

# A European standard for clinical forensic examinations

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## Abstract

Victims of physical and/or sexualized violence are often traumatised, vulnerable and in urgent need of help. Currently, there are large differences how the rights of victims are recognised and maintained in the individual member states of the European Union.

The European Parliament and the Council enacted the Directive 2012/29/EU (October 2012), which establishes a minimum standard on the rights, support and protection of victims of crime. It states that irrelevant of whether or not a victim chooses to lay criminal charges they should have access to support services, e.g. clinical forensic examinations, which should be made available for the preservation of evidence in cases of rape or sexual assault.

The LBI CFI submitted a proposal under the Justice program JUST/2015/SPOB/AG/VICT (Action grants to support national or transnational projects to enhance the rights of victims of crime/victims of violence-), which the European Commission granted in the end of 2016. The main focus of the project "JUSTeU! - juridical standards for clinical forensic examinations of victims of violence in Europe" is the creation of a European-wide minimum standard for clinical-forensic examinations and the launch of a permanent European Clinical Forensic Network (CFN Europe). The outcome of 2 questionnaires concerning the legal obligations for physicians when dealing with cases of physical and/or sexualized violence, and national victim supporting low-threshold clinical forensic examination offers in 12 European countries will be essential for the following discussion regarding future legal developments and the establishment of minimum standards for clinical forensic examination services on the European level.

**Keywords:** Clinical forensic examinations, European Union, victim support, criminal proceedings, JUSTeU!

## Európske štandardy pre klinické forenzné vyšetrenia

### Abstrakt

Obete fyzického a/alebo sexuálneho násillia sú často traumatizované, zraniteľné a naliehavo potrebujú pomoc. V súčasnosti existujú veľké rozdiely, ako sa v jednotlivých členských štátoch Európskej únie uznávajú a zachovávajú práva obetí.

Európsky parlament a Európska rada prijali smernicu 2012/29 / EÚ (október 2012), ktorá stanovuje minimálny štandard pre práva, podporu a ochranu obetí trestných činov. Uvádza, že bez ohľadu na to, či sa obeť rozhodne podať trestné oznámenie, mala by mať prístup k podporným službám, napr. klinické forenzné vyšetrenia, ktoré by mali byť k dispozícii na uchovávanie dôkazov v prípadoch znásillenia alebo sexuálneho napadnutia.

Pracovníci Ludwig Boltzman Institute for Clinical Forensic Imaging predložili návrh v rámci programu spravodlivosti JUST/2015/SPOB/AG/VICT (Akčné granty na podporu národných alebo nadnárodných projektov na posilnenie práv obetí trestných činov/obetí násillia), ktorý podporila Európska komisia koncom roku 2016. Hlavným zameraním projektu "JUSTeU! - Právne normy pre klinické forenzné vyšetrenie obetí násillia v Európe" je vytvorenie celoeurópskeho minimálneho štandardu pre klinicko-forenzné vyšetrenia a zavedenie stálej európskej klinickej forenznej siete (CFN Europe). Výsledok 2 dotazníkov týkajúcich sa zákonných povinností lekárov pri riešení prípadov fyzického a/alebo sexuálneho násillia a národných obetí podporujúcich nízkoprahové klinické forenzné vyšetrenia v 12 európskych krajinách bude základom pre ďalšiu diskusiu o budúcom vývoji právnych predpisov a stanovenie minimálnych noriem pre klinické vyšetrovacie služby na európskej úrovni.

**Kľúčové slová:** klinické forenzné vyšetrenia, Európska únia, podpora obetí, trestné konanie, JUSTeU!

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## Introduction

Every year undoubtedly many people become victims of crime in Europe. [1] Therefore, concerning the support for victims of crime the European Parliament and the Council have adopted the Directive 2012/29/EU on 25<sup>th</sup> of October 2012 establishing minimum standards on the rights, support and protection of victims of crime to harmonize the basic victim protection rights in the Member States of the Union. [2] This Directive helps to ensure that victims receive better access to judicial institutions and adequate support during criminal proceedings, regardless of their nationality – but rather because of their citizenship of the Union (cf. Art 9 TEU) – in another Member State. Regarding specific support institutions, the European legislator also saw access to and availability of clinical forensic examinations as innovative examples for such victim support during criminal proceedings. [3] The above mentioned Directive 2012/29/EU is based on Art 82 Section 2 TFEU, which gives the Union the competence to “establish minimum rules to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension (by means of directives adopted in accordance with the ordinary legislative procedure; cf. Art 289; 293-294 TFEU)” concerning “the rights of victims of crime (c)”. “Such rules shall take into account the differences between the legal traditions and systems of the Member States.” And here is the main problem facing the Union's legislative powers, so that on the one hand, it can prescribe top-to-bottom that clinical forensic examinations should be an integral part of the legal order of the Member States within the investigation of cross-border criminal offenses [4], but has to leave the precise design of this service and its application outside of criminal procedure or on criminal proceedings with no cross-border references to the individual Member States. This inevitably leads to a divergence of services between the Member States. Especially in fighting domestic violence as the most common form of violence, one may consider that most cases do never make it to court. One of the many reasons is that victims of physical and or sexualized abuse are often traumatised. Timely, low-threshold clinical forensic examinations, which are available to victims of mistreatment and abuse, regardless of whether they choose to lay criminal charges, could be a reasonable solution to fight domestic crime. But these forms of clinical forensic examination services as the Clinical Forensic Outpatient Center [5] of the Ludwig Boltzmann Institute for Clinical Forensic Imaging are currently very limited.

