 co. 1 c.p.p.**, cui in parte si sovrappone e che certamente **integra**. La **finalità** di questi ulteriori obblighi informativi è quella di **mettere in grado la persona offesa dal reato di comprendere, essere compresa ed effettuare scelte consapevoli**. Tali informazioni devono essere fornite mediante una **spiegazione di natura tecnico-giuridica** in maniera **chiara e comprensibile**, nonché **modulata sugli specifici bisogni della vittima** in relazione alla tipologia del reato e alla sua eventuale condizione di particolare vulnerabilità (v. supra, **§ II**, oltre alle specifiche **Linee guida per la valutazione individuale dei bisogni di protezione delle vittime di corporate violence**: <http://www.victimsandcorporations.eu/publications/>). Occorre tenere conto delle **maggiori difficoltà** che affrontano le **vittime di corporate violence** nell'ottenere informazioni sul proprio caso e in particolare sulla rilevanza legale della vicenda subita.

Le previsioni descritte manifestano un **limite strutturale**, poiché **presuppongono almeno l'esistenza di un procedimento penale che verta nella fase delle indagini preliminari**, ignorando del tutto i **diritti delle vittime non censite** o che non siano in condizione di rivolgersi alle autorità competenti a iniziare una investigazione.

Si possono così evidenziare una serie di **specifiche criticità in relazione a**:

- **primo contatto**: per la **polizia giudiziaria**, il primo contatto con la vittima avverrà verosimilmente in sede di presentazione di esposti e denunce. **Quando** il primo contatto abbia luogo **in occasione del compimento di un atto investigativo** che preveda la partecipazione della persona offesa, gli **obblighi di informazione** dovranno essere adempiuti **contestualmente all'avviso inviato alla persona offesa a cura del pubblico ministero**. Gli avvisi costituiscono spesso, **tuttavia, aride elencazioni di facoltà e diritti** che il **destinatario difficilmente recepisce**, in mancanza di una assistenza legale dedicata. Il **primo contatto**, inoltre, può avvenire in occasione del compimento di **attività aventi carattere puramente amministrativo o socio-assistenziale**; in simili ipotesi, l'individuazione dello status potrebbe competere a **professionalità diverse** (si pensi agli operatori dei servizi sociali o al medico di base che prenda in carico un paziente), che **vanno sensibilizzate** adeguatamente allo scopo.

- **modalità di comunicazione:** la comunicazione deve essere fornita **in forma orale e scritta**, per esempio in calce al verbale di ricezione della denuncia/querela o dell'avviso alla persona offesa precedente al compimento di un atto investigativo che renda necessario l'intervento della persona offesa. La comunicazione tecnica **esige una 'traduzione' nel linguaggio comune**, che possa riempire di contenuto diritti e facoltà di partecipazione.
- **lingua:** le informazioni devono essere fornite in una **lingua in concreto comprensibile alla persona offesa**, garantendo, ove necessario, la **traduzione** dell'avviso e di tutti gli avvertimenti connessi.

**Art. 2 co. 1 Dir.**

Ai fini della presente direttiva si intende per [...] «vittima»:

- i) una persona fisica che ha subito un danno, anche fisico, mentale o emotivo, o perdite economiche che sono stati causati direttamente da un reato;
- ii) un familiare di una persona la cui morte è stata causata direttamente da un reato e che ha subito un danno in conseguenza della morte di tale persona; [...].

**Il codice di procedura penale si riferisce alle sole nozioni di «persona offesa dal reato» e di «querelante», non definendo espressamente la nozione di vittima di reato.**

L'**art. 90 bis c.p.p.** ha accolto una **nozione derivata di 'vittima'**, in linea con la struttura soggettiva del codice di rito, **ben più ristretta di quella esplicitata dalla Direttiva** (v. anche diffusamente *supra*, § III). La norma fa infatti riferimento alla **sola «persona offesa dal reato»**, **escludendo dal diritto all'informazione**, in particolare, il **«danneggiato»** dal reato e tutte le **altre categorie di vittime individuate dalla Direttiva**.

**IV.2.** La polizia giudiziaria e/o il pubblico ministero che ricevano la notizia di un reato di *corporate violence* mediante la presentazione di denuncia o querela sono tenuti a verificare lo status fondante la legittimazione, in ipotesi chiedendo al denunciante o al querelante di fornire elementi dimostrativi della propria qualità. Tale verifica potrà essere utile al successivo censimento di soggetti che si trovino in condizioni analoghe e che possano essere contattati e informati dei propri diritti di accesso alla giustizia.

Si veda in tema anche la collegata raccomandazione al § III.3.3.

In sede di attuazione della Direttiva si sarebbe dovuto/potuto riconoscere diritti di sollecitazione, interlocuzione e intervento a soggetti diversi dalla persona offesa dal reato e dal querelante, per 'dar voce' al complesso novero delle vittime descritte dalla normativa europea. Quando la **polizia giudiziaria** e il **pubblico ministero** abbiano un **primo contatto con una vittima di corporate violence**, dovranno procedere alla **verifica dello status fondante la richiesta di apertura del procedimento** e procedere alla **successiva individuazione di altre vittime**, attingendo alla **più ampia nozione desumibile dalla direttiva**, per consentire a costoro di conoscere i poteri e le facoltà riconosciute, se non nel processo penale, in sede civile.

**Cons. 27 Dir.**

Le informazioni destinate alla vittima dovrebbero essere fornite all'ultimo recapito postale conosciuto o alle coordinate elettroniche comunicate dalla vittima all'autorità competente. In casi eccezionali, ad esempio qualora un elevato numero di vittime sia coinvolto in un caso, dovrebbe essere possibile fornire le informazioni tramite la stampa, un sito web ufficiale dell'autorità competente o qualsiasi altro canale di comunicazione analogo.

**Cons. 29 Dir.**

Le autorità competenti dovrebbero provvedere affinché la vittima ottenga gli estremi aggiornati della persona cui rivolgersi per comunicazioni sul proprio caso, a meno che non abbia espresso il desiderio di non ricevere tali informazioni.

**Cons. 31 Dir.**

Il diritto all'informazione sull'ora e il luogo di un processo conseguente alla denuncia relativa a un reato subito dalla vittima si dovrebbe applicare anche all'informazione sull'ora e il luogo di un'udienza relativa all'impugnazione di una pronuncia nella causa.

**Cons. 33 Dir.**

Le vittime dovrebbero essere informate in merito all'eventuale diritto di presentare ricorso avverso una decisione di scarcerazione dell'autore del reato, se tale diritto esiste nell'ordinamento nazionale.

**Art. 6 Dir.**

1. Gli Stati membri provvedono a che la vittima sia informata, senza indebito ritardo, del proprio diritto di ricevere le seguenti informazioni sul procedimento avviato a seguito della denuncia relativa a un reato da essa subito e provvedono a che la stessa ottenga, previa richiesta, tali informazioni:
  - a) un'eventuale decisione di non esercitare l'azione penale o di non proseguire le indagini o di non perseguire l'autore del reato;
  - b) la data e il luogo del processo e la natura dei capi d'imputazione a carico dell'autore del reato.
2. Gli Stati membri provvedono a che, secondo il ruolo nel pertinente sistema giudiziario penale, la vittima sia informata, senza indebito ritardo, del proprio diritto di ricevere le seguenti informazioni sul procedimento penale avviato a seguito della denuncia relativa a un reato da essa subito e provvedono a che la stessa ottenga, previa richiesta, tali informazioni:
  - a) l'eventuale sentenza definitiva di un processo;
  - b) le informazioni che consentono alla vittima di essere al corrente dello stato del procedimento, salvo in casi eccezionali in cui tale comunicazione potrebbe pregiudicare il corretto svolgimento del procedimento.

*continua*



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3. Le informazioni di cui al paragrafo 1, lettera a), e al paragrafo 2, lettera a), includono la motivazione o una breve sintesi della motivazione della decisione in questione, eccetto il caso di una decisione della giuria o di una decisione qualora le motivazioni siano riservate, nel qual caso le stesse non sono fornite in base alla legge nazionale.

4. La volontà della vittima di ottenere o di non ottenere informazioni vincola l'autorità competente, a meno che tali informazioni non debbano essere comunicate a motivo del diritto della vittima a partecipare attivamente al procedimento penale. Gli Stati membri consentono alla vittima di modificare in qualunque momento la sua volontà e ne tengono conto.

5. Gli Stati membri garantiscono alla vittima la possibilità di essere informata, senza indebito ritardo, della scarcerazione o dell'evasione della persona posta in stato di custodia cautelare, processata o condannata che riguardano la vittima. Gli Stati membri garantiscono che la vittima riceva altresì informazioni circa eventuali pertinenti misure attivate per la sua protezione in caso di scarcerazione o evasione dell'autore del reato.

6. La vittima, previa richiesta, riceve le informazioni di cui al paragrafo 5 almeno nei casi in cui sussista un pericolo o un rischio concreto di danno nei suoi confronti, salvo se tale notifica comporta un rischio concreto di danno per l'autore del reato.

**Art. 11 co. 3 Dir.**

Gli Stati membri provvedono a che la vittima sia informata, senza indebito ritardo, del proprio diritto di ricevere e di ottenere informazioni sufficienti per decidere se chiedere il riesame di una decisione di non esercitare l'azione penale, previa richiesta.

**Il codice di procedura penale non contempla un sistema di informazione alla vittima che prescindano dal riconoscimento dello status di persona offesa dal reato e dal suo diritto di partecipare al procedimento.**

Il recepimento della Direttiva operato dal **d.lgs. 212/2015**, che ha dettato previsioni minime per adeguare il sistema processuale interno alle previsioni sovranazionali, ha **omesso di tradurre alcune importanti garanzie informative, solo in parte contemplate nel codice di rito** in riferimento alla **persona offesa** dal reato.

**In via di mera esemplificazione**, il sistema – pur contemplando un meccanismo di **conoscenza legale circa la pendenza di un procedimento** in capo alla **persona offesa dal reato** (alla stessa stregua di ciò che accade per l'accusato, secondo l'art. 335 co. 3 c.p.p.) – **nulla prevede** in relazione alle **vittime che a tale novero non siano riconducibili** (non essendo in condizione di esercitare i diritti procedurali del soggetto offeso); **né impone oneri informativi** d'aggiornamento da parte dell'autorità circa la **«persona cui rivolgersi per comunicazioni sul proprio caso»** (cons. 29 Dir.).

In maniera ancor più significativa, sempre in ordine ai **diritti informativi procedurali**, nel codice di procedura penale **non v'è completa e puntuale attuazione** degli **artt. 6 e 11 co. 3 Dir.**, nonché del **cons. 33 Dir.**

Si noti, tuttavia, come la recente l. 23 giugno 2017, n. 103, recante *Modifiche al codice penale, al codice di procedura penale e all'ordinamento penitenziario*, ha modificato il testo dell'art. 335 c.p.p., dando parziale attuazione all'art. 6 Dir. Il nuovo co. 3-ter della citata norma stabilisce, infatti, che «decorsi sei mesi dalla data di presentazione della denuncia, ovvero della querela, la persona offesa dal reato può chiedere di essere informata dall'autorità che ha in carico il procedimento **circa lo stato del medesimo**», senza pregiudizio del segreto investigativo. Correlativamente, l'art. 90-bis c.p.p., al co. 1, lett. b, oggi impone che alla persona offesa – in sede di primo contatto con l'autorità giudiziaria – sia data l'informazione circa il diritto di accedere alle suddette informazioni sullo stato del procedimento penale, sulla base di quanto previsto proprio dall'art. 335 c.p.p.

Si tratta, ancora una volta, di una interpolazione occasionale, priva di risvolti sistematici e ancorata alla persona offesa dal reato, vero destinatario delle prerogative d'informazione e di (limitata) azione nell'ambito del procedimento penale.

**IV.3. Il diritto di informazione della vittima circa i poteri e le facoltà deve essere garantito mediante l'adozione di adeguate misure organizzative, che permettano alla medesima di conoscere senza ritardo lo stato del procedimento attivato mediante la proposizione della denuncia o della querela e le possibili forme di intervento, opposizione e critica dei provvedimenti adottati dall'autorità giudiziaria.**

Una rapida **sinossi delle facoltà contemplate** dal sistema giova all'analisi:

- il **diritto a ottenere informazioni sul proprio caso**, in un contesto coperto dal **segreto investigativo**, è ricondotto dal sistema processuale al **solo** titolare di una qualifica soggettiva cui siano riconosciuti diritti di sollecitazione e intervento nel procedimento, *id est* la **persona offesa** dal reato;
- l'**accessibilità** è **limitata** alle sole **notizie concernenti le persone coinvolte**, alle **norme che si assumono esser state violate** e allo **stato del procedimento**, anche al fine di permettere una interlocuzione cartolare o una sollecitazione al pubblico ministero, in chiave di completezza delle indagini preliminari e di tempestivo inizio dell'azione penale;

- **soltanto la persona offesa che ne abbia fatto esplicita richiesta** in sede di presentazione della notizia di reato (o in un momento successivo) ha **diritto di ricevere la notizia della decisione del pubblico ministero di non esercitare l'azione penale** (art. 408 co. 2 c.p.p.), potendosi **opporre alla richiesta di archiviazione** al fine di instaurare un primo contraddittorio partecipato di fronte a un giudice.

Ebbene, secondo l'**art. 11 co. 3 Dir.** incombe un **obbligo**, in capo agli Stati membri, che la **vittima sia informata, senza un ritardo non dovuto**, «del proprio **diritto di ricevere e di ottenere informazioni sufficienti per decidere se chiedere il riesame** di una decisione di non esercitare l'azione penale, previa richiesta». **Nulla** è dato rinvenire al riguardo nel **sistema processuale italiano**, se non limitatamente ai casi di sindacabilità di fronte alla Suprema Corte del provvedimento di archiviazione da parte dell'offeso che non abbia potuto esercitare il proprio diritto difensivo.

Va, inoltre, sottolineata l'**importanza** di una **chiara informativa** alla vittima circa l'**opportunità di procedere con tempestività** – sussistendone i presupposti – **alla nomina del difensore** (in veste di persona offesa, ex art. 101 c.p.p.) e/o **alla elezione di un domicilio** ai fini delle comunicazioni del procedimento, così da consentire all'autorità procedente una efficace e puntuale attivazione delle prerogative informative già contemplate dal sistema; alla vittima del reato la consapevolezza delle prerogative d'azione e di difesa che le competono nelle varie fasi del procedimento, nonché una puntuale informativa che sia funzionale alle eventuali misure di protezione da adottare.

**Il sistema processuale, poi, nulla prevede circa:**

- il **diritto** della **vittima, che non sia anche parte civile**, di ricevere **notizie** circa la **pronuncia della sentenza definitiva** di un processo (**art. 6 co. 2 lett. a Dir.**);
- il **rilievo** della **volontà della vittima di ottenere o non ottenere informazioni rilevanti** dall'autorità competente, «a meno che tali informazioni non debbano essere comunicate a motivo del diritto della vittima a partecipare attivamente al procedimento penale» (**art. 6 co. 4 Dir.**);
- il **diritto incondizionato e generale a essere informata** – senza indebito ritardo – della **scarcerazione** o dell'**evasione** della persona posta in stato di custodia cautelare, processata o condannata, **quando** tale notizia possa avere un **impatto sulla vita della vittima e sull'adozione di eventuali misure di protezione** (**art. 6 co. 5 Dir.**).

Si noti come una peculiare disciplina, all'apparenza in linea con la disciplina evocata, sia contenuta in seno all'**art. 282 quater c.p.p.**, pur con riferimento alla **sola** adozione delle misure cautelari dell'**allontanamento dalla casa familiare** (art. 282 *bis* c.p.p.) e del **divieto di avvicinamento ai luoghi frequentati dalla persona offesa** dal reato (art. 282 *ter* c.p.p.). L'**obbligo informativo**, in questo caso, ha come **destinataria** «la **parte offesa**», nozione che **sembra comprendere la vittima di condotte commesse in ambito familiare** e, secondo taluni, i suoi prossimi congiunti.

Peculiari **oneri informativi**, circa le vicende inerenti alla **libertà personale** dell'indagato/imputato, sono previsti altresì dagli **artt. 90 *ter*** e **299 c.p.p.** In particolare, nei **soli procedimenti per delitti commessi con violenza alla persona**, è prevista:

- la **comunicazione** alla persona offesa che ne faccia richiesta dei provvedimenti di **scarcerazione, cessazione della misura di sicurezza detentiva, evasione o sottrazione** del condannato all'esecuzione della misura di sicurezza detentiva (**art. 90 *ter* c.p.p.**);
- la **comunicazione** all'offeso dei provvedimenti di **revoca, modifica o sostituzione delle misure cautelari coercitive** (**art. 299 co. 2 *bis* c.p.p.**), nonché la **preventiva notifica** allo stesso delle **richieste** di revoca o sostituzione di dette misure, al fine di consentire una interlocuzione della persona offesa tramite la presentazione di memorie (**art. 299 co. 3 e 4 *bis* c.p.p.**).

Tali oneri comunicativi, come rilevato *supra*, **interessano il solo ambito dei delitti commessi con violenza alla persona**: alla nozione, ancorché latamente intesa (v. Cass. SU 16 marzo 2016, n. 10959, Fossati, che, con riguardo al disposto di cui all'art. 408 co. 3 *bis* c.p.p., ha ritenuto che nella definizione di violenza alla persona rientri la violenza psicologica), è **difficile ricondurre i fenomeni di corporate violence** (v. anche *supra*, § II). L'ostacolo interpretativo, in questo senso, **sembra poter essere superato soltanto attraverso un intervento di modifica delle previsioni contenute nel codice di rito**.

La **generalizzazione di un siffatto onere comunicativo** potrebbe costituire un primo punto di **avvicinamento agli standard europei**, **sebbene non copra allo stato** il momento di **cessazione della misura restrittiva** e le esigenze di tutela e protezione delle vittime.

**Nessun onere informativo**, infine, è posto dall'ordinamento processuale a vantaggio della vittima **circa il «diritto di presentare ricorso avverso una decisione di scarcerazione** dell'autore del reato». Il cons. 33 della Direttiva, tuttavia, limita questa prerogativa allo specifico riconoscimento di **un potere di critica** secondo l'ordinamento nazionale: ciò che – come detto – non si rinviene nell'ordinamento interno.

## V.

### VULNERABILITÀ E PROTEZIONE\*

#### 1. *Vulnerabilità e valutazione individuale delle specifiche esigenze di protezione: rinvio*

Il tema della **vulnerabilità delle vittime di corporate violence** e la questione collegata della «**valutazione individuale delle specifiche esigenze di protezione**» (artt. 22-23 Dir.) sono ampiamente trattati *supra*, § II, nonché nelle apposite *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence* (maggio 2017, disponibili sul sito <http://www.victimsandcorporations.eu/publications/>), a cui integralmente **si rinvia**. Si riepilogheranno in questo paragrafo, quindi, solo alcuni aspetti giuridici essenziali, utili ai fini della trattazione delle modalità di protezione delle vittime di *corporate violence*.

In estrema sintesi:

- La **Direttiva 2012/29/UE** ha inteso **superare una idea astratta di vulnerabilità** legata a **macrocategorie di soggetti**, in favore di una **valutazione in concreto, individualizzata**, della **vulnerabilità**, concepita come **titolarità di specifiche esigenze individuali di protezione** meritevoli di essere prese in carico, specialmente all'interno del procedimento penale (artt. 22-23, cons. 55-61 Dir.).
- Pur in assenza di indicazioni espresse, dal tenore del **cons. 61 della Direttiva** si evince che la valutazione è demandata in via principale e diretta (v. *supra*, § II), ai «**funzionari coinvolti in procedimenti penali**» – cioè «**i servizi di polizia e il personale giudiziario**» – presumibilmente in ragione della precocità del contatto con le persone offese, dei poteri di intervento loro riconosciuti dalla legge e degli effetti che la valutazione può avere su altri soggetti all'interno e all'esterno del procedimento penale (incidenza sul contraddittorio e sui diritti di difesa nel corso del procedimento penale; adozione di eventuali misure limitative di libertà e diritti).

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\* Redazione a cura di CLAUDIA MAZZUCATO

- Nella Direttiva, però, non scompaiono i **gruppi vulnerabili in astratto** (v. per es. artt. 22 co. 3 e 24 Dir.): continuano a essere richiamati, in più punti e disposizioni, i minori, le vittime con disabilità, le vittime di violenza di genere, le vittime del terrorismo, solo per citare alcuni esempi.
- **Coesistono** dunque nell'impianto della **Direttiva** una **vulnerabilità tipica** – prevista in astratto dal legislatore europeo (minori, donne, persone con disabilità; vittime del terrorismo, della criminalità organizzata, della tratta di esseri umani, della violenza di genere e nelle relazioni strette, ecc.) – e una **vulnerabilità atipica** da valutare caso per caso in modo individualizzato.

Le **vittime di corporate violence** possono essere **vittime vulnerabili tipiche** oppure **atipiche** (in relazione, per esempio, alla «gravità del reato» e al «grado di danno», o perché «si trovano particolarmente esposte per la loro [...] dipendenza nei confronti dell'autore del reato»: art. 22 co. 3 Dir.), **o persino essere vulnerabili sotto la duplice accezione** (ad es. il lavoratore che ha contratto una malattia professionale a seguito di esposizione a sostanza tossica, in situazione di dipendenza economica dal datore di lavoro; il minore emofiliaco in situazione di dipendenza dalla casa farmaceutica che produce il farmaco salvavita che in precedenza gli ha trasmesso un'infezione prevedibile ed evitabile).

Anche se la Direttiva 2012/29/UE ha inteso superare una categorizzazione astratta di 'vittima vulnerabile' in favore di una «valutazione individuale» delle «specifiche esigenze di protezione», continuano a esistere gruppi di vittime vulnerabili **tipiche** a cui si affianca e si aggiunge la situazione di vulnerabilità **atipica**, oggetto della valutazione individualizzata, la quale può riguardare ogni vittima.

V.1.1. La valutazione delle esigenze di protezione delle vittime di **corporate violence** deve essere condotta con particolare attenzione, tenendo presente il fatto che tali vittime potrebbero presentare forme **tipiche** o **atipiche** di vulnerabilità o entrambe, cioè appartenere a gruppi già astrattamente vulnerabili e/o presentare specifiche esigenze individuali di protezione dovute, per esempio, alla «gravità del reato» e al «grado di danno» subito, ovvero alla «dipendenza dall'autore del reato».

Su tale ultimo punto v. anche, diffusamente, *supra*, § II.

Va notato che il **quadro normativo nazionale in materia di vulnerabilità** (vulnerabilità della *persona offesa* e/o di altri soggetti, quali i testimoni non offesi) si presenta allo stato **problematico** sotto vari profili, in quanto:

- **poco sistematico e lineare**, frutto di plurimi interventi normativi, decisioni della Corte costituzionale, interpolazioni successive necessitate dagli obblighi di esecuzione di convenzioni internazionali (Convenzioni di Istanbul e di Lanzarote, ad esempio) e di recepimento di direttive europee (es. Direttiva 2012/29/UE; Direttiva 2011/36/UE sulla tratta degli esseri umani; Direttiva 2011/92/UE sullo sfruttamento sessuale dei minori);
- segnato da una **progressiva espansione** dei **beneficiari di misure speciali di protezione nel corso del procedimento**;
- **specchio** al tempo stesso dei **mutamenti della sensibilità sociale** nazionale e delle **politiche internazionali ed europee** (Unione Europea e Consiglio d'Europa), le quali hanno appunto contribuito a disegnare nel tempo delle **macrocategorie tipiche e astratte di vittime vulnerabili 'per definizione'**;
- **ulteriormente complicato** a seguito degli **interventi** operati dal **d.lgs. 212/2015**, i quali, **privi di un disegno razionale**, hanno fra l'altro introdotto – potremmo azzardare: 'hanno buttato lì' – la nuova figura della (sola) **persona offesa in condizione di particolare vulnerabilità** (**art. 90 quater c.p.p.**). Una condizione, quest'ultima, che **corrisponde solo parzialmente alla (idea di) vulnerabilità atipica di cui alla Direttiva** (cioè l'essere portatori di specifiche esigenze individuali di protezione).

**Art. 90 quater c.p.p.**

Agli effetti delle disposizioni del presente codice, la condizione di particolare vulnerabilità della persona offesa è desunta, oltre che dall'età e dallo stato di infermità o di deficienza psichica, dal tipo di reato, dalle modalità e circostanze del fatto per cui si procede. Per la valutazione della condizione si tiene conto se il fatto risulta commesso con violenza alla persona o con odio razziale, se è riconducibile ad ambiti di criminalità organizzata o di terrorismo, anche internazionale, o di tratta degli esseri umani, se si caratterizza per finalità di discriminazione, e se la persona offesa è affettivamente, psicologicamente o economicamente dipendente dall'autore del reato.

La «**condizione di particolare vulnerabilità**», relativa per definizione alla sola **persona offesa**, si **irraggia** dall'art. 90 *quater* su una serie di **disposizioni del codice di procedura penale** (artt. 190 *bis*, 351 co. 1-*ter*, 362 co. 1-*bis*, 392 co. 1-*bis*, 398 co. 5-*quater*, 498 co. 4-*quater*), che vengono **modificate** con una (forse **troppo semplicistica**) **aggiunta dell'ipotesi di nuovo conio** e con qualche **dubbio in ordine all'esaustività e completezza delle interpolazioni**.

Ne risultano ad ogni modo **mutate** le norme in materia di:

- assunzione di sommarie informazioni da parte della polizia giudiziaria;
- assunzione di informazioni da parte del pubblico ministero;
- incidente probatorio;
- esame testimoniale ed esame con modalità protette.

Le **disposizioni** nazionali **concernenti le persone vulnerabili mancano di sistematicità e precisione**, mostrando **geometrie variabili e criteriologie di inclusione/esclusione a tratti opinabili**: prima fra tutte, proprio la differenza, all'interno dei soggetti comunque vulnerabili, tra **persona (tout court)**, «**vittima**» (termine che compare, per esempio, nell'art. 498 co. 4-ter c.p.p.), «**persona offesa che versa in condizione di vulnerabilità**» (o altre analoghe locuzioni introdotte dal d.lgs. 212/2015). In questa geometria normativa variabile (v., solo a titolo di esempio, gli artt. 90 *ter*, 90 *quater*, 190 *bis*, 362, 392, 398, 498 c.p.p.; il problema è trattato anche *supra*, § III.1), l'attenzione del legislatore è rivolta variamente a:

- persone **minorenni**;
- persone **maggiorenni inferme di mente**;
- persone **maggiorenni o minorenni esposte a violenza o minaccia**;
- persone **offese in condizione di particolare vulnerabilità** (anche maggiorenni) *ex art. 90 quater c.p.p.*; fanno (nuovamente) la loro comparsa nel secondo comma dell'art. 90 *quater*, accanto ad altri criteri oggettivi e soggettivi 'ispirati dalla Direttiva', la commissione del fatto «con violenza alla persona o odio razziale», la criminalità organizzata, il terrorismo, la tratta;
- persone (offese) **maggiorenni** appartenenti alle cosiddette **macrovittime**, cioè persone offese nei procedimenti per taluni **delitti tassativamente indicati** dalla legge, riconducibili in larga parte alle stesse ipotesi di **vulnerabilità in astratto** prese in esame delle fonti UE e CE (e dunque, ad esempio, violenza domestica, reati sessuali, riduzione in schiavitù, tratta, *stalking*);
- persone **offese** nei procedimenti per «**delitti commessi con violenza alla persona**» (v., ad es., gli artt. 90 *ter*, 90 *quater*, 299, 408 c.p.p.). A favore di un'**interpretazione estensiva** della



locuzione anzidetta si sono pronunciate le Sezioni Unite della Suprema Corte (Cass. pen. SU, 29 gennaio 2016, n. 10959). Il riferimento ai «**delitti commessi con violenza alla persona**» **attrae una disciplina victim-sensitive** rispetto alla quale **occorre valutare con attenzione**, da un lato, la **portata dell'inclusione di fattispecie penali non pacificamente rientranti nel concetto di 'violenza'**, con **riflessi a favore delle persone offese**, e, dall'altro, la conseguente **portata espansiva di disposizioni processuali** che, proprio perché orientate alle vittime, potrebbero **incidere su diritti e garanzie dell'accusato**. Se le **fattispecie inquadrabili** nel fenomeno della **corporate violence** siano da **includere** nel concetto di «**violenza alla persona**» è **questione problematica aperta**, che esige un'attenta **valutazione, caso per caso, alla luce del fatto per cui si procede**, della sua qualificazione dolosa o colposa, del tipo di danno arrecato all'offeso, e comunque all'interno di un corretto bilanciamento, da parte del giudice, degli interessi e delle implicazioni in gioco (v. anche *supra*, § II).

La disciplina processuale nazionale in tema di soggetti vulnerabili è poco lineare; le norme del codice di procedura penale sono frutto di interpolazioni successive e non appaiono fra loro ben coordinate, lasciando sussistere dubbi interpretativi e creando ostacoli applicativi i quali non favoriscono una protezione efficace delle vittime, specialmente dalla vittimizzazione secondaria, pur incidendo talvolta in modo problematico sui diritti e le garanzie della persona nei cui confronti si procede.

Il **codice** di procedura penale **nulla prescrive**, infine, in ordine all'**autorità** (o al soggetto) **competente a effettuare la valutazione di vulnerabilità** ai sensi dell'art. 90 *quater*.

Dagli interventi operati dal **d.lgs. 212/2015** sul codice di procedura penale e dall'intera disciplina, però, si ricava che (salva la necessità di formazione all'uopo di una platea certamente più vasta di soggetti, potenzialmente «implicati» - cons. 61 Dir. – nella valutazione stessa: v. diffusamente *supra*, § II), la **valutazione individuale delle esigenze di protezione**, per dirla con il linguaggio della Direttiva, è **demandata** principalmente:

- **alla polizia giudiziaria e al pubblico ministero** (i quali, come affermato da uno degli esperti che partecipa alla ricerca, finiscono per essere il **front desk** della giustizia per le vittime), **specialmente in occasione dell'acquisizione della notizia di reato, dell'assunzione di sommarie informazioni, dell'assunzione di informazioni;**
- **al giudice**, specialmente in occasione dell'adozione o revoca di **talune misure cautelari, dell'incidente probatorio, dell'esame testimoniale.**

Fermo restando il contributo che i «**servizi di assistenza alle vittime**» – ove esistenti (il problema è affrontato *supra*, § II, e *infra*, § X) – possono dare alla «**valutazione individuale delle esigenze di protezione**» (artt. 22 ss. Dir.) e alla valutazione della «**condizione di particolare vulnerabilità**» (art. 90 *quater* c.p.p.), tali valutazioni pertengono necessariamente all'**autorità giudiziaria** in tutti i casi in cui il **riconoscimento della condizione di particolare vulnerabilità e delle esigenze di protezione** abbia **effetti nel procedimento penale**.

