Being (Almost) Invisible: Victims of Crime in the Italian Juvenile Criminal Justice System

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From 2008 to 2013 the author has been a Special Judge in the Juvenile Criminal Court of the Emilia Romagna Region. From that privileged perspective, it was possible to observe the dynamics of how victims of underage offenders were considered before the law, no differences if they are adults or minors, too. The reflections presented will first consider EU and UN provision on victims of crime; then, the normative framework supporting the Italian criminal juvenile justice system will be considered by an examining of the difficulties victims meet in that peculiar context. The implementation of juvenile criminal law shows the paradox victims of crime have to cope with. The Juvenile Criminal Court in Bologna recently started to promote a wide use of restorative justice measures as an attempt to correct the unfair consequences in the application of law, with judicial discretion interpreted as an instrument to favour victims’ harm recognition and to protect their dignity as persons.

Key words: juvenile criminal justice system, (underage) victims, judicial discretion, restorative justice.

Introduction

The issue concerning the implementation of legal guarantees and legal protection for victims of crime in the criminal justice system has been for many years the aim of many international and European provisions. Widely known is, of course, the UN Declaration of Basic Principles of Justice for Victims

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of Crime and Abuse of Power n. 40/34\(^1\), approved in 1985, affirming that all Member States shall grant and discipline the victims access to justice systems, guarantee them a fair treatment being “treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided by national legislation, for the harm that they have suffered” (art. 4). In the same year, the EU Recommendation no. R. (85)1\(^2\) on the Position of the Victim in the Framework of Criminal Law and Procedure adopted by the Council of Europe focused on the necessity “to have more regard in the criminal justice system to the physical, psychological, material and social harm suffered by the victim”, and remarked how important it is “to enhance the confidence of the victim in criminal justice and to encourage his co-operation, especially in his capacity as a witness”. The important document recommended the governments of Member States to consider actively in their legislation the necessity to guarantee a fair treatment to all victims in prosecution, protection of their privacy in criminal proceedings, transmission of information concerning their case, respectful questioning by Police and Judiciary system. In March 2001, the Framework Decision on the Standing of Victims in Criminal Proceedings\(^3\), adopted by the European Parliament along with the Justice and Home Affairs Council, called on member states to implement fair and effective legislation on standing of victims in the criminal procedure, affirming that “(…) Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. (…) and to ensure that victims are treated with due respect for the dignity (…)” (first paragraph). But most importantly it points out that “(…) Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances” (art. 2, Respect and recognition).

In 2006, Recommendation Rec. (2006)8\(^4\) on the Assistance to Crime Victims, adopted by the Council of Europe, highlighted the need to promote effective recognition of fundamental human rights along with the respect for all vic-

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2 Available at: http://www.coe.int/t/dghl/standardsetting/victims/recR_85_11e.pdf, assessed 15.9.2014.
tims without any discrimination of age, gender, race, nationality, religion. In particular, it affirmed that “(…) victims who are particularly vulnerable, either through their personal characteristics or through the circumstances of the crime, can benefit from special measures best suited to their situation” (art. 3, Right to assistance); they also need to “have access to information of relevance to their case and necessary for the protection of their interests and the exercise of their rights” (art. 6, Right to be informed). Finally, but no less important to our aims, it stressed “(…) at all stages of the procedure, the protection of the victim’s physical and psychological integrity. Particular protection may be necessary for victims who could be required to provide testimony” (art. 10, Right to protection of physical and psychological integrity).

More recently, in October 2012, the Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime5, adopted by the European Parliament and the European Council, introduced important standard to be expected in working with victims (they should be treated “in a respectful, sensitive, tailored, professional and non-discriminatory manner”), which can be considered a useful starting point for the implementation of measures to reduce (institutional) discrimination and secondary victimization. To this end, Member States shall promote and guarantee to all victims the rights to be informed, to be protected, to receive support and to participate in criminal proceedings (for their own case). In particular, what seems to be remarkable is the affirmation according to which “in the application of this Directive, where the victim is a child, the child’s best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child’s age, maturity, views, needs and concerns, shall prevail” (art 1). Then, it continues recalling that “The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child”. Special attention is given here to child victim or underage victims, not depending on the crime they have suffered, stressing the need for “a child-sensitive approach” able to consider the age of victims along with other fundamental characteristics like “maturity, views, needs and concerns”. It means to consider youth not merely as the exit of biological factors but to contem-

plate also the variety of psychological, social and cultural components it implies; therefore, to protect victims from harm and to support them in responding to the offences they have experienced all these factors should be taken in account by the justice system together with victims’ relatives (if possible). From this moment on, the notion of vulnerability becomes the key word for a new interpretation of victimization processes, being referred to the origin of victimization but, at the same time, to the results of this condition. More importantly, vulnerability is seen to depend not just on personal or psychological characteristics but equally on all those social conditions able to cause harm and suffering to individuals and groups as well, juveniles or adults, like iniquity, power abuse and violence, poverty, misrecognition, exploitation, discrimination and marginalization. Vulnerability is here considered a “social construct”, this change in the representation of victimization implying directly the intervention of society in prevention, supporting and taking care of people who are victimized.

Actually, the whole spectrum of all these provisions clearly shows the outstanding attention of EU and international agencies on victims’ rights and their implementation. But talking about this issue more concretely, some distinctions have to be made, as the rights to protection, to participation, to justice and to reparation are actually not subject to the same degree of consensus, as scholars critically pointed out. In particular, the right to participation seems to be really implemented: “(…) while it is broadly acknowledged that victims ought to be entitled to protection during the criminal process and some form of reparation as a result of their victimization, the idea of participatory rights in trials or sentencing procedures is still contentious, with any such ‘right’ still very much in the developmental stage” (Doak, 2009: 33). Probably we would say it is not really surprising, given that “(…) the objectives of the criminal justice system have traditionally been expressed in terms which primarily concern the relationship between the state and the offender”, to use exactly the words in Recommendation n. 85(11): “ever since the state took over from the victim the task of preserving law and order and keeping peace, concern for its predecessor” (that is, the victim) in administering criminal justice has been lacking (Schafer, 1977: 20). As Wemmers states, “the result of this transformation is that today the criminal justice process in common-law systems is founded on the state laying charges against the accused. Victims are witnesses to crimes against the state” (Wemmers, 2012: 74). During the last
centuries victims have known a progressive estrangement from criminal proceedings, experiencing a sort of expulsion from the criminal justice system: the representation on that stage concerns different actors as principals – the judge, the accused and the prosecutor – but not victims, who nevertheless “continued to be the ‘cause’ or ‘reason’ for the criminal procedure” (Schafer, 1977: 22). As Christie suggests, victims were left literally “waiting at the doorstep” (Christie, 2010: 116), where they still are indeed. Therefore the UN and EU provisions sound very interesting to our ears, soliciting some more reflections.

**About uncomfortable roles: to be a victim in the Italian juvenile criminal justice system**

Recently in Italy some important steps have been done to protect victims’ rights, thus demonstrating the attention politicians and the legal system dedicate to such a (very fashionable and “catchy”) issue. This is particularly true with regards to so called ‘special groups’ of victims being – almost formally – entitled to benefit from a sort of special legislation for crimes of great social concern: i.e. victims of domestic violence, sexual assault, terrorism, mafia and organized crime, exploitation and racket. In some cases procedures to guarantee victims’ participation in criminal proceedings have been reinforced, and sometimes partially extended, obviously without implying an authentic, deep hypothesis of “rethinking” victims’ roles and their expectations in the criminal justice system.

But there are contexts in which the position of victims of crime is still quite different, not really the most “comfortable” one: so is for their role inside the juvenile criminal justice system, a very “special proceeding” represented and detailed in DPR n. 448 enforced in 1988, approving *Disposizioni sul processo penale a carico di imputati minorenni*⁶ (along with D. Lgs. n. 272 *Norme di attuazione, di coordinamento e transitorie del DPR 22 settembre 1988, n. 448*⁷), where some ambiguities in the implementation of victims’ fundamental rights clearly appear. No matter if victims are adults or minors like the offender, as it seems to be very frequent today.

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Nowadays, it is well known that in a growing number of crimes involving underage offenders their victims are of the same age (Cops, Pleysier, 2014), which means they are peers: i.e. in case of bullying at school or on the Internet, robbery, personal assault, extortion, menace or threat, rape and sexual abuse. But this very evident, obvious remark nevertheless implies serious consequences, being the Italian Juvenile Criminal Code (DPR n. 448/1988\(^8\)) built on two basic principles explicitly recalling the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (*The Beijing Rules*, n. 40/33, 29 November 1985\(^9\)): the need to decide and act always in the name of child’s best interests and the need to support effectively and continuously the well-balanced, solid and positive development of minor’s personality (“1. Fundamental perspectives: (…) 1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible”). Clearly, those principles are addressed to underage offenders, not to their victims. In fact, according to the Juvenile Criminal Code priority shall be given to support and protect juvenile offenders during all the stages in the penal process, in order to prevent, reduce and limit every eventual stigmatization resulting in the contact with the criminal justice (and judiciary) system. It is well known that minors’ personality development is easy to be influenced by external opinions; negative labels such as “delinquent”, “sex offender”, “inmate” are extremely dangerous for the consequences they can produce on their own self image, their self esteem and on future social conducts, too. In this perspective it is necessary to prevent underage offenders to adhere to a negative stigmatization and to avoid their identification with negative labels. Aim of the judiciary system is also, indirectly, to prevent that they become a target of social blame by the community, or a target of social blame, discredit and exclusion, as this social dynamic influences unfavourably their growth, their personal and social identity, present relationships and future relations (Fadiga, 2006; Dalla Libera, Vezzadini, 2010). Minors’ education and socialization are thus considered of prior importance; other interests are not allowed to intervene, representing

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\(^8\) Available at: [http://www.regione.abruzzo.it/procuraminori/docs/legislazione/DPR_448_88.pdf](http://www.regione.abruzzo.it/procuraminori/docs/legislazione/DPR_448_88.pdf), assessed 15.9.2014.

an obstacle to the expected result of keeping and promoting the well-being of the juvenile (Moro, 2002).

In any case, there are no doubts that victims have their own interests, and many times they diverge from the one mentioned above. For this reason they are often aware of a clear limitation to their participation in criminal proceedings: we are not exaggerating when stating that they frequently become invisible to the legal system.

Other times, on the contrary, their participation is seen by judges as necessary condition to help and support in the best manner the underage offender’s feelings of responsibility. In this perspective it is important to remember that DPR n. 448/1988 introduced in Italy through articles 28 and 29 the *messa alla prova*, a measure very similar to probation. Moreover, through article 27 it introduced the *irrilevanza del fatto*, implying the possibility to stop the proceeding every time the wrong is considered by the judge (in accordance with the prosecutor) first as mild and, secondarily, as result of an occasional conduct (it means: not a result of an habit to delinquency). In any case, the Court shall consider pedagogic interest as prior, so victims are not infrequently asked to cooperate becoming useful in the very literal sense to the aim of juvenile well-being and socialization.

The Italian Juvenile Criminal Code assures the protection and safeguard to underage offenders in the penal process through peculiar legal guarantees: 1) the right to be processed and judged before special courts, by specialized judges and prosecutors, where “specialized” means specially qualified and trained to work inside the juvenile (criminal and civil) justice system; 2) the right to chamber trial 3) the right to special hearing; 4) the right to privacy; 5) the right to be psychologically and emotionally supported by relatives, experts in pedagogic disciplines or by the legal ward during all the steps in the criminal proceeding (“14. Competent authority to adjudicate: (…) 14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding which shall allow the juvenile to participate therein and to express herself or himself freely” – see again ‘The Beijing Rules’).