This is why the Ludwig Boltzmann Institute for Clinical Forensic Imaging in Graz (Austria) [6] – part of the Ludwig Boltzmann Society – formed an international consortium consisting of the Institute of

Forensic and Traffic Medicine at the University Hospital Heidelberg (Germany) [7]; the Institute for Forensic Medicine at the Hannover Medical School (Germany) [8]; the Faculty of Law at Palacky University Olomouc (the Czech Republic) [9]; the Department of Forensic Medicine at the Faculty of Medicine in Hradec Králové (the Czech Republic) [10]; and the Department of Medical and Surgical Specialties, Radiological Sciences, and Public Health at the Università degli Studi di Brescia (Italy) [11] and submitted a project proposal called JUSTeU! under the “Joint Justice & Daphne call - Action 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, which was granted in the end of 2016. Its main objectives are (i) to disseminate the importance of clinical forensic services in general to the public, (ii) to analyse the legal requirements for clinical forensic examinations with respect to their functionality regarding victim protection, (iii) to collect information about existing clinical forensic services regarding their practicality for victim protection in twelve member states and (iv) to formulate a European standard for clinical forensic examinations. Additionally, (v) the need for low-threshold access to clinical forensic examinations on victims' rights to protection shall be highlighted and a network called Clinical Forensic Network Europe (CFN Europe) shall be established.

## Methods

The entire project, which was officially launched with a public kick-off meeting on 17<sup>th</sup> of March 2017 [12] and will run until February 2019, is going to be based on two analytical studies: On the one hand, a questionnaire concerning the legal obligations for physicians, when dealing with cases of physical and/or sexualized violence (e.g. duty to secrecy, obligation to notify and report criminal acts) will shed light on the normative frameworks in each of the participating Member States (Austria, Germany, Italy and the Czech Republic) and eight other European countries (France, Sweden, Spain, Portugal, Hungary, Luxemburg, Poland and Croatia), to summarize the legal situation on this matter. On the other hand, a second questionnaire concerning national victim supporting low-threshold clinical forensic examination offers will complete the *status quo* about the existence, availability, design and access to current clinical forensic services in Europe. The collected data from both studies will be summarized, analysed and evaluated separately. Their outcome is essential for the following discussion regarding future legal developments at the European Union (EU) level and for the development of European minimum standards for clinical forensic examination services, which should include and build upon existing structures in this field.

Taking the evaluation of the results of these two studies as a starting point of discussion, the added value of clinical forensic examination services will be further discussed within national symposia in Austria, Germany, Italy and the Czech Republic. These symposia will be open for all relevant stakeholders (public prosecution, police, victim and/or youth support groups, victims) and other interested parties to gain even more input. This should further serve as a platform to establish a minimum standard for clinical forensic examinations in form of a toolkit and to create statutes for a Clinical Forensic Network for Europe (CFN Europe). The latter is supposed to be a network for clinical forensic experts throughout Europe as a permanent common ground for further discussion and mutual exchange.

## Results

The project will raise awareness amongst professionals frequently confronted with surviving victims of maltreatment and abuse regarding clinical forensic examinations and for the great importance such services have for victims. Through improved collection of evidence and a consequential strengthening of their legal position in a court of law, victims of maltreatment and abuse are clearly the primary beneficiaries of this project. A low-threshold access to clinical forensic services provides the opportunity to forensically examine victims in a timely manner and thereby optimises the quality of any evidential findings. This in turn can have a positive influence on the objective establishment of truth and certainty of the law.

The general public will be made aware of clinical forensic examinations and informed about their significance via this project (e.g. project's homepage [13], contact with local media, informative flyers, national symposia). More specifically, through the establishment of the Clinical Forensic Network Europe, clinical forensic medicine will be given a voice at an EU level. The results, which emerge over the course of the project, will be shared with European decision-makers. The presentation of these results will summarise the opinions of clinical forensic experts across Europe and will additionally offer an overview of the various legal requirements regarding criminal procedural law governing physical examinations, and the disclosure and reporting obligations of medical personnel. The final outcome will be submitted as suggestions to decision makers in the European Commission, who are responsible for examining such recommendations and could also, in certain cases, legally enshrine such recommendations.

## Conