Victims of physical and/or sexualized violence in the system of health care.

Kerbacher S, Pfeifer M, Leski S and Rienr-Hofer R.

Žrtve fizičnega in / ali spolnega nasilja v sistemu zdravstvenega varstva

SOPHIE KERBACHER, MICHAEL PFEIFER, SIMONE LESKI IN REINGARD RIENER-HOFER

Povzetek V primerih fizičnega in /ali spolnega nasilja služijo predstvijaljo ugotovitve v kliničnih forenzičnih pregledih pomembni dokaz za organe kazenskega pregona in sodišča. Navsezadnje lahko takšni pregledi zagotovijo zaščito žrtev in dosegajo pravno varnost. Svet Evrope in evropski zakonodajalec sta sprejela ukrepe za okrepitev zaščite žrtev, na primer s tako imenovano "Istanbulsko konvencijo" in z Direktivo 2012/29/EU. Obe priporočata dostop do forenzičnih testov kot podpornih storitev žrtvam nasilja. Inštitut Ludwig Boltzmann za klinično forenzično slikanje si prizadeva izboljšati podporo žrtvam s svojimi projektmi: CFN Styria in JUSTeU !.

Ključne besede: • zaščita žrtev • klinični forenzični pregledi • Istanbulska konvencija • klinična forenzična medicina • EU-projekt JUSTeU •

NASLOVI AVTORJEV: mag. iur. Sophie Kerbacher, raziskovalka, Ludwig Boltzmann Institute for Clinical-Forensic Imaging, Team Law, Universitätsplatz 4/2, 8010 Graz, Avstria, e-pošta: sophie.kerbacher@cfl.lbg.ac.at; Michael Pfeifer, BA BA MA, študent asistent, Ludwig Boltzmann Institute for Clinical-Forensic Imaging, Team Law, Universitätsplatz 4/2, 8010 Graz, Avstria, e-pošta: michael.pfeifer@cfl.lbg.ac.at; mag. iur. Simone Leski, raziskovalka, Ludwig Boltzmann Institute for Clinical-Forensic Imaging, Team Law, Universitätsplatz 4/2, 8010 Graz, Avstria, e-pošta: simone.leski@cfl.lbg.ac.at; mag. dr. iur. Reingard Riener-Hofer, vodja inštituta, vodja raziskovalne skupine, Ludwig Boltzmann Institute for Clinical-Forensic Imaging, Team Law, Universitätsplatz 4/2, 8010 Graz, Avstria, e-pošta: reingard.riener-hofer@cfl.lbg.ac.at.

DOI https://doi.org/10.18690/978-961-286-147-6.28
© 2018 Univerzitetna založba Univerze v Mariboru
Dostopno na: http://press.um.si

Victims of physical and/or sexualized violence in the system of health care

SOPHIE KERBACHER, MICHAEL PFEIFER, SIMONE LESKI IN REINGARD RIENER-HEFER

Abstract In cases of physical and/or sexualized violence findings within clinical forensic examinations serve as an important piece of evidence for law enforcement authorities and courts. Ultimately, such examinations can ensure victim protection and achieve legal certainty. The Council of Europe and the European legislator took action to enhance the protection of victims, for example with the so-called "Istanbul Convention" and with Directive 2012/29/EU. Both recommend the access to forensic examinations as support services for victims of violence. The Ludwig Boltzmann Institute for Clinical Forensic Imaging strives to improve the support of victims through its projects: CFN Styria and JUSTeU!

Keywords: • victim protection • clinical forensic examination • clinical forensic medicine • Istanbul convention • EU-project JUSTeU!
1 Introduction

As statistics of Eurostat show, many people become victims of crime year after year in the European Union (EU). (http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim_gen&lang=en ). Victims of physical and/or sexualized violence are often traumatised, vulnerable and in urgent need of help. Additionally, they may be coming into contact with criminal procedures for the very first time. They need to speak to health-care professionals, police representatives, lawyers, public prosecutors and judges. If subsequently to the crime criminal proceedings are initiated against a suspect, the body of a victim of physical and/or sexualized violence can be the most important piece of evidence for judging the incident.

The fact, that injuries heal, presents the specific challenge of the preservation of forensic evidence in cases of survived violence as maltreatment, abuse, rape and bodily harm. By the time an indictment is brought against the suspect, most injuries and health problems have often vanished and with them the possibility to secure any traces of evidence and/or to document these injuries. Therefore, timely documentation and preservation of trace evidence is important in every case for the criminal prosecution for the validity and evidential value of said evidence. Dissemination within the health care community for the importance of timely, clinical forensic examinations including trace evidence for surviving victims of physical and/or sexual violence is able to remedy these challenges.

2 Clinical forensic medicine

In criminal proceedings securing trace evidence of any kind is the task of experts in forensic medicine within a clinical forensic examination. Findings of such examinations can serve as evidence for law enforcement authorities and should facilitate an objective basis for judgements in courts. Thereby, clinical forensic examinations are able to pave the way to legal certainty and to serve as victim protection through strengthening the position of a victim in legal proceedings.

The investigation of the legal framework concerning clinical forensic medicine is one of the main research fields of the Ludwig Boltzmann Institute for Clinical Forensic Imaging (LBI CFI). The LBI CFI, founded in June 2008, is located in Graz (Austria) and is an interdisciplinary research institute combining expertise in forensic medicine, forensic technology and forensic law. In October 2008 the LBI CFI in cooperation with the Medical University Graz set up the first Austrian Clinical-Forensic Outpatient Center, which offers a clinical forensic examination service to victims of any age and gender, who have suffered from physical and/or sexualized violence. The service is free of charge and the examination is carried out, irrespective of whether or not a person has previously made a complaint with regard to a criminal offence to the police. Hence, a low-threshold access to the examinations is accomplished. The investigation of the legal framework concerning such clinical forensic examinations is one of the major research topics of the Forensic Law team of the LBI CFI. Whenever a case is investigated by the physicians of
the Clinical-Forensic Outpatient Center the important questions are: "What are the legal requirements for this clinical forensic examination? What preconditions must be met by the examining physician?" To analyze the legal requirements for clinical forensic purposes means also to focus on the corresponding regulations in the field of victims’ rights and victim protection on the European level.

3 Legal framework in the field of victim protection in Europe

The Council of Europe Convention on preventing and combating violence against women and domestic violence (so-called “Istanbul Convention”)4, which was signed on 11 May 2011 in Istanbul by initially 13 states, already recognises the significance of forensic examinations in cases of physical abuse: Parties of the convention are explicitly obligated - amongst other services - to meet “the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination” (Article 25 of the Istanbul Convention). The provision of comprehensive, accessible clinical forensic examinations is also in accordance with Article 50 of the Istanbul Convention, which stipulates the requirement for “immediate response, prevention and protection” (Council of Europe, Explanatory Report, CETS 210, Art 50, 257; Rienner-Hofer/Kainz, 2014: 209). Furthermore, such services are necessary for “risk assessment and risk management” according to Article 51 of the Convention (Council of Europe, Explanatory Report, CETS 210, Art 51, 260; Ulrich, 2014: 17; Rienner-Hofer/Kainz, 2014: 209).

On 13 June 2017 the EU signed the Istanbul Convention. (https://www.coe.int/en/web/istanbul-convention/newsroom/-/asset_publisher/anlInZ5mw6yX/content/eu-signs-the-istanbul-convention?_101_INSTANCE_anlInZ5mw6yX_viewMode=view/ ). Apart from the EU, 45 states have signed the Istanbul Convention and 28 states have ratified it so far. Beneath those 28 states are 17 member states of the EU: Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Italy, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden (https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures ).

As there are currently large differences between how the rights of victims are recognised and maintained in the individual member states, the EU is striving to ensure the non-discriminating access to a minimum standard of rights for victims of crime (Council Framework Decision 2001/220/JHA, recital 4). In this context, the European Parliament and the Council of the EU enacted the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime5 on 25 October 2011. Besides this Directive, the European legislator enacted further legal acts to guarantee victims of crime a better access to judicial institutions: Directive 2011/99/EU on the European protection order,6 Regulation (EU) 606/2013 on mutual recognition of
protection measures in civil matters\(^7\) and Directive 2004/80/EC relating to compensation to crime victims.\(^8\)

The view of the EU concerning victim protection is expressed in recital 9 of the Directive 2012/29/EU: "Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind (...)". According to Art 9 of the Treaty on the European Union\(^9\), nationals are citizens of their respective country and are additionally citizens of the Union. This is reflected in the Directive, which aims to guarantee victims the same rights, support and protection everywhere in the EU, regardless of the victim's residence status, citizenship or nationality (Directive 2012/29/EU, recital 10). Further, the rights should be seen as minimum rules and the member states are encouraged to extend them to implement a higher level of victim protection in their country (Directive 2012/29/EU, recital 11).

