



**VICTIMS HAVE AT LEAST THE RIGHT TO SPEAK
TO RECEIVE / TO GIVE INFORMATION
*RESPECT IT***

The *Seminário Infovítimas* now organized by the APAV and taking place at the Fundação Calouste Gulbenkian aims at spreading and promoting in Portugal, to the Portuguese people and the private and public entities the crime victims' right to information.

The richness and diversity of the invited speaker's interventions and their comparative perspective will help us be informed and think and act wisely; there will be an attempt to prevent us from feeling lonely and, above all, it will help us deal, here and now, in a risk and pain free manner, with our success stories and failures, starting from a modern and sustainable basis in order to be able to react to a new reality with more and better information.

The deeper analysis of the Directive raises the problem regarding our awareness of what is failing within the internal rights and above all how to act in order to improve the current legislation and routine or exceptional procedures. It also raises the provocation and challenge to find out what is still not enshrined in the Directive, but should be, and what should be the specifications for all who intend to give the victim what he/she really needs and does not have access to due to the authorities' inertia. This is also the irreplaceable role of the numerous national and international non-governmental organizations of victim support in general and of APAV and *Victim Support Europe* in particular.

There is still a long way to go in order to reach a balanced system in which each of us plays a useful role of cooperation within the government's task and special responsibility of



intelligent end complete transposition of the Directive. However, we are also aware that the fact of there being excellent laws does not replace the indispensability of best practice.

But I was asked to talk about the general framework and not so much about the legal framework which will be studied in a multidisciplinary context in order to be submitted as a proposal for amendment. Therefore, I will mainly and briefly speak about the basic regulatory framework.

The victim is the innocent target of a crime. And innocent victims are also the persons who allow to be downcast or who let themselves get down. They are the ones who remain silent and who consent. They are the ones who speak and are not heard. They are the ones who cry of suffering or who suffer in silence. They are victims of the authorities' silence or inertia and the lack of understanding or inattentiveness of the others - us.

Moreover, as has been recently written by the current President of APAV, João Lázaro, in the Boletim da Ordem dos Advogados – *the insufficient information given to the victims... is not just a question of ignorance of their rights. It is a cause of secondary victimization and, last but not least, of lack of confidence in the justice system.*

The composed title of this intervention arouse of the awareness of someone who deals with victims for more than two decades: VICTIMS HAVE AT LEAST THE RIGHT TO SPEAK. VICTIMS HAVE THE RIGHT TO BE INFORMED. VICTIMS HAVE THE RIGHT TO A JUDGE, THE RIGHT TO SPEAK AND THE RIGHT TO EVIDENCE; RESPECT IT. Respect these rights, listen to the victims, inform them, protect them and support them.

The criminal procedure also aims at listening, protecting and safeguarding the victims' rights, although the scientific investigation proves that criminal justice does not properly protect



the victims' and the offended party's interests and even if, as it happens frequently, *it* [criminal justice] *causes new suffering to the victim*.

In sanctions law in general and criminal law in particular, the word punishment remains the keyword; only the fundamental words prevention, reintegration, protection, education and care are not yet sufficiently consolidated in the vocabulary of criminal law and criminal procedure law.

Therefore, besides changing the current paradigm in which there is an exaggerated focus on an almost *talionic* retribution, it is necessary to choose an essentially protective and repairing justice and *a new approach of conflicts, in which the material and symbolic repair of the damage caused by a criminal act becomes a central issue* and the pedagogic and educational aims become more powerful. This is the reason why I am in favor of the real and adequate objective of the criminal procedure being the reestablishment of social peace. I believe that it should be the procedure itself and the act of judging to restore justice, while punishment, especially imprisonment, is excessive and is no solution to violence. It leads to a perpetuation of violence and originates more violence.

We should *protect ourselves against the future* by eliminating, as far as possible, the factors and circumstances which generate aggressive behaviors and obliterating or minimizing, as far as possible, the opportunities which lead to a repetition of violence. If possible, this should occur within a pedagogic or therapeutic intervention with a long-term effect, meaning that the approach should not have a merely deterrent effect or be simply punishing regarding the aggressor, which will only be effective in the short or medium term.

Moreover, *the past should be handled* by the attempt of a natural reconstitution. Should that be impossible, there should be an attempt to obtain a fair compensation for the



damage caused, as well as the recovery of the levels of self-esteem, of self-assertion and personal, professional, family, psychological, economic, emotional and social adjustment.

Otherwise we will be accomplices, not of the crime of course but of the perpetuation of the consequences of the aggressors' acts. In other words, we are accomplices of the eventual failure to repair the damages caused by a crime.

This way we will effectively be able to contribute to more solidarity and a more modern society, in order to create a more pacific and respecting reality, with a growing individual and collective perception of improved security, autonomy and justice.

In this sense, the non-governmental organizations for the victim's support and their work should be recognized and judicial and police agents should be made aware of the pragmatic relevance of the victim's fair worries and fears, both being the result of a legitimate desire of contemporary societies' evolution, pursuing the protection of those who are most vulnerable and harmed – a society in which the victimization risk is minimized and the risk of gratuitous and senseless violence is reduced.

Above all, the intelligent and active cooperation of the legislator upon whom rests the responsibility for introducing reforms and new procedures and ways of acting by listening to those working in the field and deal with the victim's *via crucis* on a daily basis. The crime's victim remains a victim during the whole procedure in order to clarify the type of crime and by whom it was committed and to what an extent.

We shall do everything within and outside the procedure for an effective prevention, natural reconstitution and for an adequate compensation in order to avoid a repetition or an exasperation of the offence or the grievance and in order to reverse or minimize the consequences of the crimes for the victim, its family, friends and the society. This should



happen from a symbolic perspective, but also from a material or moral point of view, as required by ethics, citizenship and normativity.