**Pur in assenza di indicazioni normative** e in mancanza, ancora, di una compiuta elaborazione dottrinale e giurisprudenziale, ai fini di queste *Linee guida* è condiviso l'orientamento volto a **evitare una 'medicalizzazione' della valutazione della vulnerabilità** in seno a una **consulenza tecnica o perizia** e ad assorbire **invece l'apporto di scienze complementari** di ambito psico-sociale **sul modello** adottato dal legislatore in materia di **accertamento della personalità** dell'imputato **minorenne**, a cui partecipano i servizi sociali e altri esperti «anche senza alcuna formalità» (art. 9 d.P.R. 448/1998). Ciò **non** significa, nel procedimento penale, **sottrarre** la **valutazione della vulnerabilità** alle dinamiche del **contraddittorio** e all'interlocuzione con la **difesa** ove l'apprezzamento della vulnerabilità abbia effetti potenzialmente *in malam partem* per la persona nei cui confronti si procede.

Le riflessioni generali che precedono valgono anche – e potremmo dire: a maggior ragione – per le **vittime dei reati d'impresa** riferibili alla fenomenologia della *corporate violence*, stante le peculiarità e le complessità della loro vittimizzazione già descritte *supra*, § II, e approfondite nelle specifiche **Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence** (<http://www.victimsandcorporations.eu/publications/>).

V.1.2. Stante la lacunosità della disciplina vigente in tema di ‘vittime’ e ‘persone offese’ in «condizione di particolare vulnerabilità» e stante l’atipicità della vulnerabilità delle vittime di *corporate violence*, la polizia giudiziaria, il pubblico ministero e il giudice, nel rispetto delle rispettive attribuzioni, devono avere riguardo all’intero quadro normativo vigente nell’individuare la corretta disciplina applicabile in ordine alle informazioni, alle comunicazioni, alla protezione della vittima considerata vulnerabile, in occasione dell’assunzione di informazioni, dell’incidente probatorio, dell’esame testimoniale, ecc., nel rispetto delle garanzie del contraddittorio e della difesa della persona nei cui confronti si procede.

V.1.3. La valutazione della vulnerabilità e delle conseguenti esigenze di protezione non è disgiungibile dalla corretta individuazione e identificazione delle vittime e dal loro riconoscimento, nonché, ove possibile, dall’attivazione dei servizi di assistenza (v. *supra* § III e *infra* § X).

## 2. La protezione da vittimizzazione ripetuta, ritorsioni e intimidazioni, vittimizzazione secondaria

### Cons. 52 Dir.

Dovrebbero sussistere misure per proteggere la sicurezza e la dignità delle vittime e dei loro familiari da vittimizzazione secondaria e ripetuta, da intimidazione e da ritorsioni, quali provvedimenti provvisori o ordini di protezione o di non avvicinamento.

### Cons. 53 Dir.

È opportuno limitare il rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni — da parte dell’autore del reato o a seguito della partecipazione al procedimento penale — svolgendo il procedimento in un modo coordinato e rispettoso, che consenta alle vittime di stabilire un clima di fiducia con le autorità. [...]

### Art. 1 co. 1 Dir.

Scopo della presente direttiva è garantire che le vittime di reato ricevano informazione, assistenza e protezione adeguate e possano partecipare ai procedimenti penali. [...]

Il tema della **protezione delle vittime** è di tale importanza per il legislatore europeo che compare addirittura nel **titolo della Direttiva** (*Norme minime in materia di diritti, assistenza e protezione delle vittime di reato*) e nella norma di apertura che ne enuncia solennemente gli **obiettivi**. La

«**protezione adeguata**» è uno degli **scopi** della Direttiva 2012/29/UE.

Che le vittime di reato debbano essere protette pare difficilmente contestabile, eppure proprio **quello della protezione è uno dei profili più delicati, complessi e problematici** dell'intero 'sistema' che l'Unione Europea ha voluto edificare nello *Spazio di libertà, sicurezza e giustizia* di cui al TFUE, spazio che continua a costituire una delle grandi sfide europee.

**Proteggere** le vittime, infatti, è **compito**

- **di estrema difficoltà**, proiettato, quasi come un'obbligazione di risultato, verso un **futuro** per definizione incerto, ma al tempo stesso rivolto indietro al **fatto** che dà causa alla necessità di protezione, quel «**reato**» la cui sussistenza non è mai solo fattuale e il cui accertamento dipende dagli esiti – essi pure incerti – di un procedimento penale;
- **di grande responsabilità** da parte dell'**autorità competente**: proteggere le vittime esige congiuntamente **efficacia e ponderazione costanti**, poiché gli interventi di protezione potrebbero incidere – e di fatto *incidono* – sulle libertà e i diritti fondamentali dell'«**autore del reato**» (locuzione da intendersi alla luce del cons. 12 Dir.), il quale potrebbe subirne gli effetti essendo per giunta ancora **presunto innocente**;
- **demandato in primis**, come si è visto, 'funzionalmente' alla **magistratura** e 'cronologicamente', di fatto, alla **polizia giudiziaria**, ma necessariamente rivolto **anche ad altri attori**: il **difensore**, per esempio, o i **servizi socio-assistenziali e sanitari**;
- **intrecciato a doppio filo con l'assistenza** (l'«altro» tema portante della Direttiva, che è stato purtroppo **completamente trascurato dal legislatore italiano**: v. *infra* § X).

Ai sensi della **Direttiva 2012/29/UE** (artt. 18 ss., cons. 52 ss.), i **soggetti destinatari della protezione** sono:

- la **vittima**,
- i suoi **famigliari**,
- la vittima **minorenne** (a cui è dedicato l'intero **art. 24 Dir.**),
- alcune **vittime vulnerabili 'tipiche'** elencate nell'**art. 22 co. 3 Dir.**

Ancora una volta, **non vi è piena coincidenza tra le norme della Direttiva e l'ordinamento nazionale** rispetto ai **beneficiari della protezione**.

Dall'impianto complessivo della **Direttiva**, si evince poi che l'**oggetto** della protezione è molteplice, riguardando **principalmente**:

- la **vittimizzazione ripetuta**,
- le **ritorsioni e intimidazioni**,
- la **vittimizzazione secondaria**,

ma essendo **esteso anche a**:

- rischio di **danni emotivi e psicologici**,
- **dignità** della vittima durante gli interrogatori e le testimonianze,
- la **vita privata**, le caratteristiche personali della vittima, l'immagine della vittima e dei suoi familiari (art. 21 Dir.; v. *infra*, § VI)

Infine, è fin d'ora necessario ricordare che la **Direttiva 2012/29/UE** **distingue due categorie di misure di protezione**:

- le **misure di protezione dalla vittimizzazione primaria ripetuta e dalle ritorsioni e intimidazioni**, cioè le misure volte a proteggere la vittima dai **rischi esterni**, e in particolare dall'**autore del reato**;
- le **misure di protezione** e le «**misure speciali nel corso del procedimento**» di tutela **dalla vittimizzazione secondaria**, cioè le misure volte a proteggere la vittima dai **rischi interni** alla giustizia penale.

La protezione delle vittime è un compito delicato, complesso e problematico, specialmente nei casi di adozione di misure di protezione che, per tutelare la vittima, incidono su diritti, libertà e garanzie della persona nei cui confronti si procede, ancora presunta innocente, o del condannato.

La **protezione delle vittime di corporate violence** è, se possibile, **ancora più ardua e sfaccettata** della protezione della vittima del reato di strada o della vittima vulnerabile 'tipica', anche a motivo della **indisponibilità di misure ad hoc**.

La **gran parte** degli **strumenti** normativi vigenti nell'ordinamento italiano sono **immaginati** per situazioni affatto diverse e sono ancora oggi 'tarati' in special modo sulla **violenza domestica** e **di genere** o sui **reati a danno di minori** (cioè sulle situazioni di vulnerabilità tipizzate): dall'audizione protetta agli ordini di protezione, dalle disposizioni relative

all'incidente probatorio a quelle concernenti l'allontanamento dalla casa familiare o il divieto di avvicinamento ai luoghi frequentati dalla persona offesa, le **norme volte alla protezione non mancano**, ma esse sono **incapaci di intercettare e neutralizzare le «specifiche esigenze di protezione» delle vittime della criminalità d'impresa** e, nella specie, di *corporate violence*, vittime cioè colpite nei beni della vita o dell'incolumità individuale o pubblica da condotte illecite commesse nell'esercizio di attività lecite complesse.

Nonostante l'introduzione dell'art. 90 *quater*, norma di portata generale, che rende applicabili diverse disposizioni a contenuto protettivo, resta valido l'assunto che le **misure** previste oggi nel nostro ordinamento **non sono in grado di essere calate nella complessità e specificità della *corporate violence***, con l'effetto di produrre una sorta di **vulnerabilità supplementare indotta dal sistema**, che risulta in una **esposizione ulteriore al rischio di vittimizzazione primaria** e in una **forma peculiare di vittimizzazione secondaria**.

Le vittime di *corporate violence* rischiano di essere rese ulteriormente vulnerabili a causa di un sistema giuridico di protezione che finora è stato incapace di 'accorgersi' di loro, avendo dato priorità ad altri gruppi vulnerabili.

V.2.1. La protezione delle vittime di *corporate violence* esige da parte dell'autorità giudiziaria e, ove previsto, della polizia giudiziaria la capacità di ricorrere con competenza, saggezza ed equilibrio alle misure capaci *in concreto* di offrire ragionevolmente detta protezione, fra quelle disponibili nell'ordinamento e rigorosamente entro i limiti applicativi previsti, avendo al tempo stesso l'obiettivo della tutela delle persone dalla vittimizzazione primaria ripetuta, dalle possibili intimidazioni e ritorsioni provenienti dalla *corporation* e dalla vittimizzazione secondaria, e la costante considerazione dei diritti e delle garanzie della persona fisica e/o dell'ente nei cui confronti si procede.

### 3. Le «misure di protezione» dalla vittimizzazione ripetuta

#### Art. 4 co. 1 Dir.

Gli Stati membri provvedono a che alla vittima siano offerte fin dal primo contatto con un'autorità competente, senza indebito ritardo, e affinché possa accedere ai diritti previsti dalla presente direttiva, le informazioni seguenti:

[...]

c) come e a quali condizioni è possibile ottenere protezione, comprese le misure di protezione;

[...]

#### Art. 6 co. 5 Dir.

[...] Gli Stati membri garantiscono che la vittima riceva altresì informazioni circa eventuali pertinenti misure attivate per la sua protezione in caso di scarcerazione o evasione dell'autore del reato.

#### Art. 18 Dir.

Fatti salvi i diritti della difesa, gli Stati membri assicurano che sussistano misure per proteggere la vittima e i suoi familiari da vittimizzazione secondaria e ripetuta, intimidazione e ritorsioni, compreso il rischio di danni emotivi o psicologici, e per salvaguardare la dignità della vittima durante gli interrogatori o le testimonianze. Se necessario, tali misure includono anche procedure istituite ai sensi del diritto nazionale ai fini della protezione fisica della vittima e dei suoi familiari.

**Le misure di protezione delle vittime dalla vittimizzazione ripetuta previste nell'ordinamento italiano sono calibrate rispetto a tipologie di vittime ben diverse dalle vittime di *corporate violence*.**

**La Direttiva 2012/29/UE non offre indicazioni circa i contenuti e le modalità applicative delle «misure di protezione», la cui disciplina è demandata al legislatore nazionale (art. 18 Dir.).**

L'art. 90 *bis*, lett. f) prevede invero l'informazione alla persona offesa in merito a «eventuali misure di protezione che possono essere disposte in suo favore», senza però dare ulteriori indicazioni.

Nell'ordinamento italiano, come si è detto, **le misure espressamente finalizzate alla protezione delle vittime sono costruite sui bisogni di vittime assai diverse da quelle di *corporate violence***. Si tratta in prevalenza di ordini di protezione e misure cautelari a contenuto prescrittivo, interdittivo o limitativo della libertà personale, **pensate ovviamente per proteggere la persona fisica da un'altra persona fisica**, quando il rischio di vittimizzazione ripetuta concerne il **pericolo di successivi reati dolosi**. D'altra parte, le **misure abitualmente adottate dall'autorità giudiziaria nel caso della criminalità economica potrebbero non rivelarsi efficaci nel proteggere le vittime di *corporate violence*** da

pericoli rilevantissimi di compromissione di beni giuridici di rango primario.

Le misure di **protezione esterna** dalla **vittimizzazione primaria ripetuta** sono, dunque, di **fondamentale importanza per le vittime di corporate violence**, come si è visto *supra* (§ II). **Ma non ve ne sono di specifiche.**

Occorre quindi **andare in cerca, con uno sguardo all'intero ordinamento, dei possibili strumenti** giuridici idonei, senza forzature, a proteggere ragionevolmente le vittime di *corporate violence* dalla vittimizzazione ripetuta (ad es. dalla continuativa esposizione alla sostanza tossico-nociva o dal rischio che l'evento di pericolo si trasformi in evento di danno, ecc.).

Non è questa la sede per discutere delle **implicazioni dogmatiche** della Direttiva 2012/29/UE **sul sistema penale**: basti qui puntare il dito sulle **conseguenze** assai **problematiche** che un approccio 'esigente' alla **protezione dalla vittimizzazione ripetuta** può avere **sulla ratio stessa del procedimento penale, delle misure ivi applicabili e persino della sanzione penale**. Ciò che qui preme sottoporre all'attenzione dei **pubblici ministeri** e dei **giudici** è che porsi nella **prospettiva della protezione delle vittime dal rischio esterno della vittimizzazione ripetuta** significa necessariamente **interrogarsi anche** riguardo all'**effetto protettivo** (se non all'efficacia) – perseguito o indotto – che l'adozione di certe misure può avere, ovviamente **a condizione del rispetto di tutti i relativi presupposti applicativi**. Per questo, nelle righe che seguono si è scelto di richiamare, a mo' di elenco, uno **spettro ampio di misure**, richiedendo o adottando le quali l'autorità giudiziaria *può* avere presente **anche** eventuali **scopi di protezione delle persone fisiche** da eventi che, nel nostro caso, ledono per definizione la vita, l'incolumità individuale e pubblica.

Ne emerge un quadro di **grande complessità** in cui è affidato al prudente apprezzamento dell'autorità giudiziaria – requirente e giudicante – **l'equilibrio delicatissimo** (se vogliamo: il bilanciamento) tra **esigenze drammaticamente contrapposte**:

- la **protezione** delle **vittime di corporate violence** dalla **vittimizzazione ripetuta**;
- le **garanzie**, le libertà e i diritti delle **persone fisiche o giuridiche a cui il fatto è attribuito** e, in generale, dei **destinatari 'passivi' delle misure a contenuto protettivo**;
- la **protezione delle potenziali vittime di errori giudiziari** in settori ad **elevata complessità scientifica e probatoria**, come quello che ci occupa.



**V.3.1.** Alla luce dell'intero ordinamento e delle politiche criminali di prevenzione della criminalità d'impresa e di responsabilizzazione di tutti i soggetti coinvolti descritte *supra* (§ III.3), la protezione dalla vittimizzazione primaria ripetuta passa attraverso interventi multilivello fra loro integrati, di cui l'adozione di eventuali misure giudiziali di protezione delle vittime costituisce solo uno degli aspetti. Tali interventi concernono:

- ▶ il **ruolo preventivo** degli **organi pubblici di controllo** e dell'**autorità di pubblica sicurezza** e il **perseguimento** da parte delle autorità competenti degli **illeciti** connessi all'**omissione** di **vigilanza, denuncia, referto** o di altra **segnalazione obbligatoria**;
- ▶ il **ruolo preventivo-repressivo** della **polizia giudiziaria** e dell'**autorità giudiziaria** (inquirente e giudicante) nel **perseguimento** dei cosiddetti '**reati spia**' fenomenologicamente prodromici o adiuvanti la *corporate violence* (corruzione, turbativa d'asta, falsità, ecc.);
- ▶ il **ruolo preventivo-repressivo** delle competenti **autorità amministrative** con poteri di accertamento, della **polizia giudiziaria** e dell'**autorità giudiziaria** (inquirente e giudicante) nel **perseguimento**, rispettivamente, di **illeciti amministrativi o penali di tutela anticipata** dei beni giuridici, inclusi l'**impedimento di controlli** (es. art. 452 *septies* c.p.) o l'**inottemperanza a obblighi di legge** volti a prevenire, elidere o attenuare offese ulteriori (es. art. 452 *terdecies* c.p., *Omessa bonifica*). Illeciti la cui repressione potrebbe evitare il prodursi di eventi lesivi contro la vita e l'incolumità delle persone (si pensi alla materia ambientale, alla sicurezza sul lavoro, allo sfruttamento del lavoro, alla produzione o commercializzazione di alimenti o prodotti farmaceutici, ecc.);
- ▶ il **ruolo proattivo della polizia giudiziaria** nell'**acquisizione** di propria iniziativa delle **notizie di reato** concernenti attività illecite d'impresa e nell'impedimento che vengano portate a conseguenze ulteriori (art. 55 c.p.p.; v. *supra*, § III.3);
- ▶ il **ruolo reattivo delle Procure della Repubblica** attente ai dati emergenti da **indagini collegate**, ai **segnali di allarme** eventualmente portati alla luce, ad esempio, dal mondo scientifico o da enti esponenziali, ecc. (v. *supra*, § III.3);
- ▶ il **riconoscimento tempestivo delle vittime attuali e potenziali** (come descritto *supra*, §§ III.1 e III.2);

- ▶ **l'indirizzamento delle vittime a eventuali servizi di assistenza** per gli interventi di protezione extragiudiziali di cui all'art. 9 Dir. (v. anche *infra*, § X);
- ▶ **l'adozione** da parte del **giudice**, nel corso del procedimento penale, del procedimento ex d.lgs. 231/2001 o di altri eventuali procedimenti, di **misure con effetti di protezione dal rischio di nuova (o ulteriore) vittimizzazione**. Nelle ipotesi di *corporate violence*, le **misure vigenti** che, se non altro indirettamente, possono esplicare tali effetti 'protettivi', avuto comunque rigoroso riguardo al perimetro applicativo di ciascuna fattispecie, possono avere **variamente natura di: misura cautelare, sanzione penale accessoria interdittiva, sanzione amministrativa** ex d.lgs. 231/2001, **misura di sicurezza**. Anche gli **istituti giuridici** vigenti produttivi di **effetti di mitigazione** della sanzione o estinzione del reato o altri benefici a seguito di **condotte riparatorie** devono essere **presi in considerazione in chiave di protezione** delle vittime per la loro capacità di coniugare incentivi e conseguenze *in bonam partem* con forme di tutela diretta delle vittime (v. sul punto § VII.6).

Per la **specificità fenomenologia della *corporate violence***, l'autorità giudiziaria dovrà spesso adottare, nel corso delle indagini preliminari e nel procedimento cautelare, **decisioni in condizioni di urgenza**, di **incertezza scientifica**, sulla base di **dati conoscitivi densamente tecnici** e magari parziali, in presenza talora di intere comunità esposte a rischi tecnologici o a sostanze nocive. Il che non fa che **innalzare il livello di complessità** ed esigere, da parte dell'autorità procedente, un **corrispondente livello di ponderazione**.

D'altro canto, e ferme le spinose avvertenze di cui sopra, il tema della **protezione dalla vittimizzazione ripetuta da *corporate violence*** non tramonta a seguito della **definizione del procedimento penale**. Anche la **fase di esecuzione** esige attenzione ai rischi di vittimizzazione ripetuta. I compiti di vigilanza e controllo sull'attività di impresa e le strategie di prevenzione della criminalità economica descritti *supra* (e nel § III.3) restano rilevanti anche nei casi in cui, per le più diverse ragioni, il procedimento penale nei confronti delle persone fisiche e il procedimento ex d.lgs. 231/2001 nei confronti dell'ente si siano conclusi con **formule assolutorie**.

**V.3.2.** Possibili misure adottabili, nel rispetto rigoroso delle ipotesi disciplinate dalla legge, in chiave anche di protezione delle vittime di *corporate violence* dalla vittimizzazione primaria ripetuta sono, a mero titolo di esempio:

- ▶ **misura cautelare del divieto temporaneo di esercitare determinate attività professionali o imprenditoriali** (art. 290 c.p.p.);
- ▶ **misure cautelari previste dal d.lgs. 231/2001**, con particolare riferimento a:
  - sequestro preventivo,
  - interdizione dall'esercizio dell'attività,
  - sospensione o revoca di autorizzazioni, licenze, concessioni funzionali alla commissione dell'illecito,
  - divieto di pubblicizzare beni o servizi.
- ▶ **sequestro preventivo** (art. 321 ss. c.p.p.);
- ▶ **sanzioni interdittive nei confronti dell'ente** (art. 9 co. 2 d.lgs. 231/2001);
- ▶ **pene accessorie interdittive nei confronti della persona fisica** (artt. 19 ss. c.p.).

**V.3.3.** La protezione delle vittime di *corporate violence* non può dipendere soltanto dalle risposte offerte dal sistema penale. L'autorità giudiziaria procedente deve saper attivare le opportune forme di protezione extrapenale, con il coinvolgimento dei competenti organi pubblici di controllo e, ove presenti, dei servizi di assistenza (v. *supra*, § III, e *infra*, § X).

#### 4. Le misure di protezione dalla vittimizzazione secondaria e le «misure speciali nel corso del procedimento penale»

##### Cons. 53 Dir.

[...] È opportuno che l'interazione con le autorità competenti avvenga nel modo più agevole possibile ma che si limiti al tempo stesso il numero di contatti non necessari fra queste e la vittima, ricorrendo ad esempio a registrazioni video delle audizioni e consentendone l'uso nei procedimenti giudiziari. È opportuno che gli operatori della giustizia abbiano a disposizione una gamma quanto più varia possibile di misure per evitare sofferenza alle vittime durante il procedimento giudiziario, soprattutto a causa di un eventuale contatto visivo con l'autore del reato, i suoi familiari, i suoi complici o i cittadini che assistono al processo. A tal fine gli Stati membri dovrebbero essere esortati ad adottare, in particolare in relazione ai tribunali e alle stazioni di polizia, misure pratiche e realizzabili per consentire di creare strutture quali ingressi e luoghi d'attesa separati per le vittime. Inoltre, gli Stati membri dovrebbero, nella misura del possibile, organizzare il procedimento penale in modo da evitare i contatti tra la vittima e i suoi familiari e l'autore del reato, ad esempio convocando la vittima e l'autore del reato alle udienze in orari diversi.

##### Cons. 58 Dir.

È opportuno che le vittime identificate come vulnerabili al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni possano godere di adeguate misure di protezione durante il procedimento penale. Il preciso carattere di queste misure dovrebbe essere determinato attraverso la valutazione individuale, tenendo conto dei desideri della vittima. La portata di queste misure dovrebbe essere determinata lasciando impregiudicati i diritti della difesa e nel rispetto della discrezionalità giudiziale. Le preoccupazioni e i timori delle vittime in relazione al procedimento dovrebbero essere fattori chiave nel determinare l'eventuale necessità di misure particolari.

##### Cons. 61 Dir.

[...] È opportuno che le persone che possono essere implicate nella valutazione individuale per identificare le esigenze specifiche di protezione delle vittime e determinare la necessità di speciali misure di protezione ricevano una formazione specifica sulle modalità per procedere a tale valutazione. Gli Stati membri dovrebbero garantire tale formazione per i servizi di polizia e il personale giudiziario. Parimenti, si dovrebbe promuovere una formazione per gli avvocati, i pubblici ministeri e i giudici e per gli operatori che forniscono alle vittime sostegno o servizi di giustizia riparativa.

##### Art. 20 Dir.

Fatti salvi i diritti della difesa e nel rispetto della discrezionalità giudiziale, gli Stati membri provvedono a che durante le indagini penali:

- a) l'audizione della vittima si svolga senza indebito ritardo dopo la presentazione della denuncia relativa a un reato presso l'autorità competente;
- b) il numero delle audizioni della vittima sia limitato al minimo e le audizioni abbiano luogo solo se strettamente necessarie ai fini dell'indagine penale;
- c) la vittima possa essere accompagnata dal suo rappresentante legale e da una persona di sua scelta, salvo motivata decisione contraria;
- d) le visite mediche siano limitate al minimo e abbiano luogo solo se strettamente necessarie ai fini del procedimento penale.

##### Art. 23 Dir.

1. Fatti salvi i diritti della difesa e nel rispetto della discrezionalità giudiziale, gli Stati membri provvedono a che le vittime con esigenze specifiche di protezione che si avvalgono delle misure speciali individuate sulla base di una valutazione individuale di cui all'articolo 22, paragrafo 1, possano avvalersi delle misure di cui ai paragrafi 2 e 3 del presente articolo. Una misura speciale prevista a seguito di una valutazione individuale può non essere adottata qualora esigenze operative o pratiche non lo rendano possibile o se vi è urgente bisogno di sentire la vittima e in caso contrario questa o un'altra persona potrebbero subire un danno o potrebbe essere pregiudicato lo svolgimento del procedimento.

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2. Durante le indagini penali le vittime con esigenze specifiche di protezione individuate a norma dell'articolo 22, paragrafo 1, possono avvalersi delle misure speciali seguenti:

- a) le audizioni della vittima si svolgono in locali appositi o adattati allo scopo;
- b) le audizioni della vittima sono effettuate da o tramite operatori formati a tale scopo;
- c) tutte le audizioni della vittima sono svolte dalle stesse persone, a meno che ciò sia contrario alla buona amministrazione della giustizia;
- d) tutte le audizioni delle vittime di violenza sessuale, di violenza di genere o di violenza nelle relazioni strette, salvo il caso in cui siano svolte da un pubblico ministero o da un giudice, sono svolte da una persona dello stesso sesso della vittima, qualora la vittima lo desideri, a condizione che non risulti pregiudicato lo svolgimento del procedimento penale.

3. Durante il procedimento giudiziario le vittime con esigenze specifiche di protezione individuate a norma dell'articolo 22, paragrafo 1, possono avvalersi delle misure seguenti:

- a) misure per evitare il contatto visivo fra le vittime e gli autori dei reati, anche durante le deposizioni, ricorrendo a mezzi adeguati fra cui l'uso delle tecnologie di comunicazione;
- b) misure per consentire alla vittima di essere sentita in aula senza essere fisicamente presente, in particolare ricorrendo ad appropriate tecnologie di comunicazione;
- c) misure per evitare domande non necessarie sulla vita privata della vittima senza rapporto con il reato; e
- d) misure che permettano di svolgere l'udienza a porte chiuse.

Alle misure di **protezione interna** dalla **vittimizzazione secondaria** la Direttiva dedica gli artt. 22-23-24. Esse sono distinte in «**misure di protezione**» e in «**misure speciali nel procedimento penale**». Le prime non sono descritte nella Direttiva, mentre le seconde vi ricevono una considerazione analitica nelle previsioni articolate di cui agli artt. 23 e 24.

Le **misure speciali nel procedimento penale** si risolvono, in estrema sintesi, nella previsione di modalità protette per le audizioni della vittima e in varie altre cautele finalizzate a proteggere la vita privata dell'offeso e a evitare il rapporto di quest'ultimo con l'autore del reato.

La **traduzione nell'ordinamento interno delle misure speciali** ruota attorno alla previsione delle modalità protette dell'esame testimoniale, dell'assunzione di informazioni e di sommarie informazioni, dell'incidente probatorio (v. *supra*). Tale disciplina, **originariamente a beneficio solo di determinati soggetti vulnerabili tipici**, è adesso **estesa**, per effetto delle modifiche introdotte dal **d.lgs. 212/2015**, **potenzialmente a tutte le vittime di cui è valutata la condizione di vulnerabilità** ex art. 90 *quater* c.p.p. Come si è accennato sopra, i **problemi applicativi di tali istituti** si sono ulteriormente **aggravati a seguito del d.lgs. 212/2015**, che si rivela, anche sotto questo profilo, davvero un'occasione mancata.

Anche nel caso delle misure di protezione dalla vittimizzazione secondaria, l'ordinamento ha trascurato di considerare le complesse esigenze delle vittime di *corporate violence*, avendo ipotizzato un sistema di audizioni investigative e testimoniali protette calibrato su alcune macrocategorie di vittime vulnerabili *tipiche*, le quali, fino all'entrata in vigore del d.lgs. 212/2015, erano le uniche beneficiarie del regime di tutela.

V.4.1. Anche per le vittime di *corporate violence*, l'autorità giudiziaria deve procedere alla valutazione della sussistenza della eventuale condizione di particolare vulnerabilità *ex art. 90 quater c.p.p.*, riconosciuta la quale anch'esse possono godere del sistema di protezione dalla vittimizzazione secondaria previsto dal codice di procedura penale e consistente, in sintesi, nelle forme protette di audizione e in altre modalità di tutela.

V.4.2. È importante che l'autorità giudiziaria, anche grazie a un'adeguata sensibilizzazione e formazione, sia attenta a non desumere dal contesto economico 'lecito' in cui si è svolta la condotta l'assenza della particolare condizione di vulnerabilità della vittima di illeciti d'impresa contro la vita, l'incolumità individuale, l'incolumità pubblica, finendo di fatto per discriminare le vittime vulnerabili *atipiche* da quelle *tipiche*, e vanificando così una delle dimensioni più innovative, sul piano giuridico e culturale, introdotte dalla Direttiva 2012/29/UE.

## 5. Garanzie di protezione nel ricorso a programmi di giustizia riparativa: rinvio

### Art. 12 Dir.

1. Gli Stati membri adottano misure che garantiscono la protezione delle vittime dalla vittimizzazione secondaria e ripetuta, dall'intimidazione e dalle ritorsioni, applicabili in caso di ricorso a eventuali servizi di giustizia riparativa. Siffatte misure assicurano che una vittima che sceglie di partecipare a procedimenti di giustizia riparativa abbia accesso a servizi di giustizia riparativa sicuri e competenti, e almeno alle seguenti condizioni:

- a) si ricorre ai servizi di giustizia riparativa soltanto se sono nell'interesse della vittima, in base ad eventuali considerazioni di sicurezza, e se sono basati sul suo consenso libero e informato, che può essere revocato in qualsiasi momento;
- b) prima di acconsentire a partecipare al procedimento di giustizia riparativa, la vittima riceve informazioni complete e obiettive in merito al procedimento stesso e al suo potenziale esito, così come informazioni sulle modalità di controllo dell'esecuzione di un eventuale accordo;
- c) l'autore del reato ha riconosciuto i fatti essenziali del caso;

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- d) ogni accordo è raggiunto volontariamente e può essere preso in considerazione in ogni eventuale procedimento penale ulteriore;
  - e) le discussioni non pubbliche che hanno luogo nell'ambito di procedimenti di giustizia riparativa sono riservate e possono essere successivamente divulgate solo con l'accordo delle parti o se lo richiede il diritto nazionale per preminenti motivi di interesse pubblico.
2. Gli Stati membri facilitano il rinvio dei casi, se opportuno, ai servizi di giustizia riparativa, anche stabilendo procedure o orientamenti relativi alle condizioni di tale rinvio.

La **protezione** della vittima dalla **vittimizzazione secondaria, ripetuta, dalle intimidazioni e dalle ritorsioni** concerne **anche** il ricorso ai programmi di **giustizia riparativa** (su cui più ampiamente *infra*, § IX).

L'art. 12 Dir. prescrive in modo piuttosto perentorio una serie di «**garanzie**» atte a evitare che la persona offesa, che liberamente decida di accedere a un programma di giustizia riparativa, possa subirne un pericolo o un danno.

L'art. 12 della Direttiva introduce un problematico 'sbilanciamento' dell'imparzialità dei mediatori a favore della vittima nel cui interesse soltanto si può ricorrere, per il legislatore europeo, alla giustizia riparativa.

La (problematica) centralità dell'interesse della vittima, la doverosa completezza e trasparenza di informazioni, la volontarietà di partecipazione e il consenso libero e informato (sempre revocabile), la riservatezza, la condizione del riconoscimento da parte del reo dei «fatti essenziali del caso» e la competenza dei mediatori rappresentano i **contenuti procedurali garantistici di un programma di giustizia riparativa victim-sensitive**.

Nei casi di *corporate violence*, in cui il rischio di vulnerabilità delle vittime è piuttosto alto, **il rispetto delle condizioni anzidette è di particolare importanza** (si pensi, ad esempio, agli squilibri di potere tra la persona fisica e l'ente, al rischio di ritorsioni del datore di lavoro sul lavoratore-vittima, ecc.).

V.5.1. Nel promuovere i programmi di giustizia riparativa, l'autorità giudiziaria procedente dovrà avvalersi solo di centri di giustizia riparativa istituzionalmente riconosciuti in grado di adempiere a tutte le condizioni garantistiche indicate dall'art. 12 Dir. Il rispetto di tali garanzie è di primaria rilevanza nel caso di programmi di giustizia riparativa che coinvolgano vittime di *corporate violence*.

## VI.

### PROTEZIONE DELLA VITA PRIVATA E DELLA RISERVATEZZA\*

#### Cons. 66 Dir.

La presente direttiva rispetta i diritti fondamentali e osserva i principi riconosciuti dalla Carta dei diritti fondamentali dell'Unione europea. In particolare, è volta a promuovere il diritto alla dignità, alla vita, all'integrità fisica e psichica, alla libertà e alla sicurezza, il rispetto della vita privata e della vita familiare, il diritto di proprietà, il principio di non-discriminazione, il principio della parità tra donne e uomini, i diritti dei minori, degli anziani e delle persone con disabilità e il diritto a un giudice imparziale.

#### Cons. 68 Dir.

I dati personali trattati nell'ambito dell'attuazione della presente direttiva dovrebbero essere protetti conformemente alla decisione quadro 2008/977/GAI del Consiglio, del 27 novembre 2008, sulla protezione dei dati personali trattati nell'ambito della cooperazione giudiziaria e di polizia in materia penale, e conformemente ai principi stabiliti dalla convenzione del Consiglio d'Europa del 28 gennaio 1981 sulla protezione delle persone rispetto al trattamento automatizzato di dati di carattere personale, che tutti gli Stati membri hanno ratificato.

#### Art. 20 Dir.

Fatti salvi i diritti della difesa e nel rispetto della discrezionalità giudiziale, gli Stati membri provvedono a che durante le indagini penali:

[...]

d) le visite mediche siano limitate al minimo e abbiano luogo solo se strettamente necessarie ai fini del procedimento penale.

#### Art. 21 Dir.

1. Gli Stati membri provvedono a che le autorità competenti possano adottare, nell'ambito del procedimento penale, misure atte a proteggere la vita privata, comprese le caratteristiche personali della vittima rilevate nella valutazione individuale di cui all'articolo 22, e l'immagine della vittima e dei suoi familiari. Gli Stati membri provvedono altresì affinché le autorità competenti possano adottare tutte le misure legali intese ad impedire la diffusione pubblica di qualsiasi informazione che permetta l'identificazione di una vittima minorenne.

2. Per proteggere la vita privata, l'integrità personale e i dati personali della vittima, gli Stati membri, nel rispetto della libertà d'espressione e di informazione e della libertà e del pluralismo dei media, incoraggiano i media ad adottare misure di autoregolamentazione.

#### Art. 23 co. 2 Dir.

Durante le indagini penali le vittime con esigenze specifiche di protezione individuate a norma dell'art. 22, paragrafo 1, possono avvalersi delle misure speciali seguenti:

[...]

c) misure per evitare domande non necessarie sulla vita privata della vittima senza rapporto con il reato; e d) misure che permettano di svolgere l'udienza a porte chiuse.

\* Redazione a cura di ENRICO MARIA MANCUSO



**Art. 114 co. 4-6 c.p.p.**

4. È vietata la pubblicazione, anche parziale, degli atti del dibattimento celebrato a porte chiuse nei casi previsti dall'articolo 472 commi 1 e 2. In tali casi il giudice, sentite le parti, può disporre il divieto di pubblicazione anche degli atti o di parte degli atti utilizzati per le contestazioni. Il divieto di pubblicazione cessa comunque quando sono trascorsi i termini stabiliti dalla legge sugli archivi di Stato ovvero è trascorso il termine di dieci anni dalla sentenza irrevocabile e la pubblicazione è autorizzata dal ministro di grazia e giustizia.

5. Se non si procede al dibattimento, il giudice, sentite le parti, può disporre il divieto di pubblicazione di atti o di parte di atti quando la pubblicazione di essi può offendere il buon costume o comportare la diffusione di notizie sulle quali la legge prescrive di mantenere il segreto nell'interesse dello Stato ovvero causare pregiudizio alla riservatezza dei testimoni o delle parti private. Si applica la disposizione dell'ultimo periodo del comma 4.

6. È vietata la pubblicazione delle generalità e dell'immagine dei minorenni testimoni, persone offese o danneggiati dal reato fino a quando non sono divenuti maggiorenni. Il tribunale per i minorenni, nell'interesse esclusivo del minorenne, o il minorenne che ha compiuto i sedici anni, può consentire la pubblicazione.

**Art. 115 c.p.p.**

1. Salve le sanzioni previste dalla legge penale, la violazione del divieto di pubblicazione previsto dagli articoli 114 e 329 comma 3 lettera b) costituisce illecito disciplinare quando il fatto è commesso da impiegati dello Stato o di altri enti pubblici ovvero da persone esercenti una professione per la quale è richiesta una speciale abilitazione dello Stato.

2. Di ogni violazione del divieto di pubblicazione commessa dalle persone indicate nel comma 1 il pubblico ministero informa l'organo titolare del potere disciplinare.

**Art. 684 c.p.**

Chiunque pubblica, in tutto o in parte, anche per riassunto o a guisa d'informazione, atti o documenti di un procedimento penale, di cui sia vietata per legge la pubblicazione, è punito con l'arresto fino a trenta giorni o con l'ammenda da € 51 a € 103.

**Art. 472 co. 2 e 4 c.p.p.**

2. Su richiesta dell'interessato, il giudice dispone che si proceda a porte chiuse all'assunzione di prove che possono causare pregiudizio alla riservatezza dei testimoni ovvero delle parti private in ordine a fatti che non costituiscono oggetto dell'imputazione. Quando l'interessato è assente o estraneo al processo, il giudice provvede di ufficio.

4. Il giudice può disporre che avvenga a porte chiuse l'esame dei minorenni.

**Art. 473 co. 1 c.p.p.**

Nei casi previsti dall'art. 472, il giudice, sentite le parti, dispone, con ordinanza pronunciata in pubblica udienza, che il dibattimento o alcuni atti di esso si svolgano a porte chiuse. L'ordinanza è revocata con le medesime forme quando sono cessati i motivi del provvedimento.

**La Direttiva 2012/29/UE si pone come obiettivo generale la tutela della vita privata e personale della vittima (cons. 66 e art. 21), nel più ampio quadro della protezione della vittima dalla vittimizzazione secondaria.**

In tale fenomeno può, infatti, rientrare la **diffusione pubblica di notizie inerenti la vita privata della vittima**: quest'ultima si trova così a soffrire una **doppia violenza**, derivante sia dal fatto delittuoso patito, sia dalla

violazione irrimediabile della propria sfera personale.

Tale forma di vittimizzazione assume proporzioni **tanto più gravi**, quanto più il caso giudiziario catturi l'**interesse dei media** (sul cui atteggiamento ambivalente nei confronti della *corporate violence* si rinvia sia al rapporto *I bisogni delle vittime di corporate violence: risultati della ricerca empirica in Italia*, luglio 2017, sia alle *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence*, maggio 2017, <http://www.victimsandcorporations.eu/publications/>). In tal caso, vi è il rischio che la vita privata delle vittime finisca per essere esposta al pubblico dagli organi di stampa.

Dal **rischio di vittimizzazione secondaria per diffusione di notizie private** circa le vittime non sono immuni i **procedimenti per fatti di corporate violence**. Il problema si può porre, **in particolare**, per le ipotesi, non prive di rilevanza mediatica, in cui il fatto delittuoso abbia arrecato un **vulnus alle sfere più intime delle vittime**, quali la **salute**: si pensi ai fenomeni di disastro ambientale o di danni da attività sanitaria (qual è il contagio derivante dall'uso di emoderivati infetti).

Sono ben noti i **danni alla privacy** derivanti dalle **fughe di notizie** nel corso delle **indagini preliminari**. In tale fase, appare di **primaria importanza** che la **vita personale delle vittime non sia esposta senza motivo alla curiosità del pubblico**. Al fine di contenere un indebito flusso di notizie alla stampa, non può che raccomandarsi una **rigorosa osservanza dell'art. 5 d.lgs. 20 febbraio 2006, n. 106**, secondo cui i **rapporti con gli organi di informazione** sono gestiti personalmente e in esclusiva dal **Procuratore della Repubblica**.

**VI.1. L'autorità procedente deve assicurare la protezione della vita privata delle vittime di corporate violence non soltanto nel corso del processo penale, ma anche nella fase delle indagini preliminari, sin dal primo contatto con le stesse.**

Gli organi inquirenti dovrebbero assicurare un'**adeguata tutela alle esigenze di riservatezza** della vittima **anche** in sede di **assunzione del contributo dichiarativo** di quest'ultima. In particolare, in sede di **sommario informazioni testimoniali**, ex art. 351 c.p.p., dovrebbero essere **evitate domande invasive** della *privacy*, qualora non necessarie a una compiuta ricostruzione della vicenda oggetto del procedimento.

Con riguardo alla fase delle indagini, la **Direttiva**, all'**art. 20 lett. d)**, impone altresì di non sottoporre la vittima a **visite mediche** ove non

strettamente necessarie. La previsione **non è stata oggetto di specifica trasposizione** da parte del legislatore interno: sul punto, **soccorre solo in parte** il combinato disposto degli **artt. 224 bis e 359 bis c.p.p.**, che subordina il ricorso ad accertamenti medici coattivi al requisito dell'assoluta indispensabilità ai fini della prova dei fatti.

Con il d.lgs. 15 dicembre 2015, n. 212 non sono state introdotte modifiche al codice penale o al codice di procedura penale, specificamente finalizzate a dare attuazione agli obblighi posti dalla Direttiva in tema di protezione della vita privata delle vittime.

La scelta è dipesa dalla **ritenuta conformità del sistema interno** alle prescrizioni del legislatore comunitario.

**Eppure** l'ordinamento nazionale, sul punto, non pare immune da **lacune**, in primo luogo sul piano della **ridotta effettività della tutela**. In particolare:

- l'**art. 114 c.p.p.** subordina, in linea generale, la **pubblicazione di atti del procedimento** al **decorso dei limiti cronologici** indicati dalla norma. **Non** è, invece, previsto un **divieto generalizzato di pubblicazione** di atti processuali, nelle parti in cui contengano **notizie esulanti dall'oggetto dell'imputazione**;
- l'**art. 115 c.p.p.** reprime a livello **soltanto disciplinare** le **violazioni dell'art. 114 c.p.p.**, laddove **commesse da impiegati dello Stato o di enti pubblici**, o da persone esercenti una professione per la quale è richiesta una speciale abilitazione dello Stato. La **reazione sul piano disciplinare non** pare **sufficiente** ad esercitare un **reale effetto deterrente**;
- quanto poi alla contravvenzione **ex art. 684 c.p. (pubblicazione arbitraria di atti di un procedimento penale)**, l'**effettività** della previsione è largamente **compromessa** dalla possibilità di ricorrere ad **oblazione** **ex art. 162 bis c.p.**

**Soprattutto**, il **sistema di protezione della vita privata** appare **concepito con riguardo a specifiche categorie di vittime**: in particolare, la **vittima-testimone**, la **vittima minorenn**e e la **vittima di reati sessuali**. Tale approccio si pone in **contrasto** con l'**obbligo comunitario** di **modellare le misure di protezione su di una valutazione individualizzata** dei bisogni della vittima (art. 22 Dir.), e rischia di lasciare largamente **scoperte** le esigenze di tutela delle **vittime di corporate violence**.

In primo luogo, l'**art. 472 co. 2 c.p.p.** prevede una **deroga alla pubblicità dell'udienza** qualora la stessa possa causare **pregiudizio alla riservatezza**

**dei testimoni e delle parti private**, in ordine a fatti che non costituiscono oggetto dell'imputazione. La previsione, riferendosi **in esclusiva** a testimoni e parti private, **non consente di includere la persona offesa** tra i soggetti legittimati a richiedere la deroga alla pubblicità, a meno che la stessa non si sia costituita parte civile o non sia chiamata a rendere testimonianza.

Ad esigenze di tutela delle **vittime di reati sessuali** risponde invece l'**art. 472 co. 3-bis**, secondo cui, nel dibattimento per i **delitti ivi elencati** (artt. 600, 600 *bis*, 600 *ter*, 600 *quinqies*, 601, 602, 609 *bis*, 609 *ter*, 609 *octies* c.p.), la **persona offesa** può chiedere che si proceda a **porte chiuse**; una possibilità che diventa **obbligo** qualora l'**offeso** sia **minorenne**. In tali ipotesi, non sono ammesse domande sulla vita privata e sulla sessualità dell'offeso, se non necessarie alla ricostruzione del fatto.

Da ultimo, l'**art. 472 co. 4 c.p.p.** consente al giudice di disporre che l'**esame dei minorenni** si svolga a **porte chiuse**.

Complessivamente, le **deroghe alla pubblicità dell'udienza non appaiono in grado di ottemperare** agli standard di tutela della vita privata della vittima imposti dalla Direttiva, e in particolare **all'art. 23 lett. d) Dir.**, secondo cui le **vittime con speciali esigenze di protezione** devono sempre poter usufruire di **udienze a porte chiuse**.

In **ottica de iure condendo**, non potendosi pervenire a un tal risultato in sede ermeneutica, appare auspicabile una **generalizzazione** del portato di cui all'**art. 472 co. 3-bis c.p.p.** a **tutte le vittime in condizioni di particolare vulnerabilità** ex art. 90 *quater* c.p.p. Ciò consentirebbe di assicurare un'adeguata tutela della **riservatezza delle vittime di corporate violence**, **laddove** le stesse, in ragione delle **concrete modalità del fatto**, possano ritenersi **particolarmente vulnerabili**. Si pensi all'ipotesi in cui la vittima, in conseguenza di reati commessi in ambito sanitario, abbia contratto una malattia ritenuta stigmatizzante nell'ambiente sociale di riferimento: in simili ipotesi, la celebrazione dell'udienza a porte chiuse potrebbe costituire idonea misura protettiva.

**VI.2. In tutti casi in cui sia necessario a tutela della riservatezza della vittima di corporate violence, ove l'ordinamento processuale lo consenta, il giudice deve disporre che l'udienza dibattimentale si svolga a porte chiuse.**

Si noti altresì che l'**art. 23 lett. c) Dir.** impone, nei riguardi delle **vittime con speciali esigenze di protezione**, l'adozione di misure per **evitare domande non necessarie sulla vita privata** della vittima senza rapporto

con il reato. Tale previsione, **sul piano interno**, è espressamente dettata, come si è già visto, **per le sole vittime di reati sessuali**.

L'ordinamento fornisce **tuttavia** gli strumenti per **proteggere anche** vittime di reati differenti – per quanto qui rileva, le **vittime di corporate violence** – da **domande invasive della privacy** e **non attinenti all'oggetto del procedimento**. Il riferimento è al **controllo presidenziale sulle domande non pertinenti**, previsto dall'**art. 499 c.p.p.**

**VI.3. Nel corso dell'esame dibattimentale, il presidente, anche d'ufficio, deve intervenire affinché alla vittima di corporate violence non siano poste domande relative alla propria vita privata, laddove non attinenti ai fatti di cui all'imputazione.**

I **deficit** dell'art. 472 c.p.p. si ripercuotono sulla disciplina dell'**art. 114 co. 4 ss. c.p.p.**, che appare sullo stesso modellata. In particolare, l'**art. 114 co. 4** vieta la **pubblicazione degli atti del dibattimento che si sia svolto a porte chiuse**, mentre l'**art. 114 co. 5** concerne gli **atti che possano causare pregiudizio alla riservatezza dei testimoni o delle parti private**. Anche in questo caso, **non** è dunque assicurata **specificata protezione alla persona offesa**, ove la stessa non rivesta la qualifica di testimone o di parte civile.

**Il sistema interno non dispone, inoltre, di misure idonee a proteggere l'immagine della vittima e dei suoi familiari, come prescritto dall'art. 21 co. 1 Dir.**

In particolare:

- l'**art. 114 co. 6 c.p.p.** vieta la **pubblicazione delle generalità e dell'immagine delle sole persone offese minorenni**;
- l'**art. 734 bis c.p.** reprime penalmente la **diffusione della generalità o delle immagini della persona offesa** senza il suo consenso, ma **solo nell'ambito dei procedimenti per reati sessuali** (artt. 600 *bis*, 600 *ter*, 600 *quater*, 600 *quinquies*, 609 *bis*, 609 *ter*, 609 *quater*, 609 *quinquies*, 609 *octies* c.p.).

Anche in questo caso, sarebbe dunque **auspicabile una generalizzazione delle previsioni in esame**, al fine di assicurare la tutela dell'immagine della vittima di *corporate violence*, specie laddove le conseguenze del reato abbiano una potenziale valenza stigmatizzante.

## VII.

### ASSISTENZA LEGALE\*

#### Cons. 47 Dir.

Non si dovrebbe pretendere che le vittime sostengano spese per partecipare a procedimenti penali. Gli Stati membri dovrebbero essere tenuti a rimborsare soltanto le spese necessarie delle vittime per la loro partecipazione a procedimenti penali e non dovrebbero essere tenuti a rimborsare le spese legali delle vittime. Gli Stati membri dovrebbero poter imporre condizioni in relazione al rimborso delle spese nel quadro del rispettivo diritto nazionale, tra cui termini per la richiesta di rimborso, importi forfettari per le spese di soggiorno e di viaggio e diaria massima per la perdita di retribuzione. Il diritto al rimborso delle spese in un procedimento penale non dovrebbe sussistere in una situazione nella quale una vittima rende una dichiarazione su un reato. Le spese dovrebbero essere rimborsate solo nella misura in cui la vittima è obbligata o invitata dalle autorità competenti ad essere presente e a partecipare attivamente al procedimento penale.

#### Art. 4 Dir.

1. Gli Stati membri provvedono a che alla vittima siano offerte fin dal primo contatto con un'autorità competente, senza indebito ritardo, e affinché possa accedere ai diritti previsti dalla presente direttiva, le informazioni seguenti:  
[...]  
d) come e a quali condizioni è possibile avere accesso all'assistenza di un legale, al patrocinio a spese dello Stato e a qualsiasi altra forma di assistenza;  
[...];  
k) come e a quali condizioni le spese sostenute in conseguenza della propria partecipazione al procedimento penale possono essere rimborsate.
2. L'entità o il livello di dettaglio delle informazioni di cui al paragrafo 1 possono variare in base alle specifiche esigenze e circostanze personali della vittima, nonché al tipo o alla natura del reato. Ulteriori informazioni dettagliate possono essere fornite nelle fasi successive, in funzione delle esigenze della vittima e della pertinenza di tali informazioni in ciascuna fase del procedimento.

#### Art. 13 Dir.

Gli Stati membri garantiscono che le vittime che sono parti del procedimento penale abbiano accesso al patrocinio a spese dello Stato. Le condizioni o le norme procedurali in base alle quali le vittime accedono al patrocinio a spese dello Stato sono stabilite dal diritto nazionale.

#### Art. 14 Dir.

Gli Stati membri concedono alle vittime che partecipano al procedimento penale la possibilità di ottenere il rimborso delle spese sostenute a seguito di tale attiva partecipazione, secondo il ruolo della vittima nel pertinente sistema giudiziario penale. Le condizioni o le norme procedurali in base alle quali le vittime possono ottenere il rimborso sono stabilite dal diritto nazionale.

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\* Redazione a cura di ENRICO MARIA MANCUSO

**Art. 90 bis c.p.p.**

Alla persona offesa, sin dal primo contatto con l'autorità procedente, vengono fornite, in una lingua a lei comprensibile, informazioni in merito:

[...]

d) alla facoltà di avvalersi della consulenza legale e del patrocinio a spese dello Stato;

[...]

l) alle modalità di rimborso delle spese sostenute in relazione alla partecipazione al procedimento penale; [...].

**Art. 101 co. 1 c.p.p.**

La persona offesa dal reato, per l'esercizio dei diritti e delle facoltà ad essa attribuiti, può nominare un difensore nelle forme previste dall'articolo 96 comma 2. Al momento dell'acquisizione della notizia di reato il pubblico ministero e la polizia giudiziaria informano la persona offesa dal reato di tale facoltà. La persona offesa è altresì informata della possibilità dell'accesso al patrocinio a spese dello Stato ai sensi dell'articolo 76 del testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia, di cui al decreto del Presidente della Repubblica 30 maggio 2002, n. 115, e successive modificazioni.

**Il diritto alla difesa tecnica è presupposto essenziale per una partecipazione effettiva e consapevole nel procedimento penale.**

Affinché la vittima possa **partecipare efficacemente al procedimento penale** è necessario che si procuri un'**adeguata assistenza tecnica**. Al riguardo, è essenziale in primo luogo, nel rispetto dei precisi obblighi di informazione previsti dalla Direttiva (su cui v., per gli altri profili, *supra*, § **IV**), che ogni vittima sia **informata** circa la sua **facoltà di essere assistita da un difensore di fiducia** affinché rappresenti e difenda i suoi interessi nel compimento degli atti processuali.

**VII.1. Ciascuna vittima di reato deve essere destinataria di una compiuta ed effettiva informazione sul diritto di difesa tecnica, che contempli lo scopo e le possibili scelte e azioni attivabili nel corso del procedimento penale. Tale informativa deve essere fornita tempestivamente, già in occasione del compimento di un atto garantito o di un incidente probatorio cui la vittima abbia diritto di assistere (in veste di persona offesa dal reato).**

Ai sensi dell'**art. 101 co. 1 c.p.p.**, al momento dell'**acquisizione della notizia di reato** il **pubblico ministero** e la **polizia giudiziaria** devono **informare la persona offesa** dal reato della **facoltà di nominare un difensore**. Nel concreto, quest'ultimo sarà in grado di fornire le migliori indicazioni per la tutela e l'attuazione dei diritti della vittima in tutti i momenti significativi del procedimento, dalla fase delle indagini preliminari al dibattimento.

In particolare, il **difensore** – mediante l’interlocuzione e il deposito di memorie difensive – potrà **veicolare** le **esigenze manifestate dalla vittima** e il **sapere di cui la stessa è portatrice** alla polizia giudiziaria e al pubblico ministero, così da permettere agli inquirenti un proficuo svolgimento delle attività investigative.

**Specifiche modalità partecipative** sono, poi, riconosciute dalla legge processuale sia nel caso di **compimento di un accertamento tecnico non ripetibile** da parte del pubblico ministero (**art. 360 c.p.p.**), sia in ipotesi di instaurazione di un **incidente probatorio** (**artt. 392 ss. c.p.p.**).

**Quando** la **notizia dell’esistenza del procedimento** giunga alla vittima in occasione della **notifica dell’atto con il quale sia esercitata l’azione penale**, esso dovrà essere accompagnato da una **contestuale informativa** delle modalità di esercizio del diritto alla difesa tecnica nel processo.

**Il diritto ad accedere alla consulenza legale e al patrocinio a spese dello Stato – al di fuori dei limiti di reddito normativamente previsti per l’imputato – è oggi riconosciuto solo per specifiche categorie di vittime.**

L’**art. 13 della Direttiva**, nel riconoscere il **diritto al patrocinio a spese dello Stato** per le **vittime** che sono **parti del procedimento penale**, ha **rimesso** ai singoli **diritti nazionali** la regolamentazione delle **condizioni** in base alle quali le vittime possono accedere al patrocinio a spese dello Stato. Accanto alla previsione del diritto, è previsto un **corrispondente obbligo di informazione** da parte dell’**autorità procedente**.

La maggior parte delle **vittime di corporate violence**, per ragioni socio-culturali e ambientali, versano in **condizioni economicamente deboli**, o comunque di decisa inferiorità rispetto agli autori del reato (*v. supra, § II*). Non potendosi permettere un’adeguata assistenza legale, l’**accesso alla giustizia** diventa inevitabilmente **più difficile**. In Italia, l’**ammissione al patrocinio a spese dello Stato** è disciplinata dal **d.P.R. 115/2002** ed è **riservata** ai soggetti che rientrano in determinati **requisiti di reddito**, alquanto stringenti (reddito imponibile personale e familiare **non superiore a 11.528,41 Euro**). Il gratuito patrocinio è garantito **sia alla persona offesa dal reato, sia al danneggiato che intenda costituirsi parte civile**. Tuttavia, **solo a determinate categorie di vittime**, in ragione della loro condizione di **particolare vulnerabilità**, l’ordinamento processuale riconosce oggi la possibilità di accedere al patrocinio a spese dello Stato **a prescindere dalle limitazioni di reddito**, ai sensi dell’art. 76 co. 4-ter d.P.R. 115/2002 (vittime dei reati di cui agli artt. 572, 583 *bis*, 609 *bis*, 609 *quater*, 609 *octies* e 612 *bis*, nonché, ove commessi in danno di minori, dei reati di cui agli artt. 600, 600 *bis*, 600 *ter*, 600 *quinqües*, 601, 602, 609 *quinqües* e



609 *undecies* c.p.) – tipologie in cui le **vittime di corporate violence** attualmente **non rientrano**, malgrado gli specifici profili di particolare vulnerabilità che pure le caratterizzano (v. *supra*, § II).

**VII.2. La vittima del reato di *corporate violence* deve essere puntualmente informata dei presupposti e dei limiti di accesso al patrocinio a spese dello Stato.**

L'art. 90 *bis* co. 1 lett. d) c.p.p. stabilisce l'**obbligo di informare la persona offesa** dal reato della **possibilità di accesso** alla **consulenza legale** e al **patrocinio a spese dello Stato** fin dal momento del **primo contatto**. Quest'obbligo è ribadito dall'art. 101 co. 1 c.p.p. laddove dispone che, al momento dell'acquisizione della notizia di reato, il pubblico ministero e la polizia giudiziaria devono informare la persona offesa dal reato della possibilità dell'accesso al patrocinio a spese dello Stato.

Tali **modalità di informativa** dovrebbero essere **calibrate alla natura e alla numerosità delle vittime di corporate violence**, tenendo in considerazione le modalità mediante le quali esse siano venute a conoscenza del procedimento penale in questione, nonché la possibilità che le stesse non siano a conoscenza dell'importanza di nominare un difensore e/o eleggere domicilio ai fini delle successive comunicazioni del procedimento.

**VII.3. La vittima del reato di *corporate violence* deve essere puntualmente e chiaramente informata circa l'opportunità di procedere con tempestività – sussistendone i presupposti – alla nomina del difensore (in veste di persona offesa, ex art. 101 c.p.p.) e/o alla elezione di un domicilio ai fini delle comunicazioni del procedimento.**

Questo **consentirà all'autorità procedente** una efficace e puntuale **attivazione delle prerogative informative** già contemplate dal sistema, e alla **vittima del reato la consapevolezza delle prerogative d'azione e di difesa** che le competono nelle varie fasi del procedimento, nonché una **puntuale informativa** che sia funzionale alle eventuali misure di protezione da adottare.

## VIII.

### PARTECIPAZIONE AL PROCEDIMENTO PENALE\*

Art. 1 co. 1 Dir.

Scopo della presente direttiva è garantire che le vittime di reato ricevano informazione, assistenza e protezione adeguate e possano partecipare ai procedimenti penali.

#### 1. *La gestione della domanda di giustizia delle vittime di corporate violence e la questione del tempo nel procedimento penale*

Il **processo penale** è la sede in cui la **domanda di giustizia** delle **vittime di corporate violence** viene **manifestata con maggiore forza**. Dalla ricerca empirica condotta nel quadro di questo progetto, è emerso come le vittime spesso vedano nel procedimento penale l'unico **percorso** possibile per ricostruire la **verità**, richiamare l'**attenzione** pubblica sulla loro vicenda, ottenere la **prevenzione di danni futuri** e conseguire una **decisione sul risarcimento** dei danni già manifestatisi (v. *supra*, § II, nonché il *report* nazionale su *I bisogni delle vittime di corporate violence: risultati della ricerca empirica in Italia*, luglio 2017, <http://www.victimsandcorporations.eu/publications/>). La domanda di giustizia è dunque caricata di **bisogni e aspettative** legati al fatto che ogni altro percorso di giustizia risulta spesso impercorribile.

Le vittime di *corporate violence* manifestano un bisogno particolarmente acuto di spiegazione *ex post* e di comprensione *ex ante* dei diritti della difesa e dei meccanismi che regolano il giudizio in sede penale, in assenza dei quali le forti aspettative di giustizia investite nel procedimento penale resteranno disattese, con potenziali ricadute negative in termini di vittimizzazione secondaria.

\* Redazione a cura di STEFANIA GIAVAZZI

Le esperienze condivise dalle vittime e dagli operatori che hanno partecipato alla citata ricerca empirica segnalano un **gap significativo** tra le **aspettative che le vittime nutrono nei confronti del processo penale** e gli **esiti** di questo, assai spesso diversi da una sentenza di condanna. Questo profilo è particolarmente accentuato rispetto alle **criticità legate al decorso del tempo**, non soltanto con riferimento alla **durata delle indagini e del processo**, ma anche e soprattutto rispetto a esiti che statuiscono il **non doversi procedere** e l'estinzione del reato per intervenuta **prescrizione**. Questa eventualità appare particolarmente critica dal punto di vista delle vittime: una sentenza di non doversi procedere per prescrizione è l'esempio più eclatante di domanda di giustizia che si vede negata in modo del tutto ingiustificabile nella percezione della persona offesa (in quanto percepita come manifestazione di diseguaglianza o come esito di indifferenza del magistrato ai diritti la cui tutela gli è affidata), **precludendole**, tra l'altro, di ottenere **nel procedimento penale una decisione in merito al risarcimento del danno** (su cui v. *infra* § VIII.2). La vittima costituita parte civile avrà, infatti, **inutilmente impiegato** nel processo penale **tempo, denaro ed energie**, senza ottenere alcun vantaggio certo.

L'ineludibilità dei presupposti della prescrizione impone la necessità di affrontare il tema sotto il profilo della **gestione del tempo del procedimento penale**. Alla finitezza delle risorse deve corrispondere il loro uso migliore, dando «a ciascuno secondo il suo bisogno minimo secondo criteri scalari di commisurazione delle risorse» (BATTARINO, 2017). Le linee guida di seguito delineate declinano norme e buone pratiche che potrebbe favorire l'attuazione di questa auspicabile direttrice di intervento.

Il principio della «**speditezza, economia ed efficacia delle indagini**» (codificato nell'**art. 371 c.p.p.**) dovrebbe essere attuato con maggiore determinazione nei **procedimenti con vittime diffuse**, tenuto conto che soprattutto l'**introduzione di conoscenze scientifiche o specialistiche** nelle indagini o nel processo può necessitare di **tempi estesi**.

Nell'ambito invece dei **poteri e doveri organizzativi e delle prerogative gerarchiche**, vi sono due norme che consentono un **impulso** costante e una sollecitazione alla **condivisione di comuni moduli organizzativi** ed alla **procedimentalizzazione della collaborazione fra uffici** in alcuni settori strategici. Si richiamano in particolare:

**a)** l'**art. 2 del d.lgs. 106/2006**, che attribuisce al **Procuratore della Repubblica**, in quanto «titolare esclusivo dell'azione penale», il dovere ex art. 1 co. 2 di assicurare il **corretto, puntuale ed uniforme esercizio dell'azione penale**; il Procuratore determina fra l'altro anche «i criteri generali ai quali i magistrati addetti all'ufficio devono attenersi

nell'impiego della polizia giudiziaria» e definisce «i criteri generali da seguire per l'impostazione delle indagini in relazione a **settori omogenei di procedimenti**».

**b) l'art. 6 del d.lgs. 106/2006** che attribuisce al **Procuratore Generale presso la Corte d'Appello** un potere di **vigilanza** e di sorveglianza al fine di «verificare il **corretto ed uniforme esercizio dell'azione penale** ed il rispetto delle norme del giusto processo, nonché il puntuale esercizio da parte dei Procuratori della Repubblica dei poteri di direzione, controllo e organizzazione degli uffici ai quali sono preposti».

Le sollecitazioni previste dall'art. 6 devono auspicabilmente trovare attuazione in **protocolli o intese a livello distrettuale** che, solo laddove risultino il frutto della unanime e condivisa valutazione di tutti i procuratori del distretto, potranno pervenire a direttive di carattere generale distrettuale anche in materia di **protocolli investigativi in senso stretto** e di **interpretazione condivisa di norme**<sup>1</sup>.

L'urgenza di giungere a **una sentenza di merito** in tempi idonei ad **evitare di incorrere nella prescrizione** risulta un obiettivo non secondario, alla luce della recentissima **riforma** attuata con la l. 23 giugno 2017, n. 103 recante **Modifiche al codice penale, al codice di procedura penale e all'ordinamento penitenziario**. La riforma, come noto, introduce nell'**art. 159 c.p.** due nuove ipotesi di **sospensione del corso della prescrizione**: la **prima** «dal termine previsto dall'articolo 544 del codice di procedura penale per il **deposito della motivazione della sentenza di condanna di primo grado**, anche se emessa in sede di rinvio, **sino alla pronuncia del dispositivo della sentenza che definisce il grado successivo** di giudizio, per un tempo **comunque non superiore a un anno e sei mesi**»; la **seconda** «dal termine previsto dall'articolo 544 del codice di procedura penale per il **deposito della motivazione della sentenza di condanna di secondo grado**, anche se emessa in sede di rinvio, **sino alla pronuncia del dispositivo della sentenza definitiva**, per un tempo **comunque non superiore a un anno e sei mesi**».

**VIII.1.1.** È necessario adottare ogni misura possibile e idonea a ridurre i tempi delle indagini e dei procedimenti penali in casi di *corporate violence*, favorendo una gestione efficiente del procedimento penale ed evitando l'esposizione delle vittime di questi reati a rischi di vittimizzazione secondaria e/o ripetuta. In particolare si dovrebbe considerare di:

<sup>1</sup>CSM, *Limiti e modalità di esercizio delle competenze del Procuratore generale della Repubblica presso la Corte d'appello ai sensi dell'art. 6 D. Lgs. 106/2006*, risposta a quesito del 20 aprile 2016.

- ▶ **individuare**, nell'**organizzazione e gestione degli uffici**, **criteri generali** per l'impostazione delle indagini e per un **efficiente impiego della polizia giudiziaria** in relazione specificamente ai **reati di corporate violence con vittime diffuse** (art. 2 d.lgs. 106/2006);
- ▶ **individuare criteri di priorità** per lo svolgimento delle **indagini** per **reati di corporate violence con vittime diffuse**, attraverso l'adozione di **protocolli o intese a livello distrettuale** che, laddove frutto di unanime e condivisa valutazione di tutti i Procuratori del distretto, possano pervenire a **direttive di carattere generale distrettuale** (art. 6 d.lgs. 106/2006);
- ▶ **individuare**, attraverso **direttive di carattere generale distrettuale**, **protocolli investigativi** e di **interpretazione condivisa di norme** per un più coordinato ed efficiente svolgimento delle indagini per **reati di corporate violence con vittime diffuse** (art. 6 d.lgs. 106/2006);
- ▶ favorire la **presenza del magistrato** nelle **operazioni peritali e di consulenza tecnica** per **prevenire** una eccessiva **dilatazione della loro tempistica** (artt. 224, co. 2, ultimo periodo, e 228, co. 4, c.p.p.);
- ▶ **individuare criteri o canali preferenziali** affinché i **processi** per **reati di corporate violence con vittime diffuse** possano godere di **priorità di trattazione** (come ad esempio avviene per i processi con detenuti o per alcuni reati, tra i quali quelli in materia di tutela del lavoratore e in materia ambientale ai sensi dell'art. 132 *bis* disp. att. c.p.p.), al fine di **evitare** che la mera **durata del processo** sia la causa di una declaratoria di **prescrizione** (il medesimo obiettivo dovrebbe anche essere perseguito in relazione a quegli illeciti contravvenzionali che, se accertati e sanzionati per tempo, potrebbero fungere da 'barriera' rispetto a ipotesi di vittimizzazione più gravi: v. anche *supra*, § III);
- ▶ **ridurre al minimo i tempi morti** che caratterizzano la **trasmissione del fascicolo** in vista della **fissazione dell'udienza preliminare**, della **prima udienza dibattimentale** e nel **passaggio dal tribunale alla Corte di Appello**;
- ▶ **sperimentare** nel **dibattimento** tecniche di **condivisione informativa** per la **gestione dei calendari** e la **trasmissione degli atti**;

- ▶ **adottare protocolli d'intesa tra magistratura e avvocatura** che impegnino entrambe le parti, a livello **deontologico**, ad **evitare o contenere** talune **prassi processuali** volte alla, o che si traducono di fatto nella, **dilatazione dei tempi processuali**.

Un **senso di denegata giustizia** è, inoltre, spesso legato, per le vittime di *corporate violence*, alla **impossibilità di comprendere esiti processuali di assoluzione** motivati dall'**adesione del collegio giudicante alle tesi scientifiche** (spesso assai complesse) sostenute dalla difesa, **in particolare in presenza di contrasti giurisprudenziali** sul punto, con decisioni di segno opposto in casi affini (emblematici i procedimenti per lesioni legate all'esposizione ad amianto). Infine, emerge un **bisogno** generale di **spiegazione e comprensione degli esiti processuali legati al mancato raggiungimento della prova** oltre ogni ragionevole dubbio, soprattutto laddove tale mancanza sia legata all'elemento soggettivo del reato.

VIII.1.2. È necessario che anche la polizia giudiziaria e gli uffici delle Procure si facciano carico di informare le vittime, in modo sintetico ma obiettivo, comprensibile e completo, anche in merito ai diritti degli imputati e delle difese, in modo tale che il corretto esercizio degli stessi non venga percepito come un atto di ingiustizia nei confronti delle vittime stesse, e si facciano altresì carico di rappresentare alle vittime, in modo neutrale e comprensibile, la possibilità che il processo abbia un esito negativo, alla luce dell'incertezza della prova scientifica e del decorso del tempo che caratterizza questa tipologia di processi; il tutto nell'ottica del mantenimento della massima equidistanza tra le ragioni dell'accusa e le aspettative delle vittime.

Le vittime e gli operatori segnalano, infine, che, **in caso di esito assolutorio**, il lasso di **tempo** intercorrente **tra la lettura del dispositivo** della sentenza **e il deposito della motivazione** può determinare **interpretazioni non corrette**, spesso accentuate dai **media**, con una vittimizzazione secondaria causata da una **percezione distorta delle motivazioni** alla base della decisione giudiziaria.

VIII.1.3. Nel pieno rispetto dei diritti della difesa e della discrezionalità giudiziale, occorre che gli uffici giudiziari individuino metodi di comunicazione dell'esito giudiziale semplici e immediati, tali da garantire la migliore e più rapida comprensione degli elementi essenziali della decisione assunta dall'autorità giudiziaria, evitando così, fra l'altro, di favorire la circolazione di errate interpretazioni o strumentalizzazioni della sentenza nella fase che precede il deposito della motivazione.

- Potrebbe essere opportuno valutare la praticabilità di rilasciare, **contestualmente** o in immediata successione alla lettura del **dispositivo, comunicati stampa analoghi a quelli talora emessi dalla Cassazione**, che **anticipino i nodi salienti della motivazione**, nei casi di **procedimenti** per casi di *corporate violence* che abbiano presentato **particolari complessità tecniche** e/o un **numero particolarmente elevato di vittime**.

## 2. La decisione in materia di risarcimento del danno

### Art. 16 Dir.

1. Gli Stati membri garantiscono alla vittima il diritto di ottenere una decisione in merito al risarcimento da parte dell'autore del reato nell'ambito del procedimento penale entro un ragionevole lasso di tempo, tranne qualora il diritto nazionale preveda che tale decisione sia adottata nell'ambito di un altro procedimento giudiziario.
2. Gli Stati membri promuovono misure per incoraggiare l'autore del reato a prestare adeguato risarcimento alla vittima.

Una **ulteriore problematica** strettamente connessa alle **aspettative delle vittime** e ai **tempi della giustizia penale** attiene al **diritto di ottenere una decisione in tema di risarcimento del danno** e di ottenerla **in tempi ragionevoli** (per la particolare ipotesi del patteggiamento, vedi *infra*, VIII.7). Il diritto nazionale italiano prevede, come noto, la **possibilità** per la **vittima danneggiata di costituirsi parte civile nel procedimento penale** (artt. 74 e ss. c.p.p.). Nei procedimenti per casi riconducibili alla *corporate violence*, il giudice penale di regola pronuncia una **condanna generica al risarcimento e rimette le parti avanti al giudice civile** che effettuerà – dopo una vera e propria causa civile finalizzata a raggiungere quella prova dell'entità del risarcimento non raggiunta durante il processo penale – la **concreta quantificazione monetaria del danno**.

**Nel contesto del procedimento penale, il diritto di ottenere in tempi ragionevoli una decisione in merito al risarcimento dei danni è fortemente limitato dalla prassi del giudice penale, in sede di deliberazione della sentenza di condanna, di rimettere *tout court* al giudice civile la decisione circa l'esatta quantificazione del danno.**

Per scongiurare il concreto svantaggio, per la vittima, di dover intentare una causa civile, la **parte civile** può **chiedere** – sempre tempestivamente, ovvero nelle conclusioni scritte al termine del dibattimento – che l'imputato, **in caso di condanna generica al risarcimento** del danno, sia condannato dal giudice penale al **pagamento di una somma provvisoriamente esecutiva**, la c.d. provvisoria (art. 539 c.p.p.). I **vantaggi** conseguenti alla **concessione della provvisoria** sono evidenti. La parte civile può, in detta ipotesi, agire immediatamente dopo la pubblicazione della sentenza penale di primo grado (con un considerevole risparmio di tempo) chiedendo formalmente al condannato il pagamento della provvisoria, ovvero, in caso di rifiuto, ottenere dal giudice civile (senza fare una causa *ad hoc*) un titolo esecutivo per procedere coattivamente al pignoramento dei beni del debitore condannato, senza dover attendere il passaggio in giudicato della pronuncia o che siano decorsi i termini per proporre impugnazione.

**Anche in questo caso**, tuttavia, la **parte civile** dovrà **in seguito agire davanti al giudice civile** per ottenere l'**esatta quantificazione del danno ulteriore** rispetto alla somma concessa a titolo di provvisoria. È allora indiscutibile che, in termini di **soddisfacimento del diritto della vittima di ottenere una decisione in tempi ragionevoli**, sarebbe **auspicabile** che il **giudice penale** effettuasse **direttamente la liquidazione di tutto il danno con la sentenza di condanna**. In questo caso, si 'risparmierebbe' alla parte civile la necessità di instaurare qualunque causa in sede civile, con una previsione di tempi e costi talvolta difficilmente sostenibili, e a quel punto ineludibili.

**Per converso**, la **condanna al risarcimento integrale non è immediatamente esecutiva** e, quindi, sarà **esigibile** dalla vittima di reato **solo dopo che la sentenza è divenuta esecutiva**. Tuttavia, esiste e andrebbe incoraggiata la **possibilità** per il giudice penale, dietro esplicita richiesta della parte civile, di **dichiarare la condanna al risarcimento del danno provvisoriamente esecutiva**, quando ricorrano **giustificati motivi** (art. 540 c.p.p.). Tali motivi non sono previsti dalla legge, ma sono generalmente riconosciuti dalla giurisprudenza di legittimità come ragioni collegate alla certezza dell'esecuzione della condanna dal punto di vista civilistico e alla obiettiva **possibilità che il ritardo aggravi le conseguenze**



**del reato** per il danneggiato. Si tratta di motivi che appaiono sussistere quasi sempre in procedimenti per *corporate violence*, alla luce della tipologia di danni causati e delle particolari condizioni di salute delle vittime.

VIII.2.1. Il giudicante dovrebbe sempre valutare la possibilità di effettuare direttamente la liquidazione integrale del danno con la sentenza di condanna. Se questa opzione non è, per ragioni oggettive, perseguibile, il giudicante, sempre se sussiste la richiesta della parte civile (che andrebbe informata in tal senso: vedi *supra*, § IV), dovrebbe favorire la liquidazione della provvisoria (in caso di generica condanna al risarcimento dei danni). In caso di condanna con contestuale liquidazione integrale del danno, il giudice – previa richiesta della parte civile – dovrebbe riconoscere, ove possibile, la sussistenza dei presupposti di legge (i giustificati motivi) per dichiarare la condanna al risarcimento provvisoriamente esecutiva.

### **3. Organizzazione della partecipazione delle vittime al procedimento penale**

I procedimenti relativi a casi di *corporate violence*, in ragione della usuale natura collettiva della vittimizzazione, presentano una serie di specifiche problematiche logistiche, di organizzazione dei luoghi e degli spazi. Si pongono inoltre problematiche legate al rischio di eccessiva spettacolarizzazione dell'udienza e di un eccesso di pressioni, esplicite o implicite, sulla serenità delle parti e dei giudicanti.

I **processi** in materia di *corporate violence* coinvolgono quasi sempre, anche per l'interesse pubblico e dei media, un **numero elevato di soggetti** che a vario titolo hanno diritto o, più banalmente, desiderano partecipare come pubblico alla fase dibattimentale del processo penale. Come già ricordato (v. *supra*, § II), si tratta di **fatti che talvolta colpiscono intere collettività**, con un interesse a seguire tutte le fasi processuali da parte di un'intera cittadinanza, più o meno direttamente offesa dai fatti per cui si procede.

Il processo, nella fase del **dibattimento**, assume così, spesso, le **dimensioni** di una **celebrazione mediatica** e di un **luogo di protesta**, nel

quale diventa difficile mantenere l'ordine e il contegno richiesto dalla natura del luogo e dei lavori che si stanno svolgendo, dal rispetto per gli imputati e per il collegio giudicante. Questi numeri elevati hanno **ripercussioni** anche sulla possibilità di **gestire l'udienza in tempi ragionevoli**. Molti gli **esempi** riscontrati: l'udienza inizia molto tardi per consentire al pubblico di accedere all'aula; nel corso dell'udienza il pubblico commenta l'esame dei testimoni o dei consulenti; il pubblico esprime il proprio dissenso rispetto alle decisioni del collegio giudicante; le vittime presenti in aula manifestano apertamente il loro dissenso; le vittime manifestano fuori dal tribunale con cortei o cartelloni.

**VIII.3.1. Gli uffici giudiziari devono organizzarsi preventivamente in vista della gestione della partecipazione di elevati numeri di vittime (tipici dei casi di *corporate violence*) alla fase dibattimentale, in modo da garantire l'accesso all'aula a tutti gli aventi diritto in modo ordinato e in tempi ragionevoli e da garantire l'ordinato e sereno svolgimento delle udienze; in vista di ciò può essere opportuno:**

- ▶ **individuare e monitorare sul territorio nazionale le *best practices* nella gestione di dibattimenti con un numero elevato di vittime;**
- ▶ **individuare preventivamente uno o più spazi** di celebrazione del dibattimento **adeguati** a procedimenti con un numero elevato di vittime, da **predisporre**, al presentarsi del caso, in modo efficace **alla luce** del numero di **persone offese individuate**, di **parti civili costituite**, nonché dell'**interesse del procedimento per la collettività**;
- ▶ **individuare**, ove possibile, degli **interlocutori rappresentativi delle vittime**, in modo da poter **coordinare preventivamente tempi, numeri e necessità delle vittime** che intendono partecipare;
- ▶ nel caso di **vittime particolarmente vulnerabili**, in particolare in ragione di malattia o infermità, **individuare aule di udienza collegate con mezzi audiovisivi a spazi autonomi e adeguati** dedicati alla loro accoglienza.

#### 4. Partecipazione al processo di enti e associazioni

Il nostro ordinamento, come noto, prevede che **enti e associazioni, senza scopo di lucro** e con **finalità** – riconosciutegli in forza di legge – di **tutela degli interessi collettivi o diffusi** compromessi dalla commissione dell'illecito penale, **in assenza di un danno proprio** possano avere **ingresso nel processo** ai sensi dell'**art. 91 c.p.p.**, con i poteri della persona offesa dal reato, e possano **esercitare diritti e facoltà spettanti alla persona offesa** – previo suo **consenso** – con **atto di intervento** il cui contenuto è descritto nell'**art. 93 c.p.p.** Quando invece detti **enti** risultino **direttamente danneggiati dal reato** è garantita la possibilità di **esercitare l'azione civile nel procedimento penale (artt. 74 ss. c.p.p.)**. È altresì noto come la Cassazione ritenga ampiamente ammissibile la costituzione di parte civile dell'ente collettivo, considerando **danno risarcibile** rilevante «**l'offesa all'interesse perseguito dal sodalizio e posto nello statuto** quale ragione istituzionale della propria esistenza ed azione, con la conseguenza che ogni attentato a tale interesse si configura come lesione di un diritto soggettivo inerente la personalità o identità dell'ente» (Cass. SU, 24 aprile 2014, n. 38343).

La **presenza degli enti e delle associazioni** nei **procedimenti penali** riconducibili a casi di *corporate violence* è segnalata come **potenzialmente problematica** dagli imputati e dai loro difensori (nonché da una parte della magistratura), in ragione della **eccessiva dilatazione** che ha avuto nel nostro ordinamento la possibilità per questi soggetti di costituirsi parte civile. L'ammissione quale parte civile di numerosi enti, rispetto ai quali sussistono spesso molti dubbi circa la lesione diretta ed effettiva di interessi statuari, **augmenta** in numero considerevole le **parti del processo**, con un conseguente **incremento delle difficoltà di gestione del dibattimento in tempi e con modalità efficienti** e con un **aumento delle domande risarcitorie** che richiedono una decisione. Questo ampliamento è un dato che, effettivamente, si continua a registrare soprattutto in procedimento penali in materia di reati ambientali. Si contesta da più parti che tali enti dovrebbero partecipare al giudizio unicamente come soggetti collettivi esponenziali di interessi lesi dal reato (art. 91 c.p.p.) e non come parti civili, essendo la lesione subita più affine a quella della persona offesa che non a quella del danneggiato.

**Allo stesso tempo**, occorre evidenziare che **alcuni di questi enti**, come le **associazioni costituite a tutela delle vittime** accomunate dalla medesima malattia o da un danno causato dalla medesima fonte, rivestono oggi nel nostro ordinamento un **ruolo insostituibile** rispetto al **diritto delle vittime di essere assistite, informate e supportate** (v. più

diffusamente *infra*, § X), dal momento che questi soggetti, in qualche misura, **suppliscono all'assenza nel nostro ordinamento di servizi pubblici di assistenza** e supporto alle vittime. Questa 'supplenza' prende forma **anche durante il procedimento penale** e nella eventuale ipotesi di **negoiazione con la corporation per il risarcimento** dei danni. Situazioni nelle quali, per altro, la **'forza' dell'ente o dell'associazione** delle vittime **dipende** anche e proprio dal **riconoscimento dell'associazione stessa quale parte civile**, in grado di esercitare nel processo un ruolo attivo a fianco della pubblica accusa.

Inoltre, **molte denunce e allegazioni probatorie**, in questi casi, in particolare in materia di reati ambientali o di reati connessi a malattie professionali, **sono presentate da enti** a tutela dell'ambiente o da associazioni a tutela dei lavoratori. È dunque un dato di fatto che l'intermediazione di alcuni di questi enti si rivela spesso indispensabile per dare avvio al procedimento penale e/o per acquisire dati storici e rilievi tecnici altrimenti difficilmente reperibili.

In relazione al coinvolgimento di enti e associazioni nei procedimenti per reati qualificabili come episodi di *corporate violence*, si riscontra una problematica necessità di bilanciamento tra due esigenze contrapposte: mantenere la partecipazione di questi enti e associazioni nel processo penale (sia per rinforzare la loro posizione a supporto delle vittime, sia *ad adiuvandum* della pubblica accusa) e al tempo stesso evitarne una partecipazione quali parti civili quando la rivendicazione di un risarcimento del danno non possa essere in concreto giustificata e finisca per risolversi in un ostacolo (in termini di efficienza processuale e/o disponibilità di risorse per il risarcimento) rispetto al soddisfacimento delle aspettative delle vittime stesse.

## 5. **Informazione e protezione per le vittime che partecipano al procedimento penale: rinvio**

### Cons. 21 Dir.

Le autorità competenti [...] dovrebbero fornire informazioni e consigli con modalità quanto più possibile diversificate e in modo da assicurarne la comprensione da parte della vittima. Tali informazioni e consigli dovrebbero essere forniti in un linguaggio semplice e accessibile. [...]

### Cons. 26 Dir.

Le informazioni fornite dovrebbero essere sufficientemente dettagliate per garantire che le vittime siano trattate in maniera rispettosa e per consentire loro di prendere decisioni consapevoli in merito alla loro partecipazione al procedimento. [...]

Cons. 58 Dir.

È opportuno che le vittime identificate come vulnerabili al rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni possano godere di adeguate misure di protezione durante il procedimento penale [...]

→ Si vedano inoltre i **cons. 21, 26, 29 e 52-56** e gli **artt. 6, 18-21 e 23 Dir.**

Come è noto, ai sensi della Direttiva il **diritto della vittima all'informazione** e quello alla **protezione da vittimizzazione secondaria o ripetuta, intimidazioni e ritorsioni**, nonché alla **protezione della vita privata** informano ogni fase del procedimento penale, espandendosi altresì in una qualche misura anche al di fuori del perimetro di questo (v. in particolare *supra*, § III).

VIII.5.1. L'inquirente e il giudice dovranno attentamente valutare l'adempimento degli obblighi di informazione a favore della vittima e promuovere misure che consentano alla stessa di agire informata anche rispetto a quelle facoltà per l'esercizio delle quali è necessaria una richiesta formale o un'attivazione della vittima di propria iniziativa. Nell'esercizio dei diritti e delle facoltà di partecipazione al procedimento penale, dovrà essere tenuta in considerazione la particolare vulnerabilità delle vittime di *corporate violence*, adottando misure di protezione adeguate per evitare il rischio di vittimizzazione secondaria e ripetuta, intimidazioni e ritorsioni, o lesioni alla *privacy*. A questi fini, si dovrebbe considerare ad esempio di:

- ▶ **favorire il dialogo con le associazioni di vittime, soprattutto in assenza di un difensore tecnico**, al fine di garantire la **maggiore diffusione possibile** delle **informazioni** circa le possibilità e le modalità di **accesso al procedimento penale**;
- ▶ **informare specificamente la vittima circa le facoltà che può esercitare solo dietro richiesta o per le quali dovrebbe informarsi** di propria iniziativa (ad esempio, le **date delle udienze**, per le quali non vi è alcun obbligo di avviso); a tal fine, è **utile individuare un interlocutore** che, **in caso di assenza del difensore**, può essere costituito dalle **associazioni di vittime** (v. anche *supra*, § IV);
- ▶ **informare specificamente la vittima della necessità di dichiarare o eleggere domicilio** onde avere **certezza di ricevere le comunicazioni** dovute per legge e per esercitare alcuni diritti;

- ▶ in sede di **indagine**, individuare **idonee misure di protezione della vittima vulnerabile** (v. *supra*, § II), in particolare in relazione alla sua **partecipazione attiva alla raccolta delle prove e agli accertamenti tecnici non ripetibili** (v. *supra*, § V);
- ▶ in sede di **dibattimento**, individuare **idonee misure di protezione della vittima vulnerabile** (v. *supra*, § II) che si sottopone ad **esame** (v. *supra*, §§ V e VI), quale può essere, ad **esempio**, la **conduzione** dell'esame della stessa a opera del **Presidente** del collegio giudicante.

In aggiunta a queste indicazioni generali e meramente esemplificative, si rinvia il lettore, ai fini di una più puntuale trattazione sistematica delle questioni attinenti ai **diritti di informazione e protezione**, rispettivamente, al § IV in tema di informazione e ai §§ V e VI in tema di vulnerabilità e protezione e, specificamente, protezione della vita privata e della riservatezza.

## 6. Coinvolgimento della corporation nel procedimento penale e misure riparatorie

Nel contesto dei reati di *corporate violence*, per intuibili ragioni legate alle caratteristiche di questi fatti di reato, risulta determinante, rispetto al soddisfacimento di alcuni bisogni e diritti della vittima, che si instauri un rapporto o un canale di dialogo tra la vittima stessa e la *corporation* i cui dipendenti o amministratori risultino indagati per fatti commessi nell'interesse dell'ente, o che risulti essa stessa indagata.

L'instaurazione di un rapporto di qualche tipo tra vittime di *corporate crime* e *corporation* di cui si assume il coinvolgimento nel reato è principalmente legata all'**esigenza**, spesso avvertita da entrambe le parti, di raggiungere un **accordo** in merito al **risarcimento dei danni** (su cui v. anche *supra*, § VIII.2, e *infra*, § VIII.7), ma non solo. Tale rapporto può avere ovviamente luogo **in momenti e spazi diversi dal procedimento penale**, su spontanea iniziativa delle parti. Dati emersi dalla ricerca empirica segnalano, **tuttavia**, che la **vittima** è in una **posizione di inferiorità** nella gestione di questo rapporto con la *corporation*, **soprattutto** quando la 'negoiazione' con questa avviene **al di fuori dei meccanismi processuali e/o senza l'intermediazione' o il supporto di una associazione** o di un legale esperto. Quando la vittima si trova a essere

sola, difficilmente potrà assumere qualunque forma di iniziativa, **non riuscendo spesso nemmeno a identificare gli interlocutori** all'interno della *corporation* con cui stabilire un contatto.

Da un altro punto di vista, è intuibile come, nella prospettiva della vittima dover **instaurare un dialogo con singoli imputati persone fisiche**, ciascuno rispetto alla propria posizione, sia in genere **assai più complesso** che non avere quale principale interlocutore soltanto la *corporation*.

Le vittime e gli operatori giudiziari che hanno condiviso le loro esperienze nell'ambito della ricerca empirica sopra citata segnalano che le ***corporations*** normalmente **si attivano nei confronti delle vittime quasi esclusivamente a fronte dell'apertura di un procedimento penale**, quando cioè si prospetta, a carico di soggetti aziendali o a carico della stessa *corporation*, un processo, in particolare se **potenzialmente implicante costituzione di parte civile di un alto numero di vittime**, associazioni o enti esponenziali nei confronti dei rappresentanti dell'impresa e la conseguente **citazione in giudizio dell'ente quale responsabile civile**.

In questa tipologia di procedimenti penali risulta **interesse** anche della ***corporation*** tentare di aprire, fin dalla fase delle indagini, una negoziazione con le vittime, sia per **evitare una futura costituzione di parte civile nei confronti dei propri rappresentanti**; sia in ottica di **tutela reputazionale**; sia, infine, per ragioni di **strategia difensiva**, legate per esempio all'ottenimento del patteggiamento della pena o altri **benefici premiali**.

È intuibile che, nella prospettiva della vittima, la **definizione anticipata della questione relativa al risarcimento** del danno **possa** venire a rappresentare l'**unica forma di compensazione, qualora** il processo penale si concluda con un non doversi procedere per **prescrizione** del reato (vedi *supra*, § VIII.1). Si richiama, a tal proposito, l'**art. 16 Dir.**, che ha quale obiettivo quello di garantire che la **vittima** ottenga una **decisione sul risarcimento del danno**, accompagnato dalla previsione che tale decisione sia assicurata in un «**ragionevole lasso di tempo**» e al **dovere** degli **Stati** di promuovere (co. 2) misure per **incoraggiare l'autore del reato a prestare risarcimento**.

Da tutti i punti di vista, la **propensione della *corporation* a risarcire e riparare i danni fin dalla fase delle indagini** andrebbe **incoraggiata**. A tal fine, alla luce anche della ricordata indicazione espressa all'art. 16 co. 2 Dir. (su cui v. più diffusamente *infra*), è il **legislatore** il soggetto maggiormente legittimato a **introdurre strumenti efficaci per il raggiungimento di questo obiettivo**. Tuttavia, pur nei limiti della **discrezionalità delle autorità inquirenti e giudicanti** e degli spazi consentiti dalle **norme in vigore** (che spesso non impongono, ma

nemmeno impediscono, iniziative in tal senso), vi sono molte **opportunità** affinché anche gli operatori di giustizia agiscano quali legittimi ‘mediatori del conflitto’, **favorendo**, da un lato, e **premiando**, dall’altro, forme di **risarcimento** e di **riparazione** delle conseguenze del reato.