Things are definitely different for victims, especially for underage victims. An attempt to explain such a paradox could be found looking at the legal definition for “victims”, being first and foremost considered the direct witnesses of the crime. If the offence is seen primarily as a violation against the state and only marginally against individual human rights, it is easier to understand
why there are so few provisions on supporting and protecting victims inside criminal proceedings. According to the law (see art. 31 DPR 448/88, and art. 90 of the Italian Procedural Penal Code10), victims are allowed to present written memories and indicate probationary elements. They also shall receive formal communication of primary judicial hearing. Other than that, there is not much one can do – irrespective of whether one is being legal assisted (or not) by a lawyer. On the contrary, it is rather interesting to notice that victims are not allowed to enter into a civil lawsuit - while it is allowed for adults on trial – which can be considered contrary to the pedagogic principles inspiring the juvenile criminal justice system (art. 10 DPR 448/1988).

So, even if the victim and the offender are both minors, their situation before the law is completely different. According to the Chart of Noto, what is positive concerning young victims of sexual abuse, rape and exploitation, is the implementation of particular legal measures to protect, cover and defend the safeguard of more fragile victims explicitly required. For example, protected hearings before the judge and supported by experts in pedagogic and psychological matters are clearly required by law. Again, when possible, participation of victims’ relatives is considered absolutely important in order to assure emotional support (art. 392 co. 1-bis CPP; art. 398, co. 5-bis CPP; art. 190-bis CPP; art. 498 CPP11). However, it must be noticed that the “special attention” recalled by law could sometime produce unexpected consequences depending on the fact that theory does not always correspond to practice: gathering evidence before a criminal trial occurs only if previously required i.e. by prosecutor or by victims (or, again, their lawyers), but experience demonstrates that this relevant legal instrument is frequently not really implemented12. It could happen that young victims of sexual abuse come to the hearing for the first time during the debate before the Court, where a vast public is waiting for their testimony: judges and prosecutor, lawyers and theirs assistants, offenders’ relatives, policemen, people from the chancellor’s office, students from faculties of Law or Social sciences there to do their practice. And, of course, the offender – or sometimes the offenders (plural).

12 The author has spent six years (from 2008 to 2013) as Special Judge in the Juvenile Criminal Court of the Emilia Romagna Region, located in the city of Bologna.
It seems to be superfluous to say that on that very peculiar ‘stage’ emotions experienced by victims are not allowed to be expressed: the representation of personal feelings is not an interest of criminal proceedings in general, but it shall be considered with more attention – very carefully – in trials involving underage offenders. Moreover, there is no doubt that the expression of feelings like shame, blame, humiliation, anger, rage or vengeance could contribute to creating new prejudices against victims, blaming them for their conduct (Ryan, 1971) or suddenly driving away the initial sympathy for their sad story (van Dijk, 2009). In other cases emotions could even affect the validity of testimony and throw a shadow of doubt on the victim’s reliability. In any case, the (public) hearing could become easily a traumatic event in itself: a secondary victimization is often waiting in the courts.

**Lack of culture, lack of justice**

Of course, bad functioning of justice systems is the most common and ‘automatic’ answer in replying to a very classic question: why does this happen? In order to try to explain those unfair outputs, several critical issues could be listed: 1) huge number of cases to be prepared and discussed before the Court (with regard to juvenile criminal courts it shall be remembered that they have in general a very wide territorial judiciary competence, operating on the basis of geographical regions as it is in the case of Emilia Romagna); 2) short time to work with the necessary attention; 3) possible inexperience of some juvenile judges, due most of the time to the high turnover inside the juvenile justice system; 4) lawyers’ oversights or incompetence; 5) lack of institutional agencies formally required to inform victims about their rights and opportunities to participate in criminal proceedings (Vezzadini, 2013).

All these issues seem to have something important in common: the complete absence of a wide, deep and rooted victim culture in Italy. This observation could probably also help to explain several paradoxes occurring when talking about victims of crime: they have no place in criminal courts and no legal opportunities to express their needs but, at the same time, their sad stories of pain and suffering are on the front page of local and national newspapers. Often forgotten or definitely invisible for the judicial system, victims are the ‘guest stars’ in shows, on crime TV channels and on the website, raising the ratings every time they appear for an interview (Fattah, 1992; Garland, 2002;
Looking at victimization processes, the very paradox is that the difficulty of victims to be recognized by the legal system and to obtain justice seems to be deeply rooted, first, in the wide lack of cognition about their condition and their legitimate expectations; and, second, in the tragic lack of sensibility and respect devoted to their emotions: that is why, as affirmed by Elias “we must examine the cultural sources of that ambivalence” (Elias, 1986: 13).

Indeed, the look society turns to victims of crime is ambivalent; and, as a result, many times inevitably ambiguous. In this perspective society, culture, politics and the judicial system frequently employ prejudices and stereotypes to legitimate a useful distinction between victims who need and ‘deserve’ special protection and victims who ‘(maybe) do not really need or deserve it’. Some authors defined this ‘unfair juxtaposition’ in terms of ideal victims vs. real victims (Christie, 1986) remarking that the risks in such a distinction are completely unable to recognize, represent and offer support to the very complexity of victims’ condition: on the contrary, as Bouris states, “a discourse of the gray victims never denies the victim status of the individual. It reaffirms the humanity of all victims” (Bouris, 2007: 7), focusing on the notion of dignity and positioning it at the center of politics and interventions. Actually, the many disadvantages and obstacles victims usual meet in the attempt to affirm their fundamental human rights before the law prepare for a secondary victimization directly imparted by those institutions which should take care of more vulnerable people: which is exactly the opposite to the recommendations of EU and UN provisions and therefore rather difficult to understand – and justify.

Judicial discretion for a more fair justice to victims

Aware of the possible unlawful consequences originating from the concrete implementation of rules and concerned about the many risks of distortion, the Juvenile Criminal Court of the Emilia Romagna Region recently considered some EU provisions on the implementation of restorative justice measures to promote a fair justice to all the subjects involved in criminal proceedings, first including victims of crime. Along with the well-being and the

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13 See i.e.: EU Recommendation no. R. (85)1, that “recommends the governments of member states to examine the possible advantages of mediation and conciliation schemes”; EU Recommendation no. R. (87)2, second paragraph, that encourage “the development of
re-education of underage offenders, the aims to promote are the following: 1) to encourage and support a more significant participation for victims in the criminal proceeding; 2) to consider and give voice to victims’ needs and requests, without forgetting their emotions; and 3) to develop resolutions to reduce the negative consequences – material, financial, psychological and emotional – of the crime.

To this end, penal judges of the Juvenile Criminal Court started applying in the case of victims – in particular when they are minors, too – the fundamental principle of judicial discretion traditionally considered exclusively with regards to juvenile offenders. Victims shall receive attention first as individuals who suffered from a crime, despite their primary position in the juvenile criminal justice system as witnesses. Focus shall be on their (violated) human dignity. Of course judicial discretion could assume different modalities according to the peculiarities of cases to be discussed before the Court. Victims could be gently encouraged during their testimony to express feelings about victimization, supported by relatives or even experts, if necessary. Sometimes it could result in the decision to stop narration of dramatic events when it evidently causes too much harm and suffering to victims; in these circumstances the Court could decide not to gather the complete testimony (even if nece-
ssary to sentencing) to defend and preserve the dignity of the person. Other times, with respect to extremely serious offences, judges could decide (under their legal responsibility) to leave the accused on the day of the process to wait in a different, separate room of the Court, in order to avoid the dramatic possibility of victims and offenders having to share space and wait for their turn before entering the court room – as it is very common, indeed. Finally, the most important modality judiciary discretion assumes has to do with the implementation of restorative justice measures with special attention to victims of crime, instead of focusing exclusively on underage offenders.

But why are we speaking about “(judicial) discretion” with respect to the implementation of restorative justice measures? The reasons are more than one. First because the Italian juvenile criminal spectrum of rules never recalls clearly this opportunity: victim-offender mediation (as for other restorative justice measures) is not directly mentioned in DPR n. 448/1988 or again in further provisions on juvenile criminal justice. Inside the juvenile criminal law the opportunity to implement restorative justice measures appears just indirectly in art. 28 on *messa alla prova*, stipulating that “during the proceedings the judge could dispose of provisions aimed to repair the consequences of the offence and to favour the underage offender reconciliation with the victim of crime”\(^{14}\). From a positive point of view, one can assume that an extensive interpretation of this article offers the opportunity to act in the direction suggested by EU and UN provisions. Nevertheless a double critical remark is necessary. In fact, the article reports “the judge could dispose” - not using more prescriptive verbs. This means that judges are free to choose whether or not to consider this choice. They are not compelled by law and indeed judicial discretion works exactly in this way. Then, the same article of law is imbalanced in favour of underage offenders, affirming literally that the aim of those measures is to promote their reconciliation *with* the victim: not *between* them! By law, priority is given to juvenile offenders, reducing victim’s role as a ‘background actor’ also on the restorative justice scene.