In the context of victim protection in the health care system, particular attention should be paid to the last sentence of recital 38 of the Directive 2012/29/EU, which explicitly mentions the access to forensic examinations: "The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims." Specifically, victims shall have access to support services in order to guard against additional problems, irrelevant of whether or not they choose to make a formal complaint with regard to a criminal offence to the police (Directive 2012/29/EU, recital 40, Art 4 (1) lit a and Art 8, 9 (1) lit a, 20 lit d).

Various regional studies have demonstrated the continually increasing demand of clinical forensic services, as well as the urgency in establishing a comprehensive service. (Wirnsberger/Dohr, 2015: 61; Rieners-Hofer et al., 2014: 322; Grassberger, 2012: 156). Still, at the moment there are large differences between the member states of the EU concerning the availability of such clinical forensic examination service offers. Against this background, the LBI CFI tries to emphasize the importance of such forensic examinations for victim protection and to raise awareness for these examinations in the public through diverse projects. The starting point was the national project "Clinical-forensic Network Styria", followed by the "JUSTeU!" project on the European level. Both projects focus on the further use of findings within clinical-forensic examinations. Two key factors should be conveyed: First, the examination has to take place in a timely manner to the violent act and second, the examination has to be carried out in a professional manner. Both factors are reflected in the efforts of the two projects, which are described in more detail in the following.
The project "Clinical-forensic Network Styria"

Already in July 2013 the LBI CFI project team launched the project Klinisch-forenisches Netzwerk Steiermark (KfN Steiermark; in English: Clinical-forensic Network Styria - CfN Styria)\textsuperscript{10}, sponsored by the „Zukunftsfonds Steiermark“ of the Province of Styria (Austria). The main goal of the CfN Styria project, which ran over an eighteen months period (till the end of December 2014), was to establish and institutionalize easy accessible forensic services for victims of violence in Styria offering low-threshold examinations including documentation and taking of evidence that can be used in court.

Therefore, the LBI CFI, which also ran the Clinical-Forensic Outpatient Center, set up a CFN head office and build up the Clinical-forensic Network Styria with three hospitals across Styria: state hospital Feldbach-Fürstenfeld, state hospital Leoben-Eisenerz and state hospital Deutschlandsberg. All three hospitals operated as regional outpatient centres (marked as red spots in figure 1) (Kainz et al, 2016: 73, 75).

![Figure 1: Clinical-forensic Network Styria: CfN head quarter in Graz and state hospitals Feldbach, Leoben and Deutschlandsberg](image1.png)

Physicians in these state hospitals were trained by experts of the Clinical-Forensic Outpatient Center in conducting a clinical forensic examination. The purpose of these nine-module trainings was to impart the specialist knowledge to the physicians concerning how to observe, name, describe and localise findings (wounds, injuries, traces...
etcetera), how to conduct a photo documentation, how to secure the gained objects of evidence correctly (clothes, swabs, samples, etcetera) and how to create a report on the findings. Besides the expert training, the project implemented telemedical support through a 24/7 CfN hotline: Physicians all over Styria could seek advice from the experts of the Clinical-Forensic Outpatient Center when dealing with a victim of physical and/or sexualized violence. During the project term 346 calls were received and demonstrated the great need for such a service. For the further support of Styrian health care professionals in the investigation of physical and/or sexual violence a CfN project website (http://kfn-steiermark.at/Projekt-KfN/html/en.html) was created. It contained general information on the Clinical-forensic Network Styria, recommendations for affected persons and a secured member area exclusively accessible to network members. The CfN website had an average of 5,500 views per month (Kainz et al, 2016: 74-76).