The key-words are: intelligent and active policies, absolute priority for prevention, prompt and adequate reaction, permanent legal counseling, protection and support whenever necessary, effective, fair and impartial criminal proceeding, constructive, pedagogic attitudes of respect and effective support.

In all these aspects it is essential to inform the victim and make sure that the victim has a full understanding of the information given. This should take place even before the action or reaction. Therefore it is necessary to promote, from the perspective of the victim, the right to understand and, from the perspective of justice, to be understood and consequently the right to evidence and to be heard, always bearing in mind the possibility of the victim's report and evidence being appreciated by a judge, at least as an appeal.

In order to achieve this it is necessary to provide information and advice in direct language, easy to understand, as well as the possibility to participate and intervene actively in the criminal procedure, that is in a democratic and fair procedure, with the chance of an effective inquiry in order to ensure a higher level of protection and, whenever necessary, adequate sanctions, special protection measures and orders or individual or collective reparation measures.

The right to the personal protection during the investigations can even lead to the necessity of an imposition of the duty of promoting the effective inexistence of contacts between the victim and the aggressor by distancing or imprisoning the suspect. This should safeguard the protection against intimidation and retaliation as well as against secondary and repeated victimization. The concrete case should be the subject of immediate, insightful and



individualized attention. There should also be a special attention paid to the risk assessment and prompt action when there are particularly violent crimes at stake or in case of imminent or potential danger, children, minorities, elderly persons, immigrants, handicapped persons, refugees and especially vulnerable persons in general.

There are three aspects of this set of concerns which are not normally guaranteed or sufficiently safeguarded within the law or legal practice.

In the first place, normally the information given during the first contact of the victim with the procedure is not clear enough, sufficient, adequate and concise. There is also no effort being made to retroactively update and complete the information given according to the evolution of the procedure. On the other hand, all the victims should have the chance to directly and personally inform the police, the prosecutor, the judge, or the court of the consequences of the crime for their personal, family, social and professional lives, that is, of the different ways in which they were affected.

Secondly, there is the issue regarding the non-disclosure or the limited disclosure of information regarding the victim's whereabouts. One of the main concerns of the victims, which may be justified or not, but which is however understandable and easily demystified, prevented and solved, is the alleged obligation of mentioning their family residence when they are heard as witnesses. There are only a few who know that they may give their professional domicile or another chosen domicile. And eventually even less victims, witnesses, injured persons or civil parties know the dispositions of the law regarding the protection of witnesses.

Finally, in the third place, there is a demand for a personalized and non-discriminatory treatment, with dignity, respect, tactfulness, sensitivity and professionalism. Additionally



there is also a demand for the right to participate and to receive support which depends firstly on the right to intervene and secondly on the right to be accompanied by a person of the victim's own choice. Similarly to what normally happens with the suspect, if the victim wishes to, he/she should also be heard by the prosecutor in the investigative phase, by the judge in the pre-trial-phase and by the court during the trial. This does not mean that the victim must be heard three or more times. In cases of specially vulnerable victims it would be convenient, for example, whenever possible and under the respect of the other rights of presence and intervention of the remaining parties, to assure an immediate taking of testimony in a proper atmosphere, with calmness and serenity, although eventually by teleconference or videoconference, in an attempt to avoid, as far as possible, the repetition of testimony, at least during the preliminary phases of the criminal proceedings.

On the other hand there is still a lot to do in order to guarantee the practical effectiveness of the victims' right to be informed of the content of their denouncement, of the situation and concrete progression of the procedure, of the reactions to the decisions which affect them and of the liberation or escape of the aggressor. This applies above all to the right to reexamine the decision of not accusing and to the right to a trial and therefore *ab initio* the right to legal aid, the reimbursement of expenses and the immediate replacement of goods, not to speak of the full compensation of the damage suffered or the effective compensation in due time of all physical, psychological, social, moral, economic or emotional damage caused. This is firstly the responsibility of the aggressor, but in the end it is also covered by the liability of the state if necessary.

I would like to finish with a last more concrete and provocative comment: in Portugal the public prosecution service may close a case, which had been opened on the grounds of a



victim's claim, without having taken all the necessary measures in terms of evidence, when these are not compulsory. In such a case it is possible to file a request of hierarchic intervention to the prosecution service in order to gather evidence. This request may again be rejected because once again such evidence is not considered necessary or obligatory. In this case there is case law saying that it is not possible to appeal to the judge. Even when the appeal to a judge is admitted, within the pre-trial-phase, it is not compulsory to hear the victim, although the suspect has the right to be heard.

As a conclusion, in contrary to the suspect, who does always have the right to be heard, the victim not always has this right. The victim can even have his/her legitimate rights curbed without having a chance to a reexamination or a new appreciation by an entity other than the one which decided to close the case. Such *capitis deminutio* doesn't seem justifiable. This is not how a fair and equitable procedure should work. It is certainly not fair towards the victim because it discriminates the victim. It isn't fair due to an imperative of justice and citizenship. Therefore, a change in case law or law is urgent, besides other important changes. However, this is another appreciation which would be out of place right now, as I would not like to take any more of your time and make you suffer.

Please allow me to finish this humble and already too extensive intervention with a quite interesting quote by Charles Chaplin:

«We have developed speed but we have shut ourselves in: machinery that gives abundance has left us in want. Our knowledge has made us cynical, our cleverness hard and unkind. We think too much and feel too little. More than machinery, we need humanity; more than cleverness, we need kindness and gentleness. Without these qualities, life will be violent and all will be lost.»



Carlos Pinto de Abreu