For all these reasons the attention dedicated to victims of crime by penal judges of the Emilia Romagna Juvenile Criminal Court is something almost

\(^{14}\) See art. 28 DPR n. 448/1988, co. 2: “Con il medesimo provvedimento il giudice può impartire prescrizioni dirette a riparare le conseguenze del reato e a promuovere la conciliazione del minorenne con la persona offesa dal reato”.

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new, although very precious for the future construction of a more widespread victim culture.

The results of the study briefly reported below offer an example of the ways this approach has been employed from 2008 to 2013, helping to analyse its strong as well as weak points.

The research concerns a sample of 33 dossiers including different types of restorative justice projects for underage offenders on probation, from 2008 to 2013. The analysis offers the opportunity to explore four main areas of interest concerning: the Juvenile Justice System; the offences subjected to restorative justice measures; the relationship between victims and offenders; and finally the results of restorative justice implementation. In particular, several points could be discussed: a) conditions under which the Juvenile Criminal Court (JCC) decides to include restorative justice measures (RJM) in probation projects; b) modalities of relationship and co-operation between the JCC and the Centers for Mediation (CM) working on the territory; c) ways restorative justice measures are chosen by judiciary and/or social actors (judges, prosecutors, juvenile social services); d) aims to be reached; e) typologies of restorative justice measures implemented; f) attention to victims of crime and modalities it will assume to the end of promoting a concrete participation during criminal proceedings.

As noticed, there are 33 dossiers sent by the JCC to the CM that favour the implementation of restorative justice measures. Looking at the distribution of dossiers during the years, it must be observed that their number has significantly increased in more recent years. Most of the cases are sent to the CM by the Juvenile Criminal Court, but a very important effort in this direction is also coming from Juvenile Social Services – Ministry of Justice, while other judicial

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15 Examples of this attention to victims of crimes in implementing restorative justice measures could be find in Italy also in the Juvenile Criminal Court of Milano, Torino, Trento and Bari.

16 The data presented in this contribution have never been published before. They are part of a more wide study concerning the position of victims of crime inside criminal proceedings in the Italian justice system, conducted directly by the author of this paper. In particular, presented data were collected during the time she spent as Special Judge in the Juvenile Criminal Court in Bologna, where she has served in the debate before the Court and, later, in the preliminary hearing phase. Actually, the time here considered is exactly coincident to the six years she worked as Special Judge (2008-2013). It is important to consider that the author also compared the data, to the aim of reaching a more deep comprehension, to those of the Italian Center for mediation in Bologna, where she works as mediator since 2001 (suspended the collaboration during the years in the Court). Preliminary consideration on this topic have been published in Vezzadini, (2013).
authorities (i.e., the Juvenile General Attorney) did not send any. Requests for implementing RJM are more frequent during preliminary hearings before the judge (24 cases) than during the debate (9 cases), thus implying little contact with the criminal justice system for both victims and offenders.

With respect to the types of crimes and offenses for which the judge considers RJM relevant, they are against the individual and the property with no differences: in the first category, there are personal injuries/assault and battery (11 cases), menace/threat (9), sexual abuse and rape (6), unlawful imprisonment/kidnapping (1), slander/calumny (1); in the second one, robbery (10 cases), extortion (9), theft/burglary (8), damages to public property (2). It can be noticed that in many cases both categories of crime (violent crimes against the individual and against property) come up in the wrong, producing various types of offences to victims: i.e., personal serious injuries often accompanied robbery; menace or threat are aimed at extortion, just like slander and calumny, or sometime they accompanied theft and burglary. The application of legal discretion seems here to find a ‘fil rouge’ most in the harm victims suffered. This (re)cognition appears to be in fact of relevant importance for decisions taken by the judge on the types of cases to ask for the implementation of restorative justice measures.