The project Clinical-forensic Network Styria was accompanied by scientific studies, analysing the project from a legal, medical and sociological point of view. The medical study, which was conducted in cooperation with the Medical University of Graz, assessed the need for specialised clinical forensic facilities and inquired information about the applied procedure of physicians, when dealing with a victim of physical and/or sexual violence. The survey revealed that regional clinical forensic outpatient centres are definitely required and that especially the 24/7 CfN Hotline was greatly appreciated. The legal study, which was carried out in collaboration with the Higher Regional Court of Styria and Carinthia in Graz, focused on the questions, if the demand by the judiciary for clinical forensic expertise has risen and therewith the need for clinical forensic outpatient centres. The results of the legal survey confirmed the outcome of the medical study and also stated the demand for clinical forensic service offers. The sociological study involved interviews with occupational groups (teachers, social workers, medical professionals, police, staff of victim protection services and the youth welfare authority), who are faced with cases of suspected violence, and pursued the question, if clinical forensic service offers should be institutionalised. These results also underlined the importance of such forensic services. In summary, it can be said that all three studies clearly demonstrated the urgent need for specialised clinical forensic outpatient centres (Kainz et al, 2016: 78).
For the period of the project, a clinical forensic network including the CfN hotline was established in Styria. The Federal Ministry for Education and Women issued a report in 2015 on forensic outpatient centres and recommended the foundation of a clinical forensic network covering all parts of Austria based on the model of the Clinical-forensic Network Styria. (Bundesministerium für Bildung und Frauen, 2015: 10). In this connection, it is worth mentioning that the funding of clinical forensic examination service offers is difficult to accomplish and therefore, the Clinical-forensic Network Styria could not be continued beyond the end of the project. Out of the efforts to expand the idea of the implementation of clinical forensic examination service offers arose a new project idea - "JUStE U!".

5 The EU project "JUStE U!"

In April 2016 the LBI CFI submitted the project proposal JUStE U! - juridical standards for clinical forensic examinations of victims of violence in Europe under the “Joint Justice & Daphne call - Actions grants to support national or transnational projects to enhance the rights of victims of crime/victims of violence-JUST/2015/SPOB/AG/VICT” to the European Commission. More than half a year later, in November 2016, the project was granted.¹

Under the project lead of Mag. Dr. Reingard Riener-Hofer and her team of the LBI CFI (Mag. Dr. Sylvia Wolf, Mag. Dr. Hanna Sprenger, DI Johannes Höller, Mag. Sophie Korbacher and Michael Pfeifer, BA BA MA) the following institutions with medical and legal experts belong to an international JUStE U! project consortium: The Institute of Forensic and Traffic Medicine at the University Hospital Heidelberg (Prof. Dr. Kathrin Yen and Dr. Astrid Krauskopf) and the Institute for Forensic Medicine at the Hannover Medical School (Prof. Dr. Michael Klintschar) in Germany, the Department of Medical and Surgical Specialties, Radiological Sciences, and Public Health at the Università degli Studi di Brescia (Assoc. Prof. Dr. Andrea Verzeletti and Dr. Samuele Manzoni) in Italy, the Department of Forensic Medicine at the Faculty of Medicine in Hradec Králové (Assoc. Prof. Dr. Petr Hejna) and the Faculty of Law at Palacký University Olomouc (Dr. Michal Malacka, Ph.D.) in the Czech Republic. The interdisciplinary composition of the consortium ensures a holistic approach for the project implementation.

![Figure 3: Logo of the project JUStE U!](image-url)
The JUSteU! project started in February 2017, will run for a period of two years till January 2019 and is dedicated to the support and protection of victims of sexualized and/or physical violence. In this connection particular attention should be paid to the last sentence of recital 38 of the Directive 2012/29/EU, which explicitly mentions the access to forensic examinations (see above). JUSteU! shall emphasize the importance of such forensic examinations, which can strengthen the position of a victim of sexualized and/or physical violence in legal proceedings through providing detailed documentation of suffered injuries and taking of trace evidence, in the public and also on the European level. To facilitate the implementation of clinical-forensic examinations in each country, a European-wide minimum standard for these examinations will be developed in the course of the project. Further, it is one of the project's objectives to create a network for the exchange of experts in clinical forensic medicine called "Clinical Forensic Network Europe - CFN Europe", which should continue to exist after the end of the project. To pursue the harmonisation and unification of clinical forensic examinations within the project, it is necessary to analyse the current circumstances in each country. For this purpose, two questionnaires, QLaw and QCFN, were initiated. These were distributed via email to the project partners and 180 other stakeholders (members of the European Council of Legal Medicine, medical associations, Ministries of Health, Ministries of Justice and experts in forensic medicine, law and victim support).