È ad esempio altamente **probabile** che la **propensione dell’impresa a negoziare** con le vittime e a **riparare** le conseguenze del reato sia generalmente **maggiore** qualora **la corporation stessa sia indagata o imputata**. Possibilità che, come noto, è disciplinata dal **d.lgs. 231/2001**, che si applica a moltissimi *corporate crimes*, tra cui sostanzialmente tutti i **reati ambientali** e le **lesioni colpose gravi o gravissime per violazione delle norme in materia di sicurezza** (non, invece, allo stato, ai reati attinenti alla sicurezza alimentare o farmaceutica o, più in generale, ai reati comuni di omicidio e lesioni, che, in particolare nella forma colposa, sono frequentemente contestati in correlazione a violazioni ambientali o della sicurezza dei prodotti: v. anche *supra*, § II). **Tuttavia**, alla luce dei dati giudiziari, risulta che tale possibilità sia **scarsamente utilizzata dagli inquirenti, oppure lo sia ‘a macchia di leopardo’**, a seconda del luogo ove è instaurato il procedimento penale.

**L’obbligatorietà dell’iscrizione della notizia dell’illecito in capo all’ente** ai sensi del d.lgs. 231/2001 **non è espressamente prevista dal legislatore**, il che ha dato luogo a un **contrasto interpretativo tutt’ora vivo** sul punto. Preso comunque atto della (di fatto) non obbligatorietà della annotazione della notizia dell’illecito e della successiva contestazione alla *corporation* dell’illecito derivante da reato, non può trascurarsi come tale **contestazione favorirebbe** sia l’impiego di **strumenti di indagine più incisivi nei confronti della corporation**, sia l’**attivarsi in maniera proattiva dell’ente** collettivo per **far fronte alle conseguenze derivanti dall’illecito**. È noto, infatti, che il **d.lgs. 231/2001** adotta un modello punitivo interamente finalizzato all’obiettivo di **premiare** non soltanto l’ente che *ex ante* si sia dotato di sistemi di prevenzione del reato, ma **anche l’ente che ex post** – una volta indagato – **dimostri di voler rimediare e riparare**, sia sotto il profilo organizzativo sia sotto quello compensativo. La prospettiva preventiva e riparatoria rispondono, di fatto, alla medesima esigenza: **incentivare comportamenti proattivi dell’ente** attraverso l’offerta di una serie di **benefici premiali gradual**i, in funzione del *momento* e della *qualità* delle iniziative intraprese.

La **casistica giudiziaria** evidenzia, peraltro, che la *corporation* confida poco in un esito assolutorio in ragione della validità del proprio modello di prevenzione e che la **logica difensiva** è per lo più interessata ad accedere a tutti i **benefici premiali** offerti dal d.lgs. 231/2001 per **attenuare le conseguenze sanzionatorie**.



VIII.6.1. Le Procure della Repubblica di tutto il territorio nazionale dovrebbero acquisire maggiore consapevolezza della disciplina e dei meccanismi della responsabilità da reato dell'ente, ai sensi del d.lgs. 231/2001, al fine di valutare in modo sistematico, in tutti i casi di *corporate violence*, l'eventuale sussistenza dei presupposti per la contestazione dell'illecito all'ente. A tal fine occorre considerare:

- ▶ la promozione di **formazione interna** (tema su cui si veda anche *infra*, § XI) **sulla disciplina e sui meccanismi della responsabilità da reato dell'ente**, ai sensi del d.lgs. 231/2001, **in generale** e con specifico riferimento alla sua applicabilità a **reati rientranti nella tipologia della *corporate violence***;
- ▶ l'adozione di **protocolli o intese a livello distrettuale** che, laddove risultino il frutto della unanime e condivisa valutazione di tutti i Procuratori del distretto, potranno pervenire a **direttive di carattere generale distrettuale** anche in materia di **protocolli investigativi** e di **interpretazione condivisa di norme**.

In presenza della **contestazione ex d.lgs. 231/2001**, sono molti i mezzi e meccanismi previsti dallo stesso che consentono, da un lato, di **coinvolgere direttamente la *corporation* fin dalla fase delle indagini** (favorendo così l'instaurarsi di un rapporto con le vittime), dall'altro lato, di **incentivarne i comportamenti proattivi** a fronte della prospettazione di rischi patrimoniali e reputazionali immediati, discendenti dal fatto di essere indagata nel procedimento penale.

A tal fine, si richiamano in particolare alcuni istituti previsti dal d.lgs. 231/2001:

- le **misure cautelari interdittive** e la **misura cautelare reale del sequestro preventivo**;
- le **misure premiali sanzionatorie** subordinate al risarcimento e alla riparazione delle conseguenze del reato.

In particolare, si segnalano quali norme di riferimento in relazione all'**applicazione delle misure cautelari**:

a) l' **art. 45 co. 1 d.lgs. 231/2001**: «Quando sussistono gravi indizi per ritenere la sussistenza della responsabilità dell'ente per un illecito amministrativo dipendente da reato e vi sono fondati e specifici elementi che fanno ritenere concreto il pericolo che vengano commessi illeciti della stessa indole di quello per cui si procede, il pubblico ministero può

richiedere l'**applicazione quale misura cautelare di una delle sanzioni interdittive** previste dall'articolo 9, comma 2 [...];

**b) l'art. 45 co. 3 d.lgs. 231/2001:** «In luogo della misura cautelare interdittiva, il giudice può nominare un **commissario giudiziale** a norma dell'articolo 15 per un periodo pari alla durata della misura che sarebbe stata applicata».

In relazione al **sequestro preventivo** la norma di riferimento è l'**art. 53 d.lgs. 231/2001:** «Il giudice può disporre il sequestro delle cose di cui è consentita la confisca a norma dell'articolo 19. Si osservano le disposizioni di cui agli articoli 321, commi 3, 3-*bis* e 3-*ter*, 322, 322-*bis* e 323 del codice di procedura penale, in quanto applicabili».

Infine, in relazione all'importanza della **riparazione delle conseguenze del reato**, va ricordato l'**art. 17. lett. a) d.lgs. 231/2001:** «Ferma l'applicazione delle sanzioni pecuniarie, **le sanzioni interdittive non si applicano** quando, **prima della dichiarazione di apertura del dibattimento di primo grado, [...]** a) l'ente ha **risarcito integralmente il danno** e ha **eliminato le conseguenze dannose o pericolose del reato** ovvero si è comunque efficacemente adoperato in tal senso».

Le **misure cautelari** mirano a **neutralizzare l'attività economica dannosa o pericolosa con un effetto immediato**. Esse rappresentano, dunque, la concretizzazione di un rischio di conseguenze di varia natura per la *corporation* indagata (le misure cautelari interdittive incidono sulle **dinamiche operative della corporation**, il sequestro preventivo e quello conservativo previsto dall'art. 54 incidono sul **patrimonio** della stessa). La *corporation*, verosimilmente, non potrà esimersi dall'adottare una **strategia difensiva** che, nell'ottica del Decreto, dovrà tradursi anche nell'accesso alle misure riparatorie.

Infatti, nonostante gli effetti derivanti dall'aver attuato le misure riparatorie di cui all'art. 17 d.lgs. 231/2001 si abbiano *in via di principio* quando il giudice emette la sentenza di condanna, esiste nell'impianto del Decreto una **sinergia** tra la richiesta e l'applicazione della **misura cautelare** e le **misure riparatorie** che consente un **incentivo immediato**. Le misure interdittive non sono applicabili nei confronti dell'ente se prima del provvedimento cautelare questo realizzi tutte le **condotte riparatorie di cui all'art. 17**. Il **perfezionarsi di queste condotte sospende, inoltre, l'esecutività dell'ordinanza cautelare** per il tempo richiesto e concesso (ai sensi dell'art. 49 d.lgs. 231/2001) al fine di adempiervi prima che sia dichiarato aperto il dibattimento (art. 65); e determina in ogni caso la revoca della cautela, anche se ciò avviene durante il giudizio.

Per quanto riguarda invece il ‘grimaldello’ offerto ex se dall’**art. 17 d.lgs. 231/2001**, esso opera **nel tempo che precede il dibattimento**. Se è pur vero che l’art. 78 consente di ottenere alcuni benefici (conversione della sanzione amministrativa interdittiva in sanzione pecuniaria) anche qualora le condotte siano adottate tardivamente, **l’esenzione dalle sanzioni interdittive** è accessibile **solo se ci si attiva in fase di indagine** (qualora la *corporation* sappia di essere indagata) **oppure in fase predibattimentale**. Vi è comunque margine per il **giudice del dibattimento** (v. **art. 65 d.lgs. 231/2001**), prima della dichiarazione di apertura, di **sospendere il processo** se **l’ente chiede di realizzare le condotte riparatorie** ex art. 17, purché dimostri di essere stato impossibilitato ad effettuarle prima e purché versi una somma a titolo di cauzione. Gli effetti della norma, come detto, si esplicheranno in questo caso solo in sede di condanna.

L’instaurarsi di un dialogo tra vittima e *corporation* è certamente favorito dalla **lett. a)** dell’**art. 17 d.lgs. 231/2001**, che **impone di fatto** all’ente di **contattare e negoziare con le vittime** quanto meno **ai fini del risarcimento del danno**. È cioè necessaria una **condotta comunicativa con il danneggiato**, il quale deve poter ponderare se aderire all’offerta o avanzare motivazioni serie e oggettive per rifiutarla. L’accettazione da parte del danneggiato è, infatti, l’unica prova del fatto che il danno sia stato effettivamente e integralmente risarcito (Cass. Sez. II, 9 febbraio 2016, n. 11209). E per poter ‘dialogare’ con le vittime, **l’ente** deve impegnarsi **«ad individuare le persone offese e danneggiate dal reato, a prescindere dalla costituzione di parte civile nel giudizio, se instaurato»** (Cass. Sez. II, 8 gennaio 2014, n. 326).

L’art. 17 non incentiva comunque solo iniziative in favore dell’integrale ed effettivo risarcimento del danno, poiché la lett. a) richiede che siano **anche eliminate le conseguenze dannose o pericolose del reato**. Non dunque le conseguenze dell’illecito dell’ente, ma proprio del reato contestato. Viceversa, la **citazione della corporation** quale mero **responsabile civile** da parte della vittima che si è costituita parte civile garantisce una **decisione** circoscritta al **mero risarcimento del danno**. Decisione che, peraltro, si avrà **soltanto all’esito del procedimento penale, sempre che esso non si concluda** con una sentenza di **patteggiamento** (su cui v. anche *infra*) o di non doversi procedere per **prescrizione** del reato.

È intuibile, quindi, sia il *favor* rispetto a questo percorso generato dalla contestazione della responsabilità ex d.lgs. 231/2001, sia il ruolo che, attraverso questa, le Procure possono rivestire già nella fase dell’individuazione delle persone offese e della ‘misurazione’ delle conseguenze del reato contestato.

Si evidenzia, infine, l'estrema rilevanza del **controllo giudiziale** dei **risultati della negoziazione** che è di fatto richiesto dall'**art. 17 d.lgs. 231/2001**, in particolare rispetto all'**effettivo e integrale risarcimento del danno**. Questo controllo consente di esercitare il citato ruolo di 'mediatore del conflitto' in capo all'inquirente, ma soprattutto favorisce una **verifica più stringente** degli esiti della negoziazione, che può anche **tenere conto** delle **specifiche vulnerabilità** di questa categoria di vittime, da un lato, e di eventuali **tentativi di compensazione offerti dalla corporation** ingiustamente rifiutati dalla vittima, dall'altro.

VIII.6.2. Le Procure della Repubblica e i giudicanti, ciascuno per le proprie competenze, dovrebbero utilizzare nel modo più efficace ed estensivo possibile le potenzialità offerte dal d.lgs. 231/2001 in materia di responsabilità da reato degli enti, in particolare considerando:

- ▶ **una valutazione sistematica**, in tutti i casi di *corporate violence*, dell'impiego dei **mezzi di indagine** e dei **meccanismi premiali** legati alla **responsabilità da reato dell'ente** ai sensi del d.lgs. 231/2001, nella prospettiva di:
  - **valutare** la sussistenza dei presupposti per richiedere le **misure cautelari interdittive** o il **sequestro preventivo** (artt. 45 e 53 d.lgs. 231/2001), **anche al fine di impedire il prosieguo dell'attività delittuosa**;
  - **favorire**, fin dalla fase delle indagini, l'instaurarsi di un **rapporto tra vittima e corporation**, consentendo così azioni o tentativi volti a **risarcire le vittime**;
  - **valorizzare le azioni o i tentativi promossi dalla corporation** di **risarcire** le vittime e **riparare** le conseguenze del reato attraverso la concessione dei **benefici premiali** previsti dall'art. 17 d.lgs. 231/2001;
  - **favorire l'integrale risarcimento del danno** al fine di **evitare** la **costituzione di parte civile** nei confronti dei rappresentanti dell'ente di un **numero eccessivamente elevato** e difficilmente gestibile di persone fisiche o giuridiche (v. *supra*);
  - **estendere** l'ambito delle **azioni di compensazione dell'offesa** anche a **misure diverse dal risarcimento** del danno (eliminazione delle conseguenze dannose o pericolose del reato), ai sensi dell'art. 17 d.lgs. 231/2001;

- ▶ per le *corporation* indagate ai sensi del d.lgs. 231/2001, **valutare di subordinare la concessione all'ente del patteggiamento** al requisito dell'**integrale risarcimento del danno** o al fatto che la *corporation* si sia **utilmente ed efficacemente adoperata** in tal senso (in caso di offerta rifiutata dalla vittima senza giustificato motivo);
- ▶ **qualora la *corporation* indagata decida di accedere alle misure riparatorie** di cui all'**art. 17 d.lgs. 231/2001**, **verificare** che le **condizioni del risarcimento integrale del danno** e della **eliminazione delle conseguenze dannose o pericolose** del reato siano **effettivamente realizzate**, tenuto conto della posizione di particolare vulnerabilità che in linea generale connota le vittime di *corporate violence* (v. *supra*, § II).

**Qualora non sia possibile contestare il Decreto**, occorre anzitutto **valutare** la possibile operatività di **altri strumenti premiali** o di altra natura messi a disposizione dall'ordinamento per alcune categorie di reato che tipicamente rientrano nella nozione di *corporate violence*. In materia di **reati ambientali**, ad esempio, opera la nuova circostanza attenuante a effetto speciale del **ravvedimento operoso (art. 452 *decies* c.p.)**, la quale prevede **considerevoli sconti di pena**, laddove il reo, tra l'altro:

- «si adopera per **evitare** che l'attività delittuosa venga portata a **conseguenze ulteriori**»;
- «prima della dichiarazione di apertura del dibattimento di primo grado, provvede concretamente alla **messa in sicurezza**, alla **bonifica** e, ove possibile, al **ripristino** dello stato dei luoghi».

Per quanto si tratti di un ravvedimento applicabile alla persona fisica, è indubbio che nel contesto della *corporate violence* è solo l'ente che può concretamente realizzare le condotte richieste.

Sempre nel settore dei **reati ambientali**, il **Codice dell'ambiente** (d.lgs. 152/2006) **subordina** la possibilità di ottenere **sconti di pena** o la **sospensione condizionale** della stessa, quando non addirittura l'**estinzione del reato**, a condotte volte a **risarcire** e a **riparare il danno arrecato all'ambiente** (artt. 139, 140 e 257 d.lgs. 152/2006). Anche se in taluni casi si parla soltanto di interventi di messa in sicurezza, bonifica e ripristino, nulla esclude che si possa **valorizzare** un serio e **proficuo confronto tra la *corporation* e le comunità colpite** (vittime potenziali o future in caso di permanenza del danno), favorevolmente valutato dal giudice proprio al fine di riconoscere i benefici predetti (per gli altri strumenti normativi che possono essere impiegati per favorire l'instaurarsi di un percorso riparativo vedi *infra*, § IX).

VIII.6.3. Qualora non sia possibile attivare i meccanismi di cui al d.lgs. 231/2001, occorrerà utilizzare e valorizzare le misure premiali previste dall'ordinamento e/o gli spazi di discrezionalità consentiti dalle norme vigenti per incoraggiare la *corporation* a prestare adeguato risarcimento dei danni alla vittima e a rimediare le conseguenze del reato, valorizzando le iniziative adottate dall'ente, anche laddove si sia solo utilmente attivato in tal senso e l'insuccesso dell'iniziativa sia dovuto al rifiuto o alla mancata collaborazione della vittima. A tal fine, si consideri:

- ▶ di **utilizzare** in materia di **reati ambientali** i **meccanismi premiali** della **integrale riparazione del danno** (art. 140 d.lgs. 152/2006) o del **ravvedimento operoso** (art. 452 *decies* c.p.);
- ▶ nell'ambito della **discrezionalità dell'autorità inquirente e giudicante** e in sede di scrutinio di congruità (ai sensi dell'art. 133 c.p.) della pena richiesta, di **valutare sempre** – eventualmente anche negando l'accordo o rigettando la richiesta – il **requisito dell'integrale risarcimento del danno da parte dell'autore del reato o del responsabile civile** ai fini della concessione del **patteggiamento** nei confronti dei **rappresentanti della corporation** richiedenti (v. anche *infra*, § VIII.7);
- ▶ di **valorizzare**, ai fini della **concessione del patteggiamento nei confronti dei rappresentanti della corporation** richiedenti, il fatto che l'**ente si sia utilmente ed efficacemente adoperato** nel senso di cui sopra (offerta rifiutata dalla vittima senza giustificato motivo);
- ▶ di **valutare** con attenzione e **secondo le peculiarità del caso** la **possibilità di subordinare** (ancorché tale opzione sia prevista solo come una facoltà: v. art. 165 co. 1 c.p.) il beneficio della **sospensione condizionale della pena** nei confronti dei **rappresentanti della corporation** al **risarcimento del danno** da parte dell'autore del reato o del responsabile civile;
- ▶ di **utilizzare** gli **spazi** concessi dalle norme vigenti per **valorizzare e premiare condotte riparatorie** (vedi *infra*, § IX).

È per altro evidente la **delicatezza** della **valorizzazione della premialità** nei confronti della *corporation* **al di fuori di un contesto normativo ben delimitato**. Occorre, inoltre, **tenere in considerazione** la posizione di

**vulnerabilità** che per lo più connota le **vittime di corporate violence**, che si manifesta con **maggiore intensità** nel contesto di **negoziazioni che avvengono al di fuori del contesto giudiziario** e **senza** la necessità di una **puntuale verifica da parte dalla magistratura** (v. *supra*, § II).

Anche per questo, un **percorso che tutela maggiormente le vittime** e che, pertanto, **andrebbe incentivato** è l'**accesso a programmi di giustizia riparativa**, laddove disponibili (v. in particolare *infra*, § IX).

## 7. Risarcimento del danno e patteggiamento

### Art. 16 Dir.

1. Gli Stati membri garantiscono alla vittima il diritto di ottenere una decisione in merito al risarcimento da parte dell'autore del reato nell'ambito del procedimento penale entro un ragionevole lasso di tempo, tranne qualora il diritto nazionale preveda che tale decisione sia adottata nell'ambito di un altro procedimento giudiziario.
2. Gli Stati membri promuovono misure per incoraggiare l'autore del reato a prestare adeguato risarcimento alla vittima.

Il diritto nazionale italiano prevede, come noto, la **possibilità** per la **vittima danneggiata** di **costituirsì parte civile nel procedimento penale** (artt. 74 e ss. c.p.p.).

**Nel contesto del procedimento penale, il diritto di ottenere una decisione in merito al risarcimento dei danni non può dirsi garantito, o è addirittura negato alla vittima, nel caso di chiusura del procedimento penale attraverso l'applicazione della pena su richiesta delle parti (c.d. patteggiamento, artt. 444 e ss. c.p.p.).**

La **vittima** appare come il **soggetto maggiormente sacrificato dalla condanna patteggiata**. Infatti, il patteggiamento **esclude** che il danneggiato possa **esercitare, o proseguire, nel processo penale l'azione civile** per ottenere il risarcimento del danno nei confronti del soggetto che ha patteggiato. La sentenza di patteggiamento, inoltre, **non comporta pronuncia sulla domanda di risarcimento** nemmeno in caso di costituzione di parte civile; infatti, il **giudice**, vista la non necessità di accordo del danneggiato sul rito, non può valutare la domanda di risarcimento danni, ma **solamente liquidare le spese per la costituzione**. La **sentenza di patteggiamento**, infine, **non ha, nei procedimenti civili e amministrativi, la stessa efficacia di un provvedimento di condanna emesso a seguito di dibattimento**. Le osservazioni valgono sia

rispetto alla o alle **persone fisiche** indagate, **sia** rispetto alla **corporation** indagata (v. anche *supra*), la quale a sua volta può accedere, ai sensi dell'art. 63 del d.lgs. 231/2001, a questo rito alternativo.

Nel caso in cui la pena sia patteggiata, la vittima potrà comunque accedere alla giustizia civile per il risarcimento del danno. Tuttavia, il **ricorso alla giustizia civile** nel contesto nazionale è una opzione alternativa in tutti i casi in cui vi sia anche un procedimento penale per i medesimi fatti causativi del danno. Nel caso del patteggiamento, la **scelta** in favore della giustizia civile è **forzata**.

L'obiettivo della **Direttiva (art. 16)** è quello di garantire che la **vittima ottenga una decisione sul risarcimento dei danni**, con un evidente *favor* per una decisione **nel contesto penalistico**, quando prevista come opzione, che si accompagna anche alla previsione che la decisione sia assicurata **in «un ragionevole lasso di tempo»** e al dovere degli Stati di promuovere (co. 2) misure per **incoraggiare l'autore del reato a prestare risarcimento**.

Il fatto **che la decisione sul risarcimento non possa aversi in sede penale** per la mera circostanza casuale della sentenza di **patteggiamento** si presenta come, quanto meno, **un ridimensionamento di questo diritto** della vittima e provoca una situazione di **disparità di trattamento** rispetto a quelle vittime che invece possono pienamente esercitare il loro diritto di ottenere una decisione in sede penale. **Inoltre**, nel caso di **patteggiamento allargato**, la **vittima già costituita** parte civile avrà **inutilmente impiegato nel processo penale tempo, denaro ed energie**, senza ottenere alcun vantaggio certo. Nel giudizio civile, la vittima non avrà **nemmeno** il vantaggio dell'**autorità di giudicato extrapenale**, potendo la sentenza di patteggiamento costituire soltanto oggetto di valutazione da parte del giudice civile, alla stregua di ogni altro possibile elemento probatorio. **Complica ulteriormente** la posizione della vittima la circostanza, del tutto **verosimile in processi per corporate violence**, che **solo uno o alcuni imputati abbiano patteggiato la pena**, mentre **altri abbiano proseguito nel giudizio**, con la conseguenza che **la vittima dovrà agire in sede penale verso taluni e in sede civile verso altri**.

A ciò si aggiunge un'**ulteriore problematica**. Infatti, come emerso dalla ricerca empirica condotta nel quadro del progetto (v. in particolare ***I bisogni delle vittime di corporate violence: risultati della ricerca empirica in Italia***, luglio 2017, e ***Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence***: <http://www.victimsandcorporations.eu/publications/>), vittime e operatori assai spesso ritengono quella della condanna in **sede civile** una opzione **impercorsibile**, per la **lunghezza dei procedimenti** e la **non sostenibilità dei costi**, legati prevalentemente alla quasi costante necessità, per questa tipologia di



reati, di soddisfare gli oneri probatori attraverso **prove di natura tecnica e scientifica oltremodo complesse**, cui soltanto la magistratura inquirente potrebbe avere accesso. La conseguenza è che il diritto sancito dalla Direttiva può risultare – e di fatto spesso risulta – di fatto negato per le vittime di *corporate violence*.

**VIII.7.1.** Le Procure della Repubblica e il giudice dovranno attentamente valutare le possibilità di operare scelte che consentano alla vittima di ottenere una decisione in merito al risarcimento del danno in sede penale, quando essa è resa impossibile per ragioni che dipendono unicamente dall'accesso da parte di uno o più imputati al rito speciale del patteggiamento, considerando, in modo particolare:

- ▶ nell'ambito della **discrezionalità dell'autorità inquirente e giudicante** e in sede di **scrutinio di congruità della pena richiesta**, ai sensi dell'art. 133 c.p., di **valutare** sempre in maniera attenta – eventualmente anche negando l'accordo o rigettando la richiesta – il requisito dell'**integrale risarcimento del danno da parte dell'autore del reato** o il fatto che l'autore si sia **utilmente ed efficacemente adoperato** in tal senso (in caso di offerta rifiutata dalla vittima senza giustificato motivo);
- ▶ di **valutare** con attenzione e secondo le **peculiarità del caso** la **possibilità di subordinare**, ancorché tale opzione sia prevista solo come una facoltà (art. 165 c.p.), il beneficio della **sospensione condizionale della pena al risarcimento del danno** da parte dell'autore del reato, *ut supra*;
- ▶ quale **buona pratica**, di convocare all'**udienza di patteggiamento**, nella fase delle indagini preliminari, la **persona offesa** del reato;
- ▶ di **dare specifico avviso alle persone offese della sentenza di patteggiamento** (v. anche *supra*, § IV).

## IX.

### GIUSTIZIA RIPARATIVA\*

#### Art. 2 Dir.

1. Ai fini della presente direttiva si intende per:

[...]

d) «giustizia riparativa»: qualsiasi procedimento che permette alla vittima e all'autore del reato di partecipare attivamente, se vi acconsentono liberamente, alla risoluzione delle questioni risultanti dal reato con l'aiuto di un terzo imparziale.

#### Art. 12 Dir.

1. Gli Stati membri adottano misure che garantiscono la protezione delle vittime dalla vittimizzazione secondaria e ripetuta, dall'intimidazione e dalle ritorsioni, applicabili in caso di ricorso a eventuali servizi di giustizia riparativa. Siffatte misure assicurano che una vittima che sceglie di partecipare a procedimenti di giustizia riparativa abbia accesso a servizi di giustizia riparativa sicuri e competenti, e almeno alle seguenti condizioni:

- a) si ricorre ai servizi di giustizia riparativa soltanto se sono nell'interesse della vittima, in base ad eventuali considerazioni di sicurezza, e se sono basati sul suo consenso libero e informato, che può essere revocato in qualsiasi momento;
- b) prima di acconsentire a partecipare al procedimento di giustizia riparativa, la vittima riceve informazioni complete e obiettive in merito al procedimento stesso e al suo potenziale esito, così come informazioni sulle modalità di controllo dell'esecuzione di un eventuale accordo;
- c) l'autore del reato ha riconosciuto i fatti essenziali del caso;
- d) ogni accordo è raggiunto volontariamente e può essere preso in considerazione in ogni eventuale procedimento penale ulteriore;
- e) le discussioni non pubbliche che hanno luogo nell'ambito di procedimenti di giustizia riparativa sono riservate e possono essere successivamente divulgate solo con l'accordo delle parti o se lo richiede il diritto nazionale per preminenti motivi di interesse pubblico.

2. Gli Stati membri facilitano il rinvio dei casi, se opportuno, ai servizi di giustizia riparativa, anche stabilendo procedure o orientamenti relativi alle condizioni di tale rinvio.

#### Cons. 46 Dir.

I servizi di giustizia riparativa, fra cui ad esempio la mediazione vittima-autore del reato, il dialogo esteso ai gruppi parentali e i consigli commisurativi, possono essere di grande beneficio per le vittime, ma richiedono garanzie volte ad evitare la vittimizzazione secondaria e ripetuta, l'intimidazione e le ritorsioni. È opportuno quindi che questi servizi pongano al centro gli interessi e le esigenze della vittima, la riparazione del danno da essa subito e l'evitare ulteriori danni. Nell'affidare un caso ai servizi di giustizia riparativa e nello svolgere un processo di questo genere, è opportuno tenere conto di fattori come la natura e la gravità del reato, il livello del trauma causato, la violazione ripetuta dell'integrità fisica, sessuale o psicologica della vittima, gli squilibri di potere, l'età, la maturità o la capacità intellettuale della vittima, che potrebbero limitarne o ridurne la facoltà di prendere decisioni consapevoli o che potrebbero pregiudicare l'esito positivo del procedimento seguito. In linea di principio i processi di giustizia riparativa dovrebbero svolgersi in modo riservato, salvo che non sia concordato diversamente dalle parti o richiesto dal diritto nazionale per preminenti motivi di interesse pubblico. Situazioni quali minacce o qualsiasi altra forma di violenza perpetrate in questo contesto potranno essere ritenute meritevoli di essere segnalate nell'interesse generale.

\* Redazione a cura di CLAUDIA MAZZUCATO

**Art. 90 bis c.p.p.**

Alla persona offesa, sin dal primo contatto con l'autorità procedente, vengono fornite, in una lingua a lei comprensibile, informazioni in merito:

[...]

n) alla possibilità che il procedimento sia definito con remissione di querela di cui all'articolo 152 del codice penale, ove possibile, o attraverso la mediazione; [...].

### **1. La giustizia riparativa: strumento promettente dall'applicazione ancora limitata**

La **definizione di giustizia riparativa** contenuta nella **Direttiva 2012/29/UE (art. 2 co. 1, lett. d)** ricalca quella, più ampia e articolata, presente nei **Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters delle Nazioni Unite** (Consiglio Economico e Sociale, Risoluzione n. 12/2002)<sup>2</sup>, dove se ne precisano la **natura partecipativa e volontaria** e la possibilità di coinvolgere, oltre all'«**autore del reato**» e alla «**vittima**», anche, se opportuno, «**membri della comunità**», con lo scopo di addivenire a un **risultato riparativo (restorative outcome)** che includa, a sua volta, risposte quali la riparazione delle conseguenze del reato, le restituzioni, i lavori socialmente utili e altri accordi aventi lo scopo della **responsabilizzazione** e del **reinserimento (reintegration)** sia dell'autore del reato, sia della vittima.

Poste le condizioni generali di svolgimento dei programmi di giustizia riparativa – appunto libertà di partecipazione, volontarietà, gratuità –, l'**art. 12 della Direttiva** puntualizza ulteriormente una serie di **garanzie** dal taglio marcatamente vittimocentrico, la più problematica delle quali è

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<sup>2</sup> «1. “Restorative justice programme” means any programme that uses restorative processes and seeks to achieve restorative outcomes. 2. “Restorative process” means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles. 3. “Restorative outcome” means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender. 4. “Parties” means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process. 5. “Facilitator” means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process».

l'**esclusività dell'interesse della vittima** nel ricorso alla giustizia riparativa. Nondimeno, la **Direttiva** (art. 12 co. 2) **promuove la giustizia riparativa**, in linea con le indicazioni provenienti dalle Nazioni Unite e dal Consiglio d'Europa, incoraggiandone l'utilizzo, che deve essere «facilitato dagli Stati membri».

La **giustizia riparativa**, come è noto, **non è ancora disciplinata nell'ordinamento italiano**. Accenni alla giustizia riparativa – e particolarmente alla mediazione reo-vittima – compaiono in modo disorganico e rapsodico in alcune disposizioni in seno alla disciplina del **procedimento penale a carico di imputati minorenni**, della **competenza penale del giudice di pace**, della **messa alla prova per adulti**. Altri spazi applicativi si rinvencono, per esempio, nella **sospensione condizionale della pena**, nelle **misure alternative alla detenzione** e, in generale, in tutti gli **istituti che prevedono effetti di mitigazione della pena o di estinzione del reato** a seguito di condotte di **riparazione delle conseguenze del reato** stesso, **incluse le ipotesi previste dal d.lgs. 231/2001** (v. anche *supra*, § VIII). La prassi operativa ha spesso erroneamente finito per appiattare la giustizia riparativa sulle varie forme – invero *sanzionatorie* o a contenuto *prescrittivo* – del lavoro di pubblica utilità previsto in diverse fonti normative (codice della strada, TU in materia di stupefacenti, ecc.). Un **cenno piuttosto criptico** è oggi presente anche nell'**art. 90 bis c.p.p.** dedicato alle **informazioni alla persona offesa** (su cui v. più diffusamente *supra*, § IV): ai sensi della **lett. p)** alla persona offesa devono essere fornite, fra l'altro, informazioni in merito alla «possibilità che il procedimento sia definito [...] attraverso la **mediazione**».

Le **lacune normative** dell'ordinamento nazionale e l'ancora **scarsa sensibilizzazione della magistratura, della polizia giudiziaria, dell'avvocatura, dei servizi sociali e della cittadinanza** incidono significativamente sulla diffusione della giustizia riparativa in Italia, di cui si parla molto ma che si pratica ancora poco.

A ciò si aggiunga il fatto che i **centri di giustizia riparativa** rispettosi degli standard internazionali, istituiti da enti locali o soggetti privati senza finalità di lucro mediante convenzioni e protocolli d'intesa con il Ministero della Giustizia sotto il patrocinio di taluni uffici giudiziari, **sono disomogeneamente distribuiti sul territorio italiano**, rendendo oltremodo **difficile, e dunque scarso, l'accesso alla giustizia riparativa da parte dei soggetti interessati**.

La Direttiva 2012/29/UE promuove la giustizia riparativa, pur vincolandola a garanzie particolari in favore della (sola) «vittima». L'accesso ai programmi e l'effettiva diffusione delle pratiche di giustizia riparativa in Italia sono però ostacolati dalla mancanza di una disciplina specifica e dall'ancora scarsa sensibilizzazione degli operatori e dei cittadini.

Le difficoltà appena ricordate non devono dissuadere dal promuovere, in quanto possibile, il **ricorso alla giustizia riparativa**: come previsto dai citati *Basic Principles* ONU, i programmi dovrebbero essere resi disponibili **in ogni stato e grado del procedimento** (art. 6), potenzialmente senza alcun filtro rispetto al tipo di reato, sussistendo il consenso delle parti. La Commissione per l'Efficienza della Giustizia del Consiglio d'Europa (CEPEJ, *Guidelines for a better implementation of the existing Recommendation concerning mediation in penal matters*, CEPEJ(2007)13, Strasburgo, 2007) ha poi sottolineato la decisività della sensibilizzazione della magistratura e dell'avvocatura (e in generale di tutti gli operatori del settore) e l'importanza del loro coinvolgimento a sostegno delle pratiche riparative.

IX.1. Come affermato nei *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* delle Nazioni Unite, i programmi di giustizia riparativa dovrebbero essere resi disponibili in ogni stato e grado del procedimento, potenzialmente per tutti i reati.

## 2. La giustizia riparativa e la corporate violence

Il preambolo ai *Basic Principles* delle Nazioni Unite e il relativo manuale operativo (UNODC, *Handbook on Restorative Justice Programmes*, Vienna, 2006, [https://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf)) sottolineano l'importanza della giustizia riparativa, i cui principali **obiettivi** sono così riassunti:

- la **prevenzione dei reati** e la promozione della sicurezza sociale;
- il **sostegno alle vittime e la loro partecipazione** (*support victims, give them a voice, enable their participation and address their needs*);

- l'assunzione di **responsabilità**, in special modo da parte degli autori di reato (*encouraging all concerned parties to take responsibility, particularly by the offenders*);
- la ricerca di **risultati riparativi orientati al futuro** (*identify restorative, forward-looking outcomes*);
- la riparazione delle **relazioni** lese dal reato (*repair damaged relationships*);
- la **risocializzazione** dei colpevoli.

Si tratta di obiettivi di sicuro rilievo anche nel campo della **criminalità economica**, dove proprio il **riconoscimento delle vittime**, spesso **invisibili e diffuse**, e l'**orientamento al futuro dei risultati riparativi** possono rivelarsi cruciali nell'**ovviare agli ostacoli all'accesso alla giustizia ordinaria da parte di queste vittime** e nell'**attenuare il sentimento di insoddisfazione** di queste ultime, sentimento non di rado legato all'esperienza frustrante e negativa della partecipazione al procedimento penale (e della vittimizzazione secondaria che ne può scaturire: v. *supra*, §§ II e VIII): si pensi, per esempio, all'importanza delle attività di bonifica eseguite volontariamente da una *corporation* all'esito di un programma di giustizia riparativa che abbia coinvolto nel procedimento decisionale le persone offese e la comunità.

**Il potenziale della giustizia riparativa nei casi di *corporate crime* e *corporate violence* è ancora largamente inesplorato.**

Il **potenziale della giustizia riparativa** nei casi di *corporate crime* e *corporate violence* è ancora **largamente inesplorato**, anche se **talune esperienze straniere** sono **estremamente promettenti** (ad es. le esperienze statunitensi e canadesi di giustizia riparativa in ambito ambientale). È opportuno **stimolare l'avvio di pratiche di *restorative justice*** anche nei settori anzidetti i quali, pur filtrati dalla prospettiva penalistica, mettono di fronte a **fatti di particolare complessità e lesività** da cui nascono **controversie** assolutamente atipiche, che **non sempre possono trovare risposta nel procedimento penale**.

L'applicazione di programmi di giustizia riparativa esige in questi contesti **declinazioni *ad hoc***, dovendosi a maggior ragione garantire (e conservare) le caratteristiche essenziali e salienti che connotano questi strumenti.

**IX.2. Il ricorso alla giustizia riparativa in caso di reati d'impresa e, nella specie, di *corporate violence* deve essere incoraggiato, seguendo modelli di intervento adattati alle specificità del contesto e nel rispetto di tutte le necessarie garanzie e cautele, come di seguito elencate:**

- ▶ i **programmi di giustizia riparativa** devono svolgersi nel **rispetto delle garanzie a tutela delle vittime** prescritte dalla **Direttiva 2012/29/UE (art. 12)**, assicurando:
  - la **protezione** dalla **vittimizzazione secondaria e ripetuta**, dalle **intimidazioni** e dalle **ritorsioni** (v. *supra* § V.5);
  - la **considerazione** dell'**interesse della vittima** e della sua **sicurezza**;
  - l'acquisizione del **consenso libero e informato della vittima**, revocabile in qualsiasi momento;
  - il **riconoscimento dei «fatti essenziali del caso»** da parte dell'**autore del reato** (senza che ciò implichi l'assunzione di responsabilità o la confessione);
  - la **riservatezza** dei **contenuti del programma** di giustizia riparativa e delle **dichiarazioni** rese dai partecipanti nel corso del programma, salvo che per accordo tra le parti, obbligo giuridico o interesse pubblico;
- ▶ i **programmi di giustizia riparativa** devono svolgersi nel rispetto dei **Principi Base delle Nazioni Unite**;
- ▶ i **programmi di giustizia riparativa** devono essere condotti (**solo**) da **mediatori** dotati di un **alto livello di competenza** (art. 20, *Basic Principles* ONU, art. 12 Dir.) e della **necessaria indipendenza e imparzialità** (artt. 1, 17-18, *Basic Principles* ONU), anche reperiti nella comunità e portatori di una «buona conoscenza delle culture locali e comunitarie» (art. 17 *Basic Principles* ONU);
- ▶ i **casi** devono essere **segnalati esclusivamente a centri di giustizia riparativa pubblici o privati con convenzionamento pubblico**. La **segnalazione** deve avvenire **preferibilmente da parte dell'autorità giudiziaria** procedente. **Altri soggetti segnalanti** possono essere, anche in ragione dell'eventuale tenuità del fatto, la **polizia giudiziaria**, il **difensore**, eventuali **organi pubblici di controllo** (ad es. in materia ambientale e di sicurezza sul lavoro), le **parti** stesse, eventuali **enti esponenziali** di interessi diffusi, eventuali **associazioni di vittime**. In tali casi, **l'autorità giudiziaria deve essere comunque informata dell'apertura di un programma**;

► i **programmi di giustizia riparativa** sono **volontari e gratuiti** e possono consistere, in ragione dell'adesione dei soggetti interessati, in:

- **mediazione reo-vittima** (*victim-offender mediation*),
- **incontro allargato a una pluralità di soggetti** (*conferences o circles*)
- **accompagnamento dell'autore del reato alla riparazione** delle conseguenze del reato,
- **ascolto protetto della vittima e/o della comunità.**

Tali programmi **possono coinvolgere** in qualità di **parti**:

- **la vittima** (persona offesa, danneggiato),
- **l'autore del reato** (da intendersi nell'accezione di cui al cons. 12 della Direttiva); per la partecipazione di un **ente**, si farà riferimento al **legale rappresentante** o ad altro soggetto da costui designato,
- membri delle **comunità** (gruppi di famiglie, associazioni di vittime, enti esponenziali, ecc.),
- **istituzioni pubbliche** centrali e/o periferiche (per es.: sindaco, rappresentanti del Ministero dell'Ambiente, ecc.);

► il **risultato riparativo** del programma deve essere «raggiunto volontariamente» (**art. 12 co. 1, lett. d, Dir.**) e **può consistere in**:

- **attività riparative** in senso stretto, volte ad **attenuare** o, se possibile, a **eliminare** le **conseguenze dannose o pericolose del reato** (ad es.: risarcimento del danno, attività di bonifica, riparazione del danno ambientale, ecc.),
- **attività conformative** consistenti in **impegni comportamentali precisi e concreti** volti in special modo all'osservanza, per il futuro, dei precetti penali trasgrediti, alla **prevenzione di ulteriori illeciti** e alla eventuale **'correzione' dei fattori organizzativi** o di altra natura che hanno **determinato la causazione dell'evento lesivo o pericoloso** (ad es. messa in sicurezza degli impianti, dotazione o modifica del modello di organizzazione e gestione ex d.lgs. 231/2001, adeguamento degli impianti, ecc.);



- ▶ il **risultato del programma** deve essere **comunicato all'autorità giudiziaria procedente**. Il **giudice** può **tener conto dell'esito** del programma e delle attività svolte **ai fini dell'applicazione degli istituti giuridici pertinenti** (art. 15 *Basic Principles* ONU; nel nostro ordinamento, ad es., attenuanti, cause di estinzione del reato, ravvedimento operoso, riduzione della sanzione pecuniaria ex art. 12 d.lgs. 231/2001, effetti della riparazione delle conseguenze del reato ex art. 17 d.lgs. 231/2001, ecc.). Ai sensi dell'**art. 12 co. 1 lett. d) Dir.**, «ogni eventuale accordo [...] può essere preso in considerazione in ogni eventuale procedimento penale ulteriore».

Sul tema della **protezione delle vittime nel ricorso a programmi di giustizia riparativa**, si veda *supra*, § V.5.

**Nota bene:** Per un **esempio** di modello di giustizia riparativa declinabile nel settore dei reati d'impresa, si consulti: Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale, *Per un modello di giustizia riparativa in ambito penale ambientale*, in AA.VV., *La mediazione dei conflitti ambientali. Linee guida operative e testimonianze degli esperti*, edizione digitale, Fondazione Pubblicità Progresso, Milano, 2016, pp. 125 ss., [www.mediazioneambiente.it](http://www.mediazioneambiente.it).

## X.

# SOSTEGNO E ASSISTENZA AL DI FUORI DEL PROCEDIMENTO PENALE\*

### 1. Non solo 'giustizia': informazione, sostegno e assistenza

#### Art. 4 Dir.

1. Gli Stati membri provvedono a che alla vittima siano offerte fin dal primo contatto con un'autorità competente, senza indebito ritardo, e affinché possa accedere ai diritti previsti dalla presente direttiva, le informazioni seguenti:

a) il tipo di assistenza che può ricevere e da chi, nonché, se del caso, informazioni di base sull'accesso all'assistenza sanitaria, ad un'eventuale assistenza specialistica, anche psicologica, e su una sistemazione alternativa; [...]

2. L'entità o il livello di dettaglio delle informazioni di cui al paragrafo 1 possono variare in base alle specifiche esigenze e circostanze personali della vittima, nonché al tipo o alla natura del reato. Ulteriori informazioni dettagliate possono essere fornite nelle fasi successive, in funzione delle esigenze della vittima e della pertinenza di tali informazioni in ciascuna fase del procedimento.

#### Art. 8 Dir.

1. Gli Stati membri provvedono a che la vittima, in funzione delle sue esigenze, abbia accesso a specifici servizi di assistenza riservati, gratuiti e operanti nell'interesse della vittima, prima, durante e per un congruo periodo di tempo dopo il procedimento penale. I familiari hanno accesso ai servizi di assistenza alle vittime in conformità delle loro esigenze e dell'entità del danno subito a seguito del reato commesso nei confronti della vittima.

2. Gli Stati membri agevolano l'indirizzamento delle vittime da parte dell'autorità competente che ha ricevuto la denuncia e delle altre entità pertinenti verso gli specifici servizi di assistenza.

3. Gli Stati membri adottano misure per istituire servizi di assistenza specialistica gratuiti e riservati in aggiunta a, o come parte integrante di, servizi generali di assistenza alle vittime, o per consentire alle organizzazioni di assistenza alle vittime di avvalersi di entità specializzate già in attività che forniscono siffatta assistenza specialistica. In funzione delle sue esigenze specifiche, la vittima ha accesso a siffatti servizi e i familiari vi hanno accesso in funzione delle loro esigenze specifiche e dell'entità del danno subito a seguito del reato commesso nei confronti della vittima.

4. I servizi di assistenza alle vittime e gli eventuali servizi di assistenza specialistica possono essere istituiti come organizzazioni pubbliche o non governative e possono essere organizzati su base professionale o volontaria.

5. Gli Stati membri assicurano che l'accesso a qualsiasi servizio di assistenza alle vittime non sia subordinato alla presentazione da parte della vittima di formale denuncia relativa a un reato all'autorità competente.

Le **vittime di reato** non hanno bisogno solo di 'giustizia'. Anzi, talvolta la domanda di giustizia non è in cima alle loro priorità: altre **esigenze**

\* Redazione a cura di CLAUDIA MAZZUCATO

possono essere ben **più urgenti e persino vitali** per la vittima, anche in ragione del tipo e dell'entità del danno subito.

L'**assistenza sanitaria e/o riabilitativa** a seguito di lesioni personali, per esempio, è una forma essenziale di aiuto erogabile dal sistema di *welfare* e del tutto indipendente dal procedimento penale.

La ricerca empirica svolta nell'ambito di questo progetto ha messo in luce come **l'assenza o l'insufficienza di questi tipi di assistenza** possano **ripercuotersi sul procedimento penale**, che finisce talvolta per diventare la sede ultima e unica della domanda di riconoscimento e protezione da parte delle persone offese. La **vittimizzazione secondaria** che deriva dal **deficit di assistenza** può, così, **riversarsi nel procedimento penale** sotto forma di insoddisfazione che assume le fattezze di una **richiesta emotiva di rivalsa** e di punizione di stampo vendicativo.

È importante **assicurare alle vittime**, non ultime le vittime di *corporate violence*, **l'accesso a tutte le possibili forme di assistenza parallele, indipendenti e/o esterne al procedimento penale**, fatto salvo ovviamente il diritto della persona offesa di partecipare a quest'ultimo. Ciò è scolpito a chiare lettere nella Direttiva, la quale ingiunge agli Stati membri di assicurare che «l'accesso a qualsiasi **servizio di assistenza** alle vittime **non sia subordinato alla presentazione da parte della vittima di formale denuncia** relativa a un reato all'autorità competente» (art. 8 co. 5 Dir.).

L'**informazione e l'assistenza** alle vittime di reato<sup>3</sup>, **indipendentemente dal procedimento penale** e al di fuori del medesimo, sono tra i **capisaldi** della **Direttiva 2012/29/UE**. Esse rappresentano la *condicio sine qua non* di qualsivoglia 'sistema' *effettivo* di supporto e protezione. Il «**diritto di accesso ai servizi di assistenza alle vittime**» di cui all'**art. 8 Dir.** è, dunque, una **pietra angolare** dell'intero edificio della Direttiva, la cui **mancata attuazione** nel nostro Paese rischia di far franare nel mero simbolismo espressivo (per non dire nel populismo) ogni intervento in favore delle vittime, **scaricando ancora una volta sulla giustizia penale compiti sociali che le sono eccentrici** e la spingono insidiosamente verso inaccettabili esiti repressivi.

L'**assenza di servizi di supporto**, inoltre, **priva** inutilmente la **polizia giudiziaria** e la **magistratura** di **figure, esterne al procedimento penale, essenziali** nel garantire una **protezione** delle vittime dalla **vittimizzazione secondaria** e dalla **vittimizzazione ripetuta** mediante interventi per giunta non coercitivi nei confronti dell'autore del fatto (v. anche *supra*, § V);

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<sup>3</sup> Utile la consultazione di European Union Agency for Fundamental Rights (FRA), *Vittime di reato nell'Unione Europea: portata e natura dell'assistenza*, Vienna 2014 (disponibile online).

figure in grado, se del caso, di contribuire anche alla corretta **valutazione individuale delle esigenze di protezione** di cui agli artt. 22 e 23 Dir. e/o di **fornire elementi utili di valutazione** in tal senso all'autorità procedente che entra in contatto con la vittima (sul punto, v. anche *supra*, §§ II e V, oltre alle specifiche **Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence**, <http://www.victimsandcorporations.eu/publications/>).

A causa, poi, degli **ostacoli all'accesso alla giustizia**, della complessità e dell'incertezza degli esiti del processo penale circa l'accertamento delle responsabilità (aspetti, questi, particolarmente ricorrenti nelle ipotesi di *corporate violence*), l'**assistenza** alle vittime **al di fuori del procedimento penale** potrebbe rivelarsi in certi casi l'**unica modalità praticabile** per **assicurare alle vittime** 'qualcosa' (informazioni, sostegno, consigli, protezione: art. 9 Dir.); 'qualcosa' che comunichi loro **rispetto, sensibilità e attenzione** nei confronti della loro sorte, cioè 'qualcosa' che pertiene, *lato sensu*, alla 'giustizia' (*sociale* evidentemente, non penale). Come fatto notare da uno dei magistrati consultati ai fini dell'elaborazione delle presenti *Linee guida*, i **servizi di assistenza operano «nella prospettiva del benessere della vittima a prescindere dal processo»**.

L'assenza dei servizi di assistenza alle vittime, l'accesso ai quali è previsto dalla Direttiva come «diritto» di queste ultime, attenua grandemente – fino quasi a vanificarlo – ogni intervento in favore delle vittime stesse, scaricando sulla giustizia penale compiti che non le appartengono e privando l'autorità giudiziaria di figure essenziali all'effettiva tutela delle vittime e alla corretta valutazione individuale delle esigenze di protezione.

**X.1.1.** È importante assicurare comunque alle vittime, ivi comprese le vittime di *corporate violence*, l'accesso a ogni possibile realtà o servizio, disponibili sul territorio, che – al di fuori e indipendentemente dal procedimento penale – possano fornire in modo competente informazioni, sostegno e forme extragiudiziali di protezione.

La lettura integrata degli **artt. 4, 8 e 9 della Direttiva** disegna un quadro assai chiaro in cui il diritto di ottenere **informazioni** sul **tipo di assistenza**, incluso l'accesso all'**assistenza sanitaria, specialistica e psicologica** (art. 4 co. 1), si combina con il diritto di usufruire in modo gratuito di **servizi di assistenza alle vittime** (art. 8) di cui sono indicate le **prestazioni minime**:

**Art. 9 Dir.**

1. I servizi di assistenza alle vittime, di cui all'articolo 8, paragrafo 1, forniscono almeno:
  - a) informazioni, consigli e assistenza in materia di diritti delle vittime, fra cui le possibilità di accesso ai sistemi nazionali di risarcimento delle vittime di reato, e in relazione al loro ruolo nel procedimento penale, compresa la preparazione in vista della partecipazione al processo;
  - b) informazioni su eventuali pertinenti servizi specialistici di assistenza in attività o il rinvio diretto a tali servizi;
  - c) sostegno emotivo e, ove disponibile, psicologico;
  - d) consigli relativi ad aspetti finanziari e pratici derivanti dal reato;
  - e) salvo ove diversamente disposto da altri servizi pubblici o privati, consigli relativi al rischio e alla prevenzione di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni.
2. Gli Stati membri incoraggiano i servizi di assistenza alle vittime a prestare particolare attenzione alle specifiche esigenze delle vittime che hanno subito un notevole danno a motivo della gravità del reato.
3. Salvo ove diversamente disposto da altri servizi pubblici o privati, i servizi di assistenza specialistica di cui all'articolo 8, paragrafo 3, sviluppano e forniscono almeno:
  - a) alloggi o altra eventuale sistemazione temporanea a vittime bisognose di un luogo sicuro a causa di un imminente rischio di vittimizzazione secondaria e ripetuta, di intimidazione e di ritorsioni;
  - b) assistenza integrata e mirata a vittime con esigenze specifiche, come vittime di violenza sessuale, vittime di violenza di genere e vittime di violenza nelle relazioni strette, compresi il sostegno per il trauma subito e la relativa consulenza.

L'art. 8 co. 2 della Direttiva, inoltre, prescrive agli Stati membri di agevolare **l'indirizzamento delle vittime da parte dell'autorità competente che ha ricevuto la denuncia** e delle altre entità pertinenti **verso gli specifici servizi di assistenza**.

Anche in materia di sostegno e assistenza, la Direttiva 2012/29/UE dedica poi **particolare attenzione** alla **valutazione individualizzata delle specifiche esigenze** delle **vittime** che «hanno subito un **notevole danno a motivo della gravità del reato**» (**art. 9 co. 2**), con una sottolineatura espressa della necessità di un'**assistenza integrata e mirata** nel caso di vittime di **violenza** (sessuale, di genere, nelle relazioni strette) (**art. 9 co. 3, lett. b**). Come si è visto nella pagine precedenti (v. *supra*, § II), le **vittime di corporate violence** rientrano sostanzialmente in questa duplice categoria: vittime per l'appunto di una forma di **violenza** (ancorché non legalmente intesa), esse hanno visto per definizione lesi i beni giuridici della **vita** e dell'**incolumità** individuale e/o pubblica.

## **2. L'incompleto recepimento della Direttiva 2012/29/UE e l'assenza di servizi di assistenza in Italia**

**Il d.lgs. 212/2015 recepisce la Direttiva limitatamente ai profili concernenti la partecipazione della vittima al procedimento penale, trascurando l'istituzione e la regolamentazione dei servizi di assistenza e, dunque, trascurando la concreta ed effettiva erogazione del sostegno dovuto.**

Il d.lgs. 212/2015 omette di recepire le disposizioni della Direttiva concernenti i servizi di assistenza e l'informazione a essi correlata, di cui infatti non vi è traccia **nemmeno nell'art. 90 bis c.p.p.** (*Informazioni alla persona offesa*). Significativamente, la **lett. p)** dell'art. 90 *bis* **si limita** a richiamare **l'informazione** in merito (solo) «alle **strutture sanitarie** presenti sul territorio, alle **case famiglia**, ai **centri antiviolenza** e alle **case rifugio**».

**L'assenza di una rete istituzionale di servizi di assistenza alle vittime di reato in generale e, a maggior ragione, di servizi specialistici dedicati ai complessi bisogni delle vittime di *corporate violence* espone le persone offese a forme di vittimizzazione secondaria e al rischio di vittimizzazione ripetuta.**

L'incompleta trasposizione della Direttiva da parte dello Stato italiano è aggravata dal fatto che, a differenza di altri Paesi, in Italia **non esistono servizi istituzionali di assistenza alle vittime** di reato, se si **eccettuano** i **servizi *minorili*** degli enti locali ('tutela minori' e/o 'pronto intervento', prevalentemente dedicati alla protezione delle persone minorenni nei casi di abuso familiare e sessuale) e se si eccettuano i **centri pubblici o privati** per l'assistenza e la protezione delle vittime (generalmente donne) di **maltrattamento in famiglia, violenza domestica, *stalking* ecc.**, sorti soprattutto a seguito dell'adozione della Convenzione di Istanbul e comunque distribuiti in modo disomogeneo sul territorio nazionale.

Esistono alcuni, rari, **esempi virtuosi**: uno per tutti è la **Rete Dafne** «**per l'accoglienza, l'ascolto, la riparazione del danno e la prevenzione dei disturbi post-traumatici delle vittime di reato**». Nata a Torino per iniziativa dell'autorità giudiziaria e ora esistente anche a Firenze (grazie un protocollo d'intesa promosso dal Tribunale della città), il **modello** da questa rappresentato sarà probabilmente (e sperabilmente) 'esportato' a breve in altre sedi, quale frutto significativo di un lavoro 'di rete', appunto, di cui si sono fatti promotori proprio alcuni magistrati.

Siamo ancora lontani, però, da uno stabile sistema di organizzazioni, pubbliche o private, di assistenza alle vittime di reato sul modello inglese o, per citare un altro esempio interessante, sul modello dell'**Institut National d'Aide aux Victimes** francese (INAVEM).

Il **deficit di assistenza** lamentato per le vittime in generale, con l'eccezione (a macchia di leopardo) di talune categorie di vittime vulnerabili 'tipiche', vale **a maggior ragione** per le **vittime di *corporate violence***. Sono infatti del tutto **assenti servizi dedicati a questo specifico gruppo** di vittime dalla vulnerabilità 'atipica', al cui **sostegno e assistenza**

hanno **finora** provveduto, in larga parte, le **associazioni fondate dalle stesse persone offese**, talvolta coadiuvate da sindacati dei lavoratori e altre realtà associative.

La vittimizzazione secondaria indotta dal deficit di assistenza, il senso di delusione e ‘tradimento’ da parte delle istituzioni spesso vissuto dalle vittime di *corporate violence*, e l’insoddisfazione che ne deriva, possono riversarsi nel procedimento penale sotto forma di desiderio di rivalsa e bisogno emotivo di pena.

X.2.1. In attesa del pieno recepimento della Direttiva e dell’istituzione di servizi di assistenza alle vittime, l’autorità giudiziaria, le forze di polizia, gli enti locali, le altre competenti amministrazioni pubbliche, l’avvocatura e la società civile devono collaborare alla realizzazione sul territorio di iniziative gratuite e senza fini di lucro, volte a offrire, con adeguati standard di competenza, informazioni e supporto extragiudiziali alle vittime di reato, quali ad es. servizi di assistenza, ‘sportelli’, ‘reti’ di servizi sociali, ecc.

### 3. Alcune indicazioni operative per il sostegno e l’assistenza alle vittime di corporate violence

#### Cons. 40 Dir.

Benché l’offerta di assistenza non debba dipendere dal fatto che le vittime abbiano presentato denuncia in relazione a un reato alle autorità competenti, come la polizia, queste sono spesso le più indicate per informare le vittime delle possibilità di aiuto esistenti. Gli Stati membri sono quindi esortati a instaurare condizioni adeguate che consentano di indirizzare le vittime verso gli specifici servizi di assistenza, garantendo al tempo stesso che gli obblighi in materia di protezione dei dati possano essere e siano rispettati. È opportuno evitare una successione di rinvii.

#### Art. 8 co. 2 Dir.

Gli Stati membri agevolano l’indirizzamento delle vittime da parte dell’autorità competente che ha ricevuto la denuncia e delle altre entità pertinenti verso gli specifici servizi di assistenza.

#### Art. 90 bis c.p.p.

Alla persona offesa, sin dal primo contatto con l’autorità procedente, vengono fornite, in una lingua a lei comprensibile, informazioni in merito:

[...]

p) alle strutture sanitarie presenti sul territorio, alle case famiglia, ai centri antiviolenza e alle case rifugio.

«Ciò di cui i malati di mesotelioma avrebbero bisogno in assoluto, nel momento in cui si ammalano, non è solo l'oncologo che cura... Hanno bisogno di chi gestisce anche gli aspetti burocratici e legali: qualcuno che deve spiegare come fare la denuncia all'INAIL e come accedere all'indennizzo» (intervista a un medico dell'Unità Mesoteliomi dell'Ospedale di Alessandria).

**X.3.1. Polizia giudiziaria e magistratura devono mappare, conoscere e saper attivare i servizi presenti sul territorio che possano fornire assistenza, anche specialistica, alle vittime di reato.**

L'assistenza (sanitaria, emotiva e psicologica, sociale e legale) prescritta dalla Direttiva in via generale a favore di tutte le vittime si deve **affiancare**, nel caso delle **vittime di corporate violence**, all'**attivazione**, ove applicabile, delle forme di **sostegno** connesse, per esempio:

- al **sistema nazionale di prevenzione, assistenza e previdenza in caso di infortuni sul lavoro e malattie professionali** e per la **sicurezza dell'ambiente e del lavoro**;
- al Servizio Nazionale della **Protezione Civile**;
- a **eventuali fondi di indennizzo**, rendite e/o altre forme di assistenza e previdenza sociale **istituiti ad hoc** per particolari **gruppi di vittime**, quale è il caso, per esempio, del Fondo Vittime dell'Amianto, dell'«indennizzo a favore dei soggetti danneggiati da complicanze di tipo irreversibile a causa di vaccinazioni obbligatorie, trasfusioni e somministrazione di emoderivati», dell'«indennizzo a favore di soggetti affetti da sindrome da Talidomide» (cfr. leggi 244/2007; 190/2014; 208/2015; 210/1992 ecc. e succ. modif.);
- a **eventuali sportelli o servizi dedicati a specifiche emergenze, incidenti o rischi** (come ad es. lo '**Sportello Amianto**' di Casale Monferrato e, più in generale, la rete di sportelli locali istituiti in adesione al progetto 'Sportello Amianto Nazionale' rivolto alle amministrazioni locali).

Fattore di ulteriore complessità, la **conoscenza 'integrata'**, da parte degli **operatori della giustizia penale** che entrano in contatto con persone offese da illeciti commessi nel corso dell'attività di impresa, del **sistema di previdenza per gli infortuni sul lavoro/malattie professionali** o per **specifici gruppi di vittime** è di particolare pregnanza al fine di **garantire** a queste persone offese il concreto esercizio dei diritti e l'**accesso**, per esempio, ad **appropriate prestazioni** sanitarie, economiche, riabilitative e previdenziali.



La capacità dell'autorità procedente di segnalare tempestivamente alla vittima ogni possibile forma di assistenza gratuita offerta dalla legge, dalle istituzioni nazionali o locali, da organizzazioni del 'terzo settore' o da associazioni di vittime (assistenza sanitaria, psicologica, previdenziale, sociale, legale, ecc.) è garanzia di una migliore protezione della vittima e potenzialmente di una sua equilibrata partecipazione al procedimento penale.

X.3.2. L'autorità procedente e, in generale, ogni operatore che entri istituzionalmente in contatto con la vittima (con speciale riguardo, in ragione della tempestività dell'indirizzamento, alla polizia giudiziaria, al pubblico ministero e, ove nominato, al difensore della persona offesa) devono essere in grado di:

- ▶ **avere una visione 'olistica' dei bisogni di assistenza e sostegno** delle vittime di *corporate violence*. Tali bisogni non sono infatti circoscritti all'accesso alla giustizia e alla partecipazione al procedimento penale, ma concernono **bisogni primari del tutto distinti e separati dalla vicenda giudiziaria e dal suo epilogo**, fra i quali spiccano, per esempio, l'**assistenza medica specialistica** e la necessità di una **tutela previdenziale** con conseguente erogazione di contributi economici e prestazioni sanitarie e riabilitative, ecc. (in tema si rinvia anche, più diffusamente, alle *Linee guida per la valutazione individuale dei bisogni delle vittime di corporate violence*: <http://www.victimsandcorporations.eu/publications/>);
- ▶ **valutare**, in base agli elementi a disposizione e anche con la guida dei parametri enunciati dall'art. 90 *quater* c.p.p., **la vulnerabilità della singola vittima** (v. *supra*, § II), apprezzando l'**entità del danno** subito e le **specifiche esigenze** al fine di **indirizzare correttamente** la vittima al servizio più opportuno (art. 4 co. 2 Dir.);
- ▶ **fornire informazioni**, in **modo semplice e personalizzato**, in una **lingua comprensibile**, in merito alle «**strutture sanitarie** presenti sul territorio», ai sensi dell'**art. 90 bis c.p.p.** Più ampiamente, come disposto dalla **Direttiva all'art. 4 co. 1, lett. a)**, «fin dal primo contatto», l'autorità dovrebbe poter offrire alla vittima informazioni anche «**sul tipo di assistenza che può ricevere e da chi**, nonché, se del caso, informazioni di base sull'accesso all'**assistenza sanitaria** [e] a un'eventuale **assistenza specialistica**, anche psicologica»;

- **Indirizzare le vittime ai servizi pubblici e/o privati** e alle eventuali altre istituzioni pertinenti, **previa mappatura** dei medesimi, **indipendentemente dalla presentazione di formale denuncia** (come previsto dagli **artt. 8 co. 2 e 5 Dir.**). La **polizia giudiziaria** (con particolare riguardo ai nuclei operativi specializzati) e l'**autorità giudiziaria procedente** devono pertanto, ove opportuno, saper indirizzare le persone offese a:
- **gli opportuni servizi del sistema sanitario nazionale**, ivi inclusi, ove presenti, **eventuali servizi specialistici dedicati** a specifici gruppi (ad es., per le malattie oncologiche asbesto-correlate, l'UFIM - Unità Funzionale Interaziendale Mesoteliomi degli Ospedali di Alessandria e Casale Monferrato);
  - **gli opportuni servizi socio-assistenziali** del territorio;
  - **i servizi – generali o specialistici – di assistenza alle vittime di reato** eventualmente istituiti sul territorio. Può trattarsi di «organizzazioni pubbliche o non governative», «su base professionale o volontaria» (art. 8 co. 4 Dir.);
  - **altri eventuali organi competenti** per i necessari adempimenti in materia di **riconoscimento di malattia professionale o infortunio sul lavoro, previdenza sociale**, accesso a **particolari fondi di indennizzo**, ecc. (quali ad es. **patronati INAIL, Ispettorato Nazionale del Lavoro, ASL e Servizi di Prevenzione e Sicurezza Ambienti di lavoro**, ecc.);
  - **al Servizio Nazionale della Protezione Civile** nel caso di **disastri, eventi catastrofici, calamità**. Costituiscono strutture operative del Servizio, fra gli altri: il **Corpo Nazionale dei Vigili del Fuoco**, le **Forze Armate**, le **Forze di Polizia**, il **Corpo Forestale dello Stato** (assorbito dal 1° gennaio 2017 nell'Arma dei Carabinieri), la **Croce Rossa Italiana**, il **Corpo Nazionale di soccorso alpino e speleologico**;
  - **eventuali associazioni di vittime**, costituite a seguito del fatto specifico o di fatti analoghi, le quali possono offrire un supporto valido e importante anche sotto il profilo dell'assistenza affettiva e psicologica e dell'auto-mutuo aiuto.

X.3.3. L'entità o il livello di dettaglio delle informazioni offerte alla vittima e l'effettiva presa in carico della vittima ai fini dell'indirizzamento ai servizi pertinenti o agli organi competenti devono essere adeguati in base alle condizioni personali e alle esigenze individuali di protezione della vittima, alla gravità del reato e all'entità del danno subito, apprezzate anche sulla scorta di una «valutazione individuale» operata dall'autorità procedente (artt. 4 co. 2, 8 co. 3, 22 Dir.).

In tema si veda anche *supra*, § II.3.

## XI.

### FORMAZIONE DEGLI OPERATORI\*

#### Cons. 61 Dir.

È opportuno che i funzionari coinvolti in procedimenti penali che possono entrare in contatto personale con le vittime abbiano accesso e ricevano un'adeguata formazione sia iniziale che continua, di livello appropriato al tipo di contatto che intrattengono con le vittime, cosicché siano in grado di identificare le vittime e le loro esigenze e occuparsene in modo rispettoso, sensibile, professionale e non discriminatorio. È opportuno che le persone che possono essere implicate nella valutazione individuale per identificare le esigenze specifiche di protezione delle vittime e determinare la necessità di speciali misure di protezione ricevano una formazione specifica sulle modalità per procedere a tale valutazione. Gli Stati membri dovrebbero garantire tale formazione per i servizi di polizia e il personale giudiziario. Parimenti, si dovrebbe promuovere una formazione per gli avvocati, i pubblici ministeri e i giudici e per gli operatori che forniscono alle vittime sostegno o servizi di giustizia riparativa. Tale obbligo dovrebbe comprendere la formazione sugli specifici servizi di sostegno cui indirizzare le vittime o una specializzazione qualora debbano occuparsi di vittime con esigenze particolari e una formazione specifica in campo psicologico, se del caso. Ove necessario, tale formazione dovrebbe essere sensibile alle specificità di genere. [...]

#### Art. 25 Dir.

1. Gli Stati membri provvedono a che i funzionari suscettibili di entrare in contatto con la vittima, quali gli agenti di polizia e il personale giudiziario, ricevano una formazione sia generale che specialistica, di livello appropriato al tipo di contatto che intrattengono con le vittime, che li sensibilizzi maggiormente alle esigenze di queste e dia loro gli strumenti per trattarle in modo imparziale, rispettoso e professionale.
2. Fatta salva l'indipendenza della magistratura e le differenze nell'organizzazione del potere giudiziario nell'ambito dell'Unione, gli Stati membri richiedono che i responsabili della formazione di giudici e pubblici ministeri coinvolti nei procedimenti penali offrano l'accesso a una formazione, sia generale che specialistica, che li sensibilizzi maggiormente alle esigenze delle vittime.
3. Con il dovuto rispetto per l'indipendenza della professione forense, gli Stati membri raccomandano che i responsabili della formazione degli avvocati offrano l'accesso a una formazione, sia generale che specialistica, che sensibilizzi maggiormente questi ultimi alle esigenze delle vittime.
4. Attraverso i loro servizi pubblici o finanziando organizzazioni che sostengono le vittime, gli Stati membri incoraggiano iniziative che consentano a coloro che forniscono servizi di assistenza alle vittime e di giustizia riparativa di ricevere un'adeguata formazione, di livello appropriato al tipo di contatto che intrattengono con le vittime, e rispettino le norme professionali per garantire che i loro servizi siano forniti in modo imparziale, rispettoso e professionale.
5. A seconda delle mansioni svolte e della natura e del livello dei contatti fra l'operatore e le vittime, la formazione mira ad abilitare l'operatore a riconoscere le vittime e a trattarle in maniera rispettosa, professionale e non discriminatoria.

Come si è avuto modo di notare in tutte le **sezioni precedenti**, quello della **necessità di specifica e adeguata formazione** di tutti gli **operatori potenzialmente coinvolti nel contatto con vittime di reato** in generale, e

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\* Redazione a cura di ARIANNA VISCONTI

con **vittime di corporate violence** in particolare (e specialmente, per quanto qui interessa, dei funzionari di polizia giudiziaria, dei magistrati requirenti e giudicanti e degli ausiliari di tribunale) è un tema **strettamente legato** alla possibilità di un **corretto adempimento** di tutti i **doveri derivanti dalla Direttiva**, come pure a quella di una **effettiva garanzia** dei **diritti delle vittime da questa sanciti**, rispetto ai quali una appropriata formazione appare **strumentale e indispensabile**. Non è quindi casuale che la Direttiva stessa dedichi alla questione specifica attenzione (**cons. 61; art. 25**), articolando un sistema di **doveri di (fornire) formazione** incombenti sia sullo **Stato** in generale, sia sugli **specifici organi, ordini ed enti** cui in linea generale è affidata la cura della **formazione professionale** degli operatori interessati.

In particolare, da una lettura congiunta del **cons. 61** e dell'**art. 25** della Direttiva, si possono desumere una serie di **indicazioni** relative a:

- **platea dei soggetti interessati:** vi rientrano tutti i «funzionari coinvolti in procedimenti penali che possono entrare in contatto personale con le vittime» e tutte le «persone che possono essere implicate nella valutazione individuale per identificare le esigenze specifiche di protezione delle vittime e determinare la necessità di speciali misure di protezione», ossia gli «**agenti di polizia**», il «**personale giudiziario**», gli «**avvocati**», i «**pubblici ministeri e i giudici**», gli «operatori che forniscono alle vittime sostegno o servizi di giustizia riparativa»;
- **momento in cui debba essere fornita la formazione:** sia **preliminarmente** all'inizio dell'attività professionale, **o comunque al primo presentarsi dell'esigenza di formazione**, sia continuativamente, sotto forma di **aggiornamento periodico**, durante tutto il corso dell'attività professionale dell'operatore che possa portarlo in contatto con vittime di reato;
- **graduazione del livello di formazione:** la Direttiva prevede dei **livelli differenziati di formazione** a seconda «delle mansioni svolte» e «della natura e del livello dei contatti tra l'operatore e la vittima», i quali dovrebbero garantire:
  - **di base e in generale**, la **capacità** di «**riconoscere**» e «**identificare**» le **vittime di reato**, di individuare «le loro esigenze», nonché di «**trattarle in maniera rispettosa, professionale e non discriminatoria**»;

- alle «persone che possono essere implicate nella valutazione individuale» dei bisogni di protezione delle vittime, una «formazione specifica sulle modalità per procedere a tale valutazione», nonché un'apposita «formazione sugli specifici servizi di sostegno cui indirizzare le vittime»;
- agli operatori che «debbono occuparsi di vittime con esigenze particolari», una «specializzazione» e, «se del caso», una «formazione specifica in campo psicologico», nonché, «ove necessario», indirizzata a sensibilizzare l'operatore alle «specificità di genere».

Il d.lgs. 212/2015 nulla ha previsto in relazione al delicato tema della formazione da assicurare agli operatori che, per motivi professionali, possano trovarsi a entrare in contatto con vittime di reato, né in generale, né con specifico riferimento alla formazione necessaria a una efficace valutazione dei bisogni individuali di protezione, né per quegli operatori destinati a occuparsi di vittime con esigenze particolari.

**Tuttavia**, per quanto concerne le categorie di operatori direttamente interessate dalle presenti *Linee guida*, va sottolineato come, in relazione ai magistrati sia giudicanti sia requirenti, gli **obblighi formativi ('attivi')** individuati dalla **Direttiva** ricadono **implicitamente quanto 'naturalmente' tra i compiti di «aggiornamento e formazione»** oggi demandati dal nostro ordinamento (**d.lgs. 30 gennaio 2006, n. 26**) alla **Scuola Superiore della Magistratura** (tenuto conto delle attribuzioni del **Consiglio Superiore della Magistratura** in relazione alle **linee programmatiche** su formazione e aggiornamento professionale dei magistrati), con **correlativi obblighi** di formazione e aggiornamento ('passivo') per tutti i **magistrati in servizio** – in linea del resto con la previsione dell'**art. 25 co. 2 Dir.**, a termini del quale, «fatta **salva l'indipendenza della magistratura** e le differenze nell'organizzazione del potere giudiziario nell'ambito dell'Unione, gli Stati membri richiedono che i **responsabili della formazione di giudici e pubblici ministeri** coinvolti nei procedimenti penali **offrano l'accesso a una formazione, sia generale che specialistica**, che li sensibilizzi maggiormente alle **esigenze delle vittime**».

Per quanto riguarda la **polizia giudiziaria**, invece, fermo l'obbligo (sancito al **co. 1 dell'art. 25 Dir.**) di ciascuno Stato membro di provvedere a che i relativi funzionari «ricevano una formazione sia generale che specialistica, di livello appropriato al tipo di contatto che intrattengono con le vittime, che li sensibilizzi maggiormente alle esigenze di queste e dia loro gli strumenti per trattarle in modo imparziale, rispettoso e professionale»,

va sottolineato come **non** esista nel nostro Paese un analogo **ente preposto in modo organico** alla **formazione** e all'**aggiornamento** dei **diversi soggetti** individuati, ai sensi degli **artt. 57 c.p.p. e 5 disp. att. c.p.p.**, come **ufficiali e agenti di polizia giudiziaria**. In questo caso, **per ogni corpo** di riferimento esistono **strutture preposte alla formazione, iniziale e successiva** ('post-formazione'), del personale, con **poteri di indirizzo** demandati ai rispettivi **comandi generali** e una **organizzazione su base territoriale** dell'**aggiornamento professionale decentrato**. È dunque su questi diversi enti e organi che ricadono gli **obblighi formativi 'attivi' previsti dalla Direttiva** in relazione al corretto approccio alle vittime di reato (in generale e, per quanto qui di più specifico interesse, alle vittime di *corporate violence* in particolare).

XI.1. Fatta salva l'indipendenza della magistratura, le attribuzioni del CSM e l'autonomia e le competenze della Scuola Superiore della Magistratura, i soggetti responsabili, a livello centrale e territoriale, della formazione iniziale e permanente dei magistrati, ordinari e onorari, degli altri operatori di giustizia e degli ufficiali e agenti destinati a svolgere compiti di polizia giudiziaria devono garantire una formazione adeguata e aggiornata non solo sugli obblighi di base nascenti dalla Direttiva 2012/29/UE, ma anche, proporzionatamente al livello di contatti tra i diversi operatori e le vittime di reato, specificamente in relazione alle modalità di valutazione dei bisogni individuali di protezione, ai servizi di sostegno cui indirizzare le vittime e, ove necessario, alle particolari esigenze delle vittime vulnerabili, anche attraverso l'integrazione di competenze extragiuridiche, nonché in relazione a tutte le misure di protezione attivabili. In relazione ai potenziali contatti con vittime vulnerabili, la formazione dovrà includere le specifiche esigenze e vulnerabilità che possono connotare le vittime di *corporate violence*, e le correlate possibilità di accesso a misure di protezione e/o servizi di supporto adeguati alle specifiche necessità di queste vittime.

È poi evidente come una **formazione specifica** sulle **peculiarità e vulnerabilità della vittimizzazione da *corporate violence*** si presenti **particolarmente necessaria** per quei **nuclei di polizia giudiziaria** che, per il loro **settore specialistico di intervento**, con **maggiore probabilità** possono trovarsi a venire in **contatto con vittime** di *corporate crime* e *corporate violence* e, tra queste, con soggetti potenzialmente in condizione di particolare vulnerabilità (si pensi ad es. ai Nuclei Operativi Ecologici e Antisofisticazione e Sanità dei Carabinieri, ai nuclei ambiente di molte polizie locali, ai diversi soggetti coinvolti in operazioni di Protezione Civile

in caso di vittimizzazione collettiva a connotazione di disastro, ecc.).

Proprio nella prospettiva di un **miglioramento della formazione specifica** degli operatori di polizia giudiziaria destinati a entrare in contatto con vittime, potenzialmente vulnerabili, di *corporate violence*, può inoltre essere ulteriormente **valorizzato** il già ricordato (v. *supra*, § III) potere del **Procuratore della Repubblica** di impartire **direttive alla polizia giudiziaria**, nel quadro del suo più generale potere-dovere di assicurare il corretto, puntuale ed uniforme esercizio dell'azione penale nel circondario (art. 4 d.lgs. 106/2006 e art. 58 c.p.p.).

**XI.2.** Nel quadro del potere direttivo sulle attività di polizia giudiziaria spettante al Procuratore della Repubblica, questi dovrà valorizzare, compatibilmente con le risorse a disposizione nel circondario di pertinenza, le possibilità di specializzazione degli operatori di polizia giudiziaria in riferimento alle peculiarità e vulnerabilità delle vittime di *corporate violence*, ad esempio:

- ▶ **nei circondari più grandi e con maggiore dotazione di personale**, attraverso la costituzione di **unità o nuclei specializzati**, formati da **operatori specificamente formati**, deputati alle **indagini** su reati riconducibili alla categoria della ***corporate violence*** e preparati al **contatto con le relative vittime**, dotati di competenze specifiche in relazione alle peculiarità delle diverse tipologie di tali reati (in materia di ambiente, salute e sicurezza sul lavoro, sicurezza alimentare, sicurezza farmaceutica, ecc.);
- ▶ **nei circondari di minori dimensioni** e con dotazioni di risorse inferiori, attraverso l'**individuazione di almeno una figura formata** sulle peculiarità dei reati e della vittimizzazione da ***corporate violence***, in grado di **contattare e attivare risorse esterne** (nel distretto di Corte d'Appello e/o presso enti di controllo territoriali o centrali), dotate delle **specializzazioni necessarie**;
- ▶ **in generale**, attraverso la **predisposizione e diffusione** di appositi **protocolli**, distinti per **tipologie di reato** e **settori di intervento** (ambiente, salute e sicurezza sul lavoro, sicurezza alimentare, sicurezza farmaceutica, ecc.), miranti a **sensibilizzare la polizia giudiziaria** sulle **specificità** dei reati di ***corporate violence*** e della **relativa vittimizzazione** e a fornire **indicazioni operative pratiche** circa la gestione delle relative attività di **indagine** e dei **contatti con le vittime di tali reati**.



## XII.

### DEL 'BUON USO' DELLA DIRETTIVA 2012/29/UE\*

#### Art. 27 co. 1 Dir.

1. Gli Stati membri mettono in vigore le disposizioni legislative, regolamentari e amministrative necessarie per conformarsi alla presente direttiva entro il 16 novembre 2015.

#### Art. 28 Dir.

Entro il 16 novembre 2017, e successivamente ogni tre anni, gli Stati membri trasmettono alla Commissione i dati disponibili relativi al modo e alla misura in cui le vittime hanno avuto accesso ai diritti previsti dalla presente direttiva

#### Art. 29 Dir.

Entro il 16 novembre 2017 la Commissione presenta al Parlamento europeo e al Consiglio una relazione in cui valuta in che misura gli Stati membri abbiano adottato le misure necessarie per conformarsi alla presente direttiva, compresa una descrizione delle misure adottate ai sensi degli articoli 8, 9 e 23, corredata se del caso di proposte legislative.

Formalizzato dalla Direttiva 2012/29/UE, e preceduto dalla Decisione Quadro 2001/220/GAI, l'**ingresso delle vittime** di (qualsivoglia) reato nella **giustizia penale** e nei **sistemi di welfare** crea al tempo stesso **opportunità** e **criticità**, con implicazioni politiche, giuridiche e sociali di enorme portata:

- l'**opportunità** per l'ordinamento giuridico di crescere in **civiltà** nella direzione di una maggiore **cura e attenzione** nei confronti delle persone, e specialmente delle persone vulnerabili; la *chance* della promozione di **interventi di stampo 'integrato'** (o, se vogliamo, 'olistico'), in cui i diversi rami dell'ordinamento dialogano sinergicamente per offrire prevenzione e protezione e in cui gli operatori del diritto lavorano insieme ad altre figure professionali all'interno di una **rete di collaborazioni** volte a informare, assistere, supportare, proteggere chi ha subito un reato;

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\* Redazione a cura di CLAUDIA MAZZUCATO

- le **criticità** connesse alla presenza di una **figura difficile** (e, per certi versi, ‘scomoda’) **nel sistema penale**, che nel caso dell’Italia (ma il problema è assai più diffuso) sconta già immensi **problemi** teorici e pratici ed esige una **riforma** davvero ‘radicale’, sempre di là da venire. Una figura, quella della vittima, che se imbrigliata nelle maglie del **populismo penale** può spingere il diritto penale e il processo verso **inaccettabili esiti illiberali**. Una figura, infine, che in ogni caso costringe la giustizia penale – e ovviamente gli operatori a tutti i livelli – a **interrogarsi sul senso** stesso del proprio esserci e a svelarne la **ratio** e gli **scopi** effettivamente perseguiti.

Nelle pagine che precedono si sono sottolineate

- le **parzialità** e le **approssimazioni nel recepimento** della Direttiva 2012/29/UE nell’ordinamento italiano;
- la **manca di organicità e sistematicità complessiva della disciplina nazionale** in tema di **diritti, assistenza, protezione e posizione nel procedimento penale** delle **vittime di reato**;
- **l’assenza di un sistema**, nazionale o locale, di **supporto alle vittime** a motivo della **trascurata previsione e mancata istituzione** di **servizi di assistenza**, la cui importanza è invece assolutamente ‘strategica’ nell’economia di una seria ed equilibrata politica in favore delle vittime, che non si risolva nella domanda di penalità e repressione con l’effetto dell’ennesima strumentalizzazione delle persone colpite.

L’Italia, come è noto, è chiamata a ‘rendere conto’ alla Commissione Europea del corretto e integrale recepimento delle disposizioni contenute nella Direttiva.

Tali disposizioni lasciano **pochi o nulli margini di discrezionalità** quanto alla **trasposizione** delle **norme in tema di informazione, assistenza e protezione indipendentemente** dal procedimento penale.

Diverso è il caso della **partecipazione al procedimento penale** (Capo 3 Dir.): qui la Direttiva consegna un **più ampio margine di intervento al legislatore nazionale**, affidando al **diritto interno** il compito di **adattare la Direttiva ai sistemi processuali** nazionali e **stabilire**, per esempio, le **norme** relative all’audizione della vittima, all’opposizione al mancato esercizio dell’azione penale, alle condizioni di accesso al patrocinio a spese dello Stato, ecc.

Restano alcuni limiti invalicabili: la **presunzione di innocenza**, i «**diritti dell'autore di reato**» e **di difesa**, il rispetto della «**discrezionalità giudiziale**» e l'**indipendenza della magistratura**.

I diritti e gli interventi concernenti **l'informazione, l'assistenza e la protezione** delle vittime dovrebbero (il condizionale è d'obbligo) godere di una **sostanziale uniformità** all'interno dell'Unione Europea, mentre la **partecipazione al procedimento penale** si presenta per definizione **variabile** da ordinamento a ordinamento, **fermi** restando taluni **diritti e garanzie** sia della **vittima**, sia della **persona nei cui confronti si procede**.

È soprattutto con riferimento alla trasposizione dei **diritti e delle garanzie obbligatori** che lo **Stato italiano è in difetto**. Ecco solo alcuni esempi:

- **macroscopico** è il caso della previsione dei **servizi di assistenza**, semplicemente '**dimenticati**' dal legislatore nazionale;
- non meno **problematica**, come si è visto, è la disciplina proprio dell'aspetto più innovativo e culturalmente dirompente della Direttiva 2012/29/UE, cioè la **valutazione individuale delle esigenze di protezione della vittima** (artt. 22-23 Dir.), divenuta nell'ordinamento italiano una **fumosa valutazione della «condizione di particolare vulnerabilità» della persona offesa** (art. 90 *quater* c.p.p.);
- anche in tema di **protezione dalla vittimizzazione ripetuta e secondaria**, l'ordinamento interno presenta **gravi problemi di coordinamento** tra le norme vigenti e **lacune** nella previsione adeguata di misure di protezione rispettose dei principi costituzionali.

Sono questi, insieme ad altri, gli ambiti in cui la **magistratura** (e specialmente i **giudicanti**), eventualmente e anche su impulso di un'**avvocatura** saggia e capace, sarà chiamata a **intervenire**, esercitando le attribuzioni offerte all'organo giudiziario dall'ordinamento europeo e dalla Costituzione, **in supponenza del legislatore**.

Del recepimento della Direttiva 2012/29/UE con il d.lgs. 212/2015, si è parlato correttamente in termini di «**un'occasione mancata**» (BOUCHARD 2016), da cui nasce il serio rischio (o, forse, la speranza?) dell'avvio di una **procedura di infrazione** contro lo Stato italiano, come è accaduto, sempre sul terreno della tutela delle vittime di reato, per il recepimento della Direttiva 2004/80/CE relativa all'indennizzo.

La **declinazione** di quanto sopra **nel contesto della corporate violence**, di cui qui ci occupiamo, è, se possibile, **ancora più sfidante**: ai problemi 'strutturali' e di 'sistema' a cui si è fatto cenno si aggiungono quelli di **specificità pertinenza all'ambito della criminalità d'impresa** che provoca morti, lesioni, disastri, avvelenamenti, ecc.

**Il recepimento della Direttiva 2012/29/UE da parte dello Stato italiano è parziale e, per le disposizioni trasposte, comunque problematico.**

**XII.1. La magistratura ha un ruolo fondamentale nel dare completa ed effettiva applicazione alla Direttiva 2012/29/UE, nonostante l'inerzia e le lacune del legislatore nazionale, alla luce di:**

- ▶ **principio del primato del diritto dell'Unione**, che prevale sulle norme dell'ordinamento nazionale, essendo così il giudice chiamato anche a **disapplicare**, in caso di contrasto, *in toto* o parzialmente, le **disposizioni nazionali** in favore dell'immediata **applicazione**, di propria iniziativa, di quelle della **Direttiva** aventi carattere **self executing** (dotate, cioè, di chiarezza, precisione, completezza delle previsioni contenute nella norma);
- ▶ **vincolo dell'interpretazione conforme al diritto dell'Unione**, per effetto del quale il giudice nazionale deve assicurare, attraverso il ricorso all'ermeneutica e tenuto conto degli orientamenti interpretativi della **Corte di Giustizia dell'Unione Europea**, l'**applicazione del diritto interno in conformità con la Direttiva**, al fine di conseguire il risultato voluto dal legislatore europeo e assicurare così l'adeguamento dell'ordinamento interno a quello europeo;
- ▶ **in caso di dubbio ermeneutico** in ordine all'interpretazione della fonte europea, **ricorso pregiudiziale alla Corte di Giustizia dell'Unione Europea**;
- ▶ **in caso di contrasto insanabile** tra le norme interne e la Direttiva, **ricorso alla Corte costituzionale** ed **eccezione di legittimità costituzionale** per violazione dell'art. 117 Cost.;
- ▶ **rispetto dei principi costituzionali** ed eventuale **opposizione dei 'controlimiti'** alle limitazioni di sovranità derivanti dall'appartenenza all'Unione Europea, mediante **ricorso alla Corte costituzionale**;

- ▶ **dialogo tra Corti e interpretazione conforme alle norme CEDU** alla luce degli orientamenti interpretativi della **Corte Europea dei Diritti dell’Uomo**.

XI.2. La portata innovativa ‘programmatica’ della Direttiva 2012/29/UE richiede da parte degli operatori, ai fini della piena attuazione del diritto dell’Unione, l’esame attento, coordinato e integrale sia delle *norme* in cui la Direttiva si articola, sia dei *considerando* che le precedono, i quali offrono importanti orientamenti operativi, indicazioni teleologiche e elementi esegetici utili alla migliore applicazione della Direttiva stessa.



## Sommario delle linee guida

(illustrazione  
della linea guida)

- II.1.** Nella valutazione individuale dei bisogni di protezione di una vittima di *corporate violence*, l'operatore non deve farsi condizionare dall'inquadramento giuridico-formale del fatto, ma concentrarsi sull'effettivo impatto di questo sulla vita, salute o integrità psico-fisica della vittima, individuato in termini di danno attuale o di pericolo, onde procedere a una valutazione concreta dei rischi di vittimizzazione secondaria o ripetuta, intimidazione o ritorsione, nello specifico caso. pp. 17-19
- II.2.** Nella valutazione dei bisogni di protezione di una vittima di *corporate violence* l'operatore deve tenere conto della frequente compresenza di plurimi fattori di vulnerabilità e verificare quindi accuratamente se una tale combinazione si dia nel caso in esame. pp. 19-22
- II.3.1.** L'operatore che si trovi a effettuare la valutazione individuale dei bisogni di protezione di una vittima di *corporate violence* dovrà prestare particolare attenzione a caratteristiche personali della vittima, tipo e natura del reato, circostanze del reato e desideri della vittima. pp. 22-24
- II.3.2.** Il rischio di esposizione a intimidazioni e/o ritorsioni va sempre preso in considerazione in relazione alle vittime di *corporate violence*, in particolare in tutte le situazioni di dipendenza, economica o di altro tipo, dalla *corporation* coinvolta, sia questa una dipendenza individuale o estesa all'intera comunità di appartenenza. In generale, occorre tenere presente che intimidazione e ritorsione tenderanno per lo più ad assumere forme 'atipiche' se confrontate con i casi di crimini 'convenzionali'. pp. 24-25
- II.3.3.** Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* occorre tenere presente che il permanere dell'esposizione della vittima ai fattori di rischio all'origine del reato lamentato, e dunque il pericolo di vittimizzazione ripetuta, è estremamente frequente, anche se tale esposizione può avvenire con modalità poco visibili, a causa della complessità di questo tipo di reati. p. 25

(illustrazione  
della linea guida)

- II.3.4.** Nella valutazione individuale dei bisogni di protezione delle vittime di *corporate violence* occorre prestare particolare e specifica attenzione alle esigenze di tutela della vita privata, della riservatezza e della dignità della persona offesa e dei suoi famigliari, in relazione alla frequente natura sensibile di dati e informazioni indispensabili alle indagini e al processo. pp. 25-26
- II.3.5.** Nella complessiva valutazione dei bisogni di una vittima di *corporate violence* occorre tenere conto della possibilità che il rispetto di sé e l'autostima della persona siano stati gravemente compromessi da una ripetuta negazione dell'ingiustizia subita, oltre che dal senso di 'tradimento' implicito in questo tipo di reati e da un possibile senso di vergogna e/o colpa nei casi in cui la vittima abbia in qualche misura 'contribuito' al verificarsi del fatto. p. 26
- II.3.6.** La valutazione individuale dei bisogni di protezione non può considerarsi 'data' una volta per tutte, ma va adattata all'evolversi della situazione della vittima nel tempo, che deve quindi essere periodicamente rivalutata. p. 27
- III.1.1.** Ai fini dell'applicazione di queste *Linee guida* sono 'vittime' le persone fisiche rientranti nella definizione di cui all'art. 2 della Direttiva 2012/29/UE, le quali hanno subito un danno – fisico, mentale, emotivo, economico – causato direttamente da un fatto preveduto come reato dalla legge nazionale, commesso nell'Unione Europea o per cui si procede penalmente nell'Unione Europea. pp. 28-31
- III.2.1.** Ogni operatore, nel contatto con 'vittime di reato' ai sensi della Direttiva, dovrà attenersi ai principi da questa espressi in relazione a: considerazione della persona come vittima, da accordarsi indipendentemente dall'identificazione, cattura, rinvio a giudizio o condanna della persona a cui il fatto è attribuito; riconoscimento e trattamento rispettoso, sensibile, personalizzato, professionale, non discriminatorio, i quali sono dovuti alla persona che afferma di essere vittima in tutti i contatti con l'autorità competente; riconoscimento, fin dal primo contatto con un'autorità competente e indipendentemente dalla presentazione della denuncia, dei diritti di base sanciti dalla Direttiva, in tema di informazione, accesso ai servizi di assistenza, diritto a essere ascoltati; riconoscimento delle vulnerabilità della persona che afferma di essere vittima. Tali diritti riguardano ogni persona fisica che affermi di essere vittima di reato, indipendentemente dall'eventuale procedimento penale e dai suoi esiti e fatti salvi i diritti e le garanzie della persona (fisica o giuridica) a cui il fatto è attribuito. pp. 31-34
- III.2.2.** Gli operatori che, a qualsiasi titolo, entrano in contatto con persone che affermano di essere vittime di reato, e a maggior ragione con persone potenzialmente lese da un episodio di *corporate violence* ma ignare di esserlo, devono essere in grado di garantire un'idonea attitudine all'ascolto e una elevata capacità di prestare attenzione alle storie riferite e alle esigenze riportate. pp. 34-35



(illustrazione  
della linea guida)

- III.3.1.** L'autorità giudiziaria, unitamente alle altre autorità competenti, è chiamata a contribuire a una strategia di prevenzione della *corporate violence* che miri alla responsabilizzazione di tutti i soggetti rilevanti. pp. 35-38
- III.3.2.** La preparazione degli operatori, lo scambio di informazioni, la capacità di lettura dei segnali d'allarme, la corretta valutazione dei rischi e l'efficienza 'integrata' dei sistemi di vigilanza, prevenzione e repressione – a livello degli organi pubblici preposti al controllo, dell'autorità di pubblica sicurezza e della magistratura – sono fattori cruciali per il tempestivo e corretto riconoscimento delle vittime di *corporate violence* e *corporate crime*, nel rispetto delle garanzie del giusto processo e dei diritti delle persone indagate, imputate, condannate. In particolare, gli uffici competenti dovrebbero dedicare specifica attenzione a: formazione e preparazione degli operatori, unitamente a organizzazione ed efficienza dell'attività degli uffici; attenzione a informazioni e segnali d'allarme disponibili; adozione di azioni preventive e repressive 'di sistema'; creazione di banche dati, registri, ecc. pp. 38-41
- III.3.3.** Fin dal primo contatto con la persona che afferma di essere vittima di *corporate violence*, la polizia giudiziaria e il pubblico ministero devono procedere a una verifica dello status fondante la richiesta di apertura del procedimento, effettuando gli opportuni riscontri, anche al fine di individuare altre possibili vittime e tutelare i soggetti denunciati [v. anche, in stretto collegamento, la raccomandazione § IV.2]. pp. 41-42
- III.4.1.** Davanti alla specificità e complessità della vittimizzazione da *corporate violence*, al possibile numero delle vittime e al rango dei beni giuridici lesi dal reato, il riconoscimento di queste vittime e il loro trattamento rispettoso, sensibile, personalizzato, professionale e non discriminatorio esigono da parte degli operatori speciali attenzioni, che tengano conto in particolare del considerevole danno subito, del particolare rischio legato alla relazione e dipendenza nei confronti dell'autore del reato, della dimensione generalmente collettiva dell'illecito, dell'incertezza scientifica gravante su molti casi di *corporate violence*, del rischio di colpevolizzazione delle vittime. pp. 42-43

(illustrazione  
della linea guida)

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|---------------|--|-----------|
| <b>IV.1.</b>  | In occasione del primo contatto con la vittima, la polizia giudiziaria, il pubblico ministero e gli altri operatori (funzionari pubblici o incaricati di un pubblico servizio) coinvolti dovranno fornire le informazioni indicate dall'art. 90 <i>bis</i> c.p.p. in maniera comprensibile e calibrata sugli specifici bisogni delle vittime di <i>corporate violence</i> . Quando il primo contatto avvenga in occasione dell'udienza dibattimentale, il giudice dovrà spiegare alla vittima il suo ruolo, nei limiti in cui esso risulti compatibile con il sistema processuale.                                   | pp. 44-47 |
| <b>IV.2.</b>  | La polizia giudiziaria e/o il pubblico ministero che ricevano la notizia di un reato di <i>corporate violence</i> mediante la presentazione di denuncia o querela sono tenuti a verificare lo status fondante la legittimazione, in ipotesi chiedendo al denunciante o al querelante di fornire elementi dimostrativi della propria qualità. Tale verifica potrà essere utile al successivo censimento di soggetti che si trovino in condizioni analoghe e che possano essere contattati e informati dei propri diritti di accesso alla giustizia [v. anche, in stretto collegamento, la raccomandazione § III.3.3]. | pp. 47-48 |
| <b>IV.3.</b>  | Il diritto di informazione della vittima circa i poteri e le facoltà deve essere garantito mediante l'adozione di adeguate misure organizzative, che permettano alla medesima di conoscere senza ritardo lo stato del procedimento attivato mediante la proposizione della denuncia o della querela e le possibili forme di intervento, opposizione e critica dei provvedimenti adottati dall'autorità giudiziaria.  | pp. 48-51 |
| <b>V.1.1.</b> | La valutazione delle esigenze di protezione delle vittime di <i>corporate violence</i> deve essere condotta con particolare attenzione, tenendo presente il fatto che tali vittime potrebbero presentare forme tipiche o atipiche di vulnerabilità o entrambe, cioè appartenere a gruppi già astrattamente vulnerabili e/o presentare specifiche esigenze individuali di protezione dovute, per esempio, alla «gravità del reato» e al «grado di danno» subito, ovvero alla «dipendenza dall'autore del reato».  | pp. 53-54 |

(illustrazione  
della linea guida)

- V.1.2.** Stante la lacunosità della disciplina vigente in tema di ‘vittime’ e ‘persone offese’ in «condizione di particolare vulnerabilità» e stante l’atipicità della vulnerabilità delle vittime di *corporate violence*, la polizia giudiziaria, il pubblico ministero e il giudice, nel rispetto delle rispettive attribuzioni, devono avere riguardo all’intero quadro normativo vigente nell’individuare la corretta disciplina applicabile in ordine alle informazioni, alle comunicazioni, alla protezione della vittima considerata vulnerabile, in occasione dell’assunzione di informazioni, dell’incidente probatorio, dell’esame testimoniale, ecc., nel rispetto delle garanzie del contraddittorio e della difesa della persona nei cui confronti si procede. pp. 55-59
- V.1.3.** La valutazione della vulnerabilità e delle conseguenti esigenze di protezione non è disgiungibile dalla corretta individuazione e identificazione delle vittime e dal loro riconoscimento, nonché, ove possibile, dall’attivazione dei servizi di assistenza (v. anche §§ III e X). pp. 55-59
- V.2.1.** La protezione delle vittime di *corporate violence* esige da parte dell’autorità giudiziaria e, ove previsto, della polizia giudiziaria la capacità di ricorrere con competenza, saggezza ed equilibrio alle misure capaci in concreto di offrire ragionevolmente detta protezione, fra quelle disponibili nell’ordinamento e rigorosamente entro i limiti applicativi previsti, avendo al tempo stesso l’obiettivo della tutela delle persone dalla vittimizzazione primaria ripetuta, dalle possibili intimidazioni e ritorsioni provenienti dalla *corporation* e dalla vittimizzazione secondaria, e la costante considerazione dei diritti e delle garanzie della persona fisica e/o dell’ente nei cui confronti si procede. pp. 59-62
- V.3.1.** Alla luce dell’intero ordinamento e delle politiche criminali di prevenzione della criminalità d’impresa e di responsabilizzazione di tutti i soggetti coinvolti descritte *supra* (§ III.3), la protezione dalla vittimizzazione primaria ripetuta passa attraverso interventi multilivello fra loro integrati, di cui l’adozione di eventuali misure giudiziali di protezione delle vittime costituisce solo uno degli aspetti. Tali interventi concernono il ruolo preventivo degli organi pubblici di controllo e dell’autorità di pubblica sicurezza e il perseguimento delle omissioni di segnalazione obbligatoria; il ruolo preventivo-repressivo della polizia giudiziaria e dell’autorità giudiziaria nel perseguimento dei ‘reati spia’ e di reati o illeciti penali o amministrativi di tutela anticipata (rispetto ai quali rilevante è il ruolo delle competenti autorità amministrative); il ruolo proattivo della polizia giudiziaria nell’acquisizione delle notizie di reato; il ruolo reattivo delle Procure della Repubblica rispetto a dati provenienti da indagini collegate e a segnali di allarme; il riconoscimento tempestivo di vittime attuali o potenziali; il loro indirizzamento a servizi di assistenza; l’adozione di misure con effetti di protezione dal rischio di nuova o ulteriore vittimizzazione. pp. 63-66

(illustrazione  
della linea guida)

- V.3.2.** Possibili misure adottabili, nel rispetto rigoroso delle ipotesi disciplinate dalla legge, in chiave anche di protezione delle vittime di *corporate violence* dalla vittimizzazione primaria ripetuta sono, a mero titolo di esempio, il divieto temporaneo di esercitare determinate attività professionali o imprenditoriali, le misure cautelari previste dal d.lgs. 231/2001, il sequestro preventivo, le sanzioni interdittive nei confronti dell'ente, le pene accessorie interdittive nei confronti della persona fisica. pp. 66-67
- V.3.3.** La protezione delle vittime di *corporate violence* non può dipendere soltanto dalle risposte offerte dal sistema penale. L'autorità giudiziaria procedente deve saper attivare le opportune forme di protezione extrapenale, con il coinvolgimento dei competenti organi pubblici di controllo e, ove presenti, dei servizi di assistenza (v. anche §§ III e X). p. 67
- V.4.1.** Anche per le vittime di *corporate violence*, l'autorità giudiziaria deve procedere alla valutazione della sussistenza della eventuale condizione di particolare vulnerabilità ex art. 90 *quater* c.p.p., riconosciuta la quale anch'esse possono godere del sistema di protezione dalla vittimizzazione secondaria previsto dal codice di procedura penale e consistente, in sintesi, nelle forme protette di audizione e in altre modalità di tutela. pp. 68-70
- V.4.2.** È importante che l'autorità giudiziaria, anche grazie a un'adeguata sensibilizzazione e formazione, sia attenta a non desumere dal contesto economico 'lecito' in cui si è svolta la condotta l'assenza della particolare condizione di vulnerabilità della vittima di illeciti d'impresa contro la vita, l'incolumità individuale, l'incolumità pubblica, finendo di fatto per discriminare le vittime vulnerabili atipiche da quelle tipiche, e vanificando così una delle dimensioni più innovative, sul piano giuridico e culturale, introdotte dalla Direttiva 2012/29/UE. pp. 68-70
- V.5.1.** Nel promuovere i programmi di giustizia riparativa, l'autorità giudiziaria procedente dovrà avvalersi solo di centri di giustizia riparativa istituzionalmente riconosciuti in grado di adempiere a tutte le condizioni di garanzia indicate dall'art. 12 Dir. Il rispetto di tali garanzie è di primaria rilevanza nel caso di programmi di giustizia riparativa che coinvolgano vittime di *corporate violence*. pp. 70-71

(illustrazione  
della linea guida)

- VI.1.** L'autorità procedente deve assicurare la protezione della vita privata delle vittime di *corporate violence* non soltanto nel corso del processo penale, ma anche nella fase delle indagini preliminari, sin dal primo contatto con le stesse. pp. 72-75
- VI.2.** In tutti casi in cui sia necessario a tutela della riservatezza della vittima di *corporate violence*, ove l'ordinamento processuale lo consenta, il giudice deve disporre che l'udienza dibattimentale si svolga a porte chiuse. pp. 75-76
- VI.3.** Nel corso dell'esame dibattimentale, il presidente, anche d'ufficio, deve intervenire affinché alla vittima di *corporate violence* non siano poste domande relative alla propria vita privata, laddove non attinenti ai fatti di cui all'imputazione. p. 77
- VII.1.** Ciascuna vittima di reato deve essere destinataria di una compiuta ed effettiva informazione sul diritto di difesa tecnica, che contempra lo scopo e le possibili scelte e azioni attivabili nel corso del procedimento penale. Tale informativa deve essere fornita tempestivamente, già in occasione del compimento di un atto garantito o di un incidente probatorio cui la vittima abbia diritto di assistere (in veste di persona offesa dal reato). pp. 78-80
- VII.2.** La vittima del reato di *corporate violence* deve essere puntualmente informata dei presupposti e dei limiti di accesso al patrocinio a spese dello Stato. pp. 80-81
- VII.3.** La vittima del reato di *corporate violence* deve essere puntualmente e chiaramente informata circa l'opportunità di procedere con tempestività – sussistendone i presupposti – alla nomina del difensore (in veste di persona offesa, ex art. 101 c.p.p.) e/o alla elezione di un domicilio ai fini delle comunicazioni del procedimento. p. 81
- VIII.1.1.** È necessario adottare ogni misura possibile e idonea a ridurre i tempi delle indagini e dei procedimenti penali in casi di *corporate violence*, favorendo una gestione efficiente del procedimento penale ed evitando l'esposizione delle vittime di questi reati a rischi di vittimizzazione secondaria e/o ripetuta. In particolare si dovrebbe considerare di individuare criteri generali per un efficace impiego della polizia giudiziaria; individuare criteri di priorità per lo svolgimento delle indagini; individuare a livello distrettuale protocolli condivisi; favorire la presenza del magistrato nelle operazioni peritali; individuare criteri o canali di priorità di trattazione dei processi; ridurre al minimo i tempi di trasmissione del fascicolo; sperimentare tecniche di condivisione informativa; adottare protocolli d'intesa tra magistratura e avvocatura. pp. 82-86

(illustrazione  
della linea guida)

- VIII.1.2.** È necessario che anche la polizia giudiziaria e gli uffici delle Procure si facciano carico di informare le vittime, in modo sintetico ma obiettivo, comprensibile e completo, anche in merito ai diritti degli imputati e delle difese, in modo tale che il corretto esercizio degli stessi non venga percepito come un atto di ingiustizia nei confronti delle vittime stesse, e si facciano altresì carico di rappresentare alle vittime, in modo neutrale e comprensibile, la possibilità che il processo abbia un esito negativo, alla luce dell'incertezza della prova scientifica e del decorso del tempo che caratterizza questa tipologia di processi; il tutto nell'ottica del mantenimento della massima equidistanza tra le ragioni dell'accusa e le aspettative delle vittime. p. 86
- VIII.1.3.** Nel pieno rispetto dei diritti della difesa e della discrezionalità giudiziale, occorre che gli uffici giudiziari individuino metodi di comunicazione dell'esito giudiziale semplici e immediati, tali da garantire la migliore e più rapida comprensione degli elementi essenziali della decisione assunta dall'autorità giudiziaria, evitando così, tra l'altro, di favorire la circolazione di errate interpretazioni o strumentalizzazioni della sentenza nella fase che precede il deposito della motivazione. pp. 86-87
- VIII.2.1.** Il giudicante dovrebbe sempre valutare la possibilità di effettuare direttamente la liquidazione integrale del danno con la sentenza di condanna. Se questa opzione non è, per ragioni oggettive, perseguibile, il giudicante, sempre se sussiste la richiesta della parte civile (che andrebbe informata in tal senso: v. linee guida § IV), dovrebbe favorire la liquidazione della provvisoria (in caso di generica condanna al risarcimento dei danni). In caso di condanna con contestuale liquidazione integrale del danno, il giudice – previa richiesta della parte civile – dovrebbe riconoscere, ove possibile, la sussistenza dei presupposti di legge (i giustificati motivi) per dichiarare la condanna al risarcimento provvisoriamente esecutiva. pp. 87-89
- VIII.3.1.** Gli uffici giudiziari devono organizzarsi preventivamente in vista della gestione della partecipazione di elevati numeri di vittime (tipici dei casi di *corporate violence*) alla fase dibattimentale, in modo da garantire l'accesso all'aula a tutti gli aventi diritto in modo ordinato e in tempi ragionevoli e da garantire l'ordinato e sereno svolgimento delle udienze; in vista di ciò può essere opportuno individuare e monitorare sul territorio nazionale le *best practices* nella gestione di dibattimenti con un numero elevato di vittime; individuare preventivamente uno o più spazi adeguati; individuare, ove possibile, interlocutori rappresentativi delle vittime; nei casi di vittime particolarmente vulnerabili, individuare aule di udienza collegate con mezzi audiovisivi a spazi autonomi e adeguati. pp. 89-90

(illustrazione  
della linea guida)

- VIII.5.1.** L'inquirente e il giudicante dovranno attentamente valutare l'adempimento degli obblighi di informazione a favore della vittima e promuovere misure che consentano alla stessa di agire informata anche rispetto a quelle facoltà per l'esercizio delle quali è necessaria una richiesta formale o un'attivazione della vittima di propria iniziativa (v. anche § IV). Nell'esercizio dei diritti e delle facoltà di partecipazione al procedimento penale, dovrà essere tenuta in considerazione la particolare vulnerabilità delle vittime di *corporate violence*, adottando misure di protezione adeguate per evitare il rischio di vittimizzazione secondaria e ripetuta, intimidazioni e ritorsioni, o lesioni alla *privacy* (v. anche §§ V e VI) pp. 92-94
- VIII.6.1.** Le Procure della Repubblica di tutto il territorio nazionale dovrebbero acquisire maggiore consapevolezza della disciplina e dei meccanismi della responsabilità da reato dell'ente, ai sensi del d.lgs. 231/2001, al fine di valutare in modo sistematico, in tutti i casi di *corporate violence*, l'eventuale sussistenza dei presupposti per la contestazione dell'illecito all'ente. A tal fine occorre considerare la promozione di formazione interna specifica (v. anche § XI) e l'adozione di protocolli o intese a livello distrettuale. pp. 94-97
- VIII.6.2.** Le Procure della Repubblica e i giudicanti, ciascuno per le proprie competenze, dovrebbero utilizzare nel modo più efficace ed estensivo possibile le potenzialità offerte dal d.lgs. 231/2001 in materia di responsabilità da reato degli enti, in particolare considerando una valutazione sistematica, in tutti i casi di *corporate violence*, dell'impiego dei mezzi di indagine e dei meccanismi premiali a questa legati; una valutazione circa la possibilità di subordinare la concessione all'ente del patteggiamento all'integrale risarcimento del danno; la verifica del risarcimento integrale del danno e della riparazione delle conseguenze dannose o pericolose del reato in caso di richiesta di accesso alle misure riparatorie di cui all'art. 17 d.lgs. 231/2001. pp. 97-101
- VIII.6.3.** Qualora non sia possibile attivare i meccanismi di cui al d.lgs. 231/2001, occorrerà utilizzare e valorizzare le misure premiali previste dall'ordinamento e/o gli spazi di discrezionalità consentiti dalle norme vigenti per incoraggiare la *corporation* a prestare adeguato risarcimento dei danni alla vittima e a rimediare le conseguenze del reato, valorizzando le iniziative adottate dall'ente, anche laddove si sia solo utilmente attivato in tal senso e l'insuccesso dell'iniziativa sia dovuto al rifiuto o alla mancata collaborazione della vittima. pp. 101-103

(illustrazione  
della linea guida)

- VIII.7.1.** Le Procure della Repubblica e il giudicante dovranno attentamente valutare le possibilità di operare scelte che consentano alla vittima di ottenere una decisione in merito al risarcimento del danno in sede penale, quando essa è resa impossibile per ragioni che dipendono unicamente dall'accesso da parte di uno o più imputati al rito speciale del patteggiamento, considerando in modo particolare, in sede di scrutinio di congruità della pena, di valutare attentamente l'integrale risarcimento del danno; di valutare la subordinazione della sospensione condizionale della pena al risarcimento del danno; di convocare all'udienza di patteggiamento la persona offesa; di dare specifico avviso alla persona offesa della sentenza di patteggiamento. pp. 103-105
- IX.1.** Come affermato nei *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* delle Nazioni Unite, i programmi di giustizia riparativa dovrebbero essere resi disponibili in ogni stato e grado del procedimento, potenzialmente per tutti i reati. pp. 106-109
- IX.2.** Il ricorso alla giustizia riparativa in caso di reati di impresa e, nella specie, di *corporate violence* deve essere incoraggiato, seguendo modelli di intervento adattati alle specificità del contesto, nel rispetto delle garanzie a tutela delle vittime previste dalla Direttiva, da svolgersi nel rispetto dei *Principi Base* delle Nazioni Unite e in conformità a elevati standard di competenza, indipendenza e professionalità di mediatori e centri di giustizia riparativa, con garanzia della gratuità e volontarietà del programma e della volontarietà del risultato, da comunicarsi all'autorità giudiziaria procedente. pp. 109-113
- X.1.1.** È importante assicurare comunque alle vittime, ivi comprese le vittime di *corporate violence*, l'accesso a ogni possibile realtà o servizio, disponibili sul territorio, che – al di fuori e indipendentemente dal procedimento penale – possano fornire in modo competente informazioni, sostegno e forme extragiudiziali di protezione. pp. 114-117
- X.2.1.** In attesa del pieno recepimento della Direttiva e dell'istituzione di servizi di assistenza alle vittime, l'autorità giudiziaria, le forze di polizia, gli enti locali, le altre competenti amministrazioni pubbliche, l'avvocatura e la società civile devono collaborare alla realizzazione sul territorio di iniziative gratuite e senza fini di lucro, volte a offrire, con adeguati standard di competenza, informazioni e supporto extragiudiziali alle vittime di reato, quali ad es. servizi di assistenza, 'sportelli', 'reti' di servizi sociali, ecc. pp. 117-119



(illustrazione  
della linea guida)

- X.3.1.** Polizia giudiziaria e magistratura devono mappare, conoscere e saper attivare i servizi presenti sul territorio che possano fornire assistenza, anche specialistica, alle vittime di reato. pp. 119-121
- X.3.2.** L'autorità procedente e, in generale, ogni operatore che entri istituzionalmente in contatto con la vittima (con speciale riguardo, in ragione della tempestività dell'indirizzamento, alla polizia giudiziaria, al pubblico ministero e, ove nominato, al difensore della persona offesa) devono essere in grado di: avere una visione 'olistica' dei bisogni di assistenza e sostegno delle vittime di *corporate violence*; valutare la vulnerabilità della singola vittima; fornire informazioni sulle strutture sanitarie presenti sul territorio e sul tipo di assistenza che può ricevere e da chi; indirizzare le vittime ai servizi pubblici e/o privati e alle eventuali altre istituzioni pertinenti, previa mappatura dei medesimi, indipendentemente dalla presentazione di formale denuncia. pp. 121-122
- X.3.3.** L'entità o il livello di dettaglio delle informazioni offerte alla vittima e l'effettiva presa in carico della vittima ai fini dell'indirizzamento ai servizi pertinenti o agli organi competenti devono essere adeguati in base alle condizioni personali e alle esigenze individuali di protezione della vittima, alla gravità del reato e all'entità del danno subito, apprezzate anche sulla scorta di una «valutazione individuale» operata dall'autorità procedente. p. 123
- XI.1.** Fatta salva l'indipendenza della magistratura, le attribuzioni del CSM e l'autonomia e le competenze della Scuola Superiore della Magistratura, i soggetti responsabili, a livello centrale e territoriale, della formazione iniziale e permanente dei magistrati, ordinari e onorari, degli altri operatori di giustizia e degli ufficiali e agenti destinati a svolgere compiti di polizia giudiziaria devono garantire una formazione adeguata e aggiornata non solo sugli obblighi di base nascenti dalla Direttiva 2012/29/UE, ma anche, proporzionatamente al livello di contatti tra i diversi operatori e le vittime di reato, specificamente in relazione alle modalità di valutazione dei bisogni individuali di protezione, ai servizi di sostegno cui indirizzare le vittime e, ove necessario, alle particolari esigenze delle vittime vulnerabili, anche attraverso l'integrazione di competenze extragiuridiche, nonché in relazione a tutte le misure di protezione attivabili. In relazione ai potenziali contatti con vittime vulnerabili, la formazione dovrà includere le specifiche esigenze e vulnerabilità che possono connotare le vittime di *corporate violence*, e le correlate possibilità di accesso a misure di protezione e/o servizi di supporto adeguati alle specifiche necessità di queste vittime. pp. 124-128

(illustrazione  
della linea guida)

- XI.2.** Nel quadro del potere direttivo sulle attività di polizia giudiziaria spettante al Procuratore della Repubblica, questi dovrà valorizzare, compatibilmente con le risorse a disposizione nel circondario di pertinenza, le possibilità di specializzazione degli operatori di polizia giudiziaria in riferimento alle peculiarità e vulnerabilità delle vittime di *corporate violence*. p. 128
- XII.1.** La magistratura ha un ruolo fondamentale nel dare completa ed effettiva applicazione alla Direttiva 2012/29/UE, nonostante l'inerzia e le lacune del legislatore nazionale, alla luce del principio del primato del diritto dell'Unione; del vincolo di interpretazione conforme al diritto dell'Unione; in caso di dubbio ermeneutico, della possibilità di ricorso pregiudiziale alla Corte di Giustizia dell'Unione Europea; in caso di contrasto insanabile tra le norme interne e la direttiva, della possibilità di ricorso alla Corte Costituzionale. pp. 129-133
- XII.2.** La portata innovativa 'programmatica' della Direttiva 2012/29/UE richiede da parte degli operatori, ai fini della piena attuazione del diritto dell'Unione, l'esame attento, coordinato e integrale sia delle *norme* in cui la Direttiva si articola, sia dei *considerando* che le precedono, i quali offrono importanti orientamenti operativi, indicazioni teleologiche e elementi esegetici utili alla migliore applicazione della Direttiva stessa. pp. 129-133

## ENGLISH ABSTRACT

These *National guidelines for police officers, public prosecutors and judges* are aimed at providing a **practical and specific tool** for a better **implementation**, by **Italian law enforcement agencies**, of **Directive 2012/29/EU**, with specific respect to **victims of corporate crime and corporate violence**. Building on a previous theoretical and empirical research, these *Guidelines* provide an **overview of the minimum standards on the rights, support and protection of victims of crime** established by the Directive (**§ I**), with specific respect to the **peculiarities and problems** related to **corporate violence victimization**, i.e. to criminal offences committed by corporations in the course of their legitimate activities, which result in harms to natural persons' health, integrity or life, and whose victims experience a whole range of **distinctive risks** of **secondary and repeat victimisation**, of **intimidation** and **retaliation**, as well as of **harm to their dignity and private and family life**. An overview of the harms and risks suffered by these victims is therefore indispensable in view of a competent and effective **individual assessment** of their specific protection needs (**§ II**).

The usually **collective dimension** of corporate violence victimization, together with the frequently **long latency periods** which characterize the onset of the harmful effects, and with the recurrence of **scientific uncertainty** about causal links and, in some cases, about the meaning and relevance of symptoms experienced by victims, all add to the **greater difficulty in identifying and recognizing these victims** and their status as such, so that specific guidelines are provided with this respect (**§ III**). Due to the same factors, these victims also present **peculiar needs for information** (**§ IV**), as well as for **protection** from secondary and repeat victimization, from intimidation and from retaliation, including against the risk of emotional or psychological harm (**§ V**), as well as against **risks for their privacy**, their personal integrity and personal data (**§ VI**).

Further guidelines are specifically addressed at tackling, as far as possible, the difficulties **corporate violence victims** experience in getting **adequate and economically sustainable legal assistance** (**§ VII**), in **accessing criminal justice** and in participating, in an informed and effective way, in criminal proceedings, as well as in **achieving a decision on compensation** from individual and corporate offenders (**§ VIII**). Corporate violence victims' possibilities to access **specific restorative justice programmes** are also addressed (**§ IX**), together with law enforcement agents' duties in providing **information and advice about available support services**, in a country where no specific victim support services have, as yet, been provided for (**§ X**). The importance of **training** for police officers, judges and prosecutors is also addressed, with specific attention to the available channels for the implementation of adequate and specific trainings aimed at tackling corporate violence victims' criticalities and needs (**§ XI**). Finally, specific attention is paid to possible **critical issues**, as well as **general principles**, related to the **integration** of such an innovative **EU discipline** within the **Italian legal framework** (**§ XII**).



## PARTNERS



UNIVERSITÀ CATTOLICA del Sacro Cuore  
**CSGP**  
Centro Studi "Federico Stella"  
sulla Giustizia penale e la Politica criminale

**Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale (CSGP) – Università Cattolica del Sacro Cuore, Milano, Italia.** Il CSGP è l'ente coordinatore del Progetto. Il CSGP nasce nell'Università Cattolica di Milano con lo scopo di promuovere la ricerca teorica e applicata sui problemi della giustizia penale e della politica criminale in una prospettiva interdisciplinare, attenta a metodi e risultati dello studio criminologico e agli apporti delle scienze empirico-sociali, nonché all'attuazione dei principi costituzionali. Il CSGP si avvale di un autorevole comitato scientifico (di cui fanno parte magistrati ed esperti di chiara fama in materie giuridiche, economiche, psicologiche e filosofiche) e di un ampio gruppo di ricerca composto da professori, ricercatori, dottorandi.



**Leuven Institute of Criminology – Università di Lovanio, Lovanio, Belgio.**

L'Università di Lovanio (KU Leuven) è socio fondatore della LERU (League of European Research Universities); figura tra i primi dieci istituti universitarie nelle classifiche europee relative alla ricerca. Il Leuven Institute of Criminology (LINC) si compone di circa settanta professori e ricercatori impegnati nella ricerca criminologica e nell'insegnamento. Il LINC prosegue la tradizione dell'Università di Lovanio di combinare ricerca di qualità con un forte impegno verso la società, obiettivo perseguito attraverso ricerca sia di base che orientata alla politica criminale e sociale. Il LINC persegue otto 'filoni di ricerca' uno dei quali dedicato alla giustizia riparativa e alla vittimologia.



**Max-Planck-Institut  
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**Max-Planck-Institut für ausländisches und internationales Strafrecht (MPICC), Friburgo in Br., Germania.**

I progetti di ricerca intrapresi dal MPICC sono di natura comparativa, internazionale e interdisciplinare, e si concentrano sullo studio empirico del diritto penale, della criminalità, della difesa sociale e delle vittime di reato. I campi di ricerca dell'Istituto includono altresì: armonizzazione e uniformazione del diritto penale e del diritto processuale penale negli Stati dell'Unione Europea; riforma del diritto penale alla luce delle migliori conoscenze disponibili sulle possibili soluzioni giuridiche ai problemi sociali e sulle alternative più funzionali all'interno e all'esterno dell'ordinamento penale.

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This project is co-funded by  
the Justice Programme  
of the European Union