Looking at the gender of victims and offenders, we observe that it is most frequently male. Offenders’ age ranges from 15 to 17 years old; victims are often of the same age but in several cases they are over 18 (from 18 to 35 years old). In the vast majority, both victims and offenders are Italian but some differences emerge: in nine cases victims are Italian, but not the offenders; in one case the offender is Italian, but not the victim; and in five cases they are both not Italian, coming from other countries.

Finally, some remarks on the implementation of restorative justice programs. Written letters of apology are the most common measure, resulting in 17 cases. This probably depends on the fact that mediation (direct or indirect) seems more difficult to implement, just like other modalities; therefore, a written letter of apology is preferred either as first preliminary contact between the offender and the victim and, secondarily, as an attempt to successively restore the offence. But in many cases (about 15), it has been impossible to concretely proceed to any forms of contact between the juvenile offender and his/her victim and to implement a mediation. There are various explanations for that: i.e., victims were too young to meet directly their offender(s); they did not want to have any further contacts with the
offenders, apart from the criminal proceeding; they were not interested in restorative justice; finally, it was impossible to find them because they changed address, were abroad or no-one knew about them. Of course, the chancellor’s office of the Juvenile Criminal Court was not really the agency deputy to search for them; again, most of the time the centers for mediation did not have their references anyway. Such an impasse would be easily overcome in other countries thanks to the intervention of victims support centers that facilitate contacts among the justice system, centers for mediation and victims of crime. But despite the EU legislation on this specific matter, there are no victim support centers in Italy (a part from the ones in Milano or Torino); so is not infrequent that the judicial interest and the clear will of penal judges in the Juvenile Criminal Court is not enough to guarantee victims of crime a wider and more concrete participation.

**Conclusion**

What concluding observations can we draw from the results presented above? With respect to the years here examined, an important and substantial cultural change among penal judges in the Juvenile Criminal Court in Bologna (Dalla Libera, Vezzadini, 2010) can be noticed. They consider restorative justice as a measure in favour of victims harm’s recognition and as a measure to promote their dignity as persons through participation. In this perspective, restorative justice has been interpreted as a way to make and establish justice; and, as everyone knows, the idea of justice has much to do with the position and the requests of victims in the social system more in general. The risks of vengeance through participation are not contemplated at all; on the contrary, juvenile criminal judges believed in a more fair justice to victims, focusing on the necessity to avoid humiliation, revenge and resentment. Actually, penal judges assume restorative justice as an approach offering the chance to move their attention towards victims of crime – instead of being focused exclusively on juvenile offenders – and thus promoting a fairer justice for all the people involved.

Unfortunately, the research shows something else as well: it gives a brief but clear picture of the lack of victim’s culture still enduring in the Ita-

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17 See again: Rec. 87(21); Rec. 2006(8) and Directive 2012/29/EU
lian society, as it is proved by the very high number of victims not available e.g. to mediation (direct or indirect), not understanding what it really means and how it works. Very frequently victims prefer to stay at the back and not appear as “principals”, because they are worried about the unexpected consequences of such participation. So, they prefer to hide and keep silent, not being able to express their emotions. They finally accept the role that the (traditional) legal justice system has set up for them, asking from them to remain (almost) invisible.

Therefore, we need to make a common effort, first starting from our communities, to change the social image people have about victims, their rights and needs. This initial modification will reflect positively also on the image that victims have of themselves, being influenced by the social representation of their role through stereotypes and prejudices.

But this will inevitably imply a strong, hard and synergetic work – involving justice and political systems, schools and universities, the voluntary sector and the media – to join efforts of citizens as well as of legal and social operators working in the field of victimization processes, to put the notion of human dignity at the core of our reflections and actions.

References


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**Biti (skoro) nevidljiv: žrtve kriminaliteta u maloletničkom krivičnom pravosuđu u Italiji**


**Ključne reči:** maloletničko krivično pravosuđe, (maloletne) žrtve, diskreciono pravo sudija, restorativna pravda.