The main goal of first questionnaire QLaw (Questionnaire concerning the legal framework for doctors when dealing with a case of physical violence) is to receive important basic information about the diverse national legal regulations concerning physicians and health-care professionals, when dealing with or rather examining a victim of violence. The fifteen questions of QLaw concern the legal framework for medical professionals, the duty to secrecy, the obligation to notify and report criminal acts to the police and/or youth welfare authorities, the differences between adult and underage victims, the legal consequences if said duties are neglected, the procedure of a physical examination in criminal proceedings and the use of imaging techniques within clinical forensic examinations. The collected data of QLaw was passed on to the Faculty of Law at Palacký University Olomouc in the end of October 2017 for analysis and evaluation. Dr. Michal Malacka, Ph.D, will draw up a legal opinion on the European and national regulations concerning doctors during clinical forensic examinations, which will be presented at the JUSteU! Workshop in June 2018.

The second questionnaire QCFN (Questionnaire concerning national victim supporting low-threshold clinical forensic examination offers) contains 32 questions, subdivided in three parts (Part I - questions concerning clinical forensic examination services, Part II - questions concerning the clinical forensic examination routine, Part III - questions concerning the Clinical Forensic Network Europe). Through QCFN information shall be acquired about the availability of clinical-forensic examination services in the respective country, the examination routine and the expectations towards the establishment of a permanent European Clinical Forensic Network (CFN Europe). On the basis of the
responses towards QCFN, the LBI CFI will conduct a summary regarding national clinical forensic service offers.

Besides the two questionnaire surveys, significant parts of JUSTeU! are the dissemination of the project idea and the awareness raising activities. For this purposes, a JUSTeU! project website (https://www.justeu.org/) is accessible since shortly after the project launch. It provides detailed information about the project and is regularly updated to announce upcoming events. Moreover, publications are available for download on the website. One of the public events, that already took place on 17 March 2017 in Graz, is the JUSTeU! kick-off meeting. Representatives from victim support, forensic medicine and the judiciary held presentations on the importance of clinical forensic examinations in their field of work to demonstrate the demand of such services to the public. Moreover, all project partners participated and presented their tasks within the project.

![Figure 4: The JUSTeU! project consortium at the kick-off meeting](image)

The next upcoming public events are the national symposia in every partner country (Austria, Germany - the project partners will host a joint national event, the Czech Republic and Italy). The national symposia should serve to bring the public's attention to the relevance of an ideally nationwide coverage with clinical forensic service offers. The dates for the Austrian\(^\text{19}\) (8th of March 2018 in Vienna, under the patronage of the Federal Ministry of the Interior) and German\(^\text{20}\) (5th of March 2018 in Heidelberg) symposia have already been set. The national symposium for the Czech Republic will be held in České
Budějovice at the beginning of April 2018 and the national symposium for Italy will take place in March or April 2018.

Beyond that, in June 2018 a two-day workshop will be organized in Graz. All project partners will participate and have already recruited one additional interested institution, which will join the JUSTeU! workshop. There a European wide minimum standard for clinical forensic examinations and statutes for CFN Europe shall be formulated and a Clinical Forensic Network for Europe (CFN Europe) shall be founded. All these aspirations should ensure the long term impact of the JUSTeU! project and should especially encourage countries, which have no forensic service offers so far, to implement such clinical forensic outpatient centers.

6 Conclusion

The beneficiaries of the projects Clinical-forensic Network Styria and JUSTeU! are particularly the victims of physical and/or sexualized violence and the medical as well as nursing staff in the health care system.

As mentioned in the legal framework - Istanbul Convention and Directive 2012/29/EU - the access to forensic examinations should be ensured. In this context the establishment of clinical forensic service offers, which provide such examinations free-of-charge and on a low-threshold basis, fulfils these legal conditions and appears as the best solution in many respects. The low-threshold basis (previously making a complaint with regard to a criminal offence to the police is no prerequisite) enables victims to seek medical attention in a quick and uncomplicated manner and may encourage victims to make a complaint to the police at a later time. In that case, victims, which have been clinically forensically examined, have the advantage of a detailed medical documentation of the findings including photos and possibly secured trace evidence. This in turn, strengthens their legal position in possible upcoming criminal proceedings.

Implementing the necessary infrastructure is the first step. To actually achieve a better standard for victim support, focusing on the practical aspects of victims' care and support must be the second step: Medical professionals are often the first contact point for victims and therefore it is not only important that they have specific knowledge concerning victims' rights, but also that they are supported how to care for and deal with a victim of crime.

The combination of the establishment of clinical forensic service offers and the support of medical professionals concerning victims' rights is able to assure a better care for victims of physical and/or sexualized violence and can further help to guarantee legal certainty.
Notes

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 authors of this publication and can in no way be taken to reflect the views of the European Commission.

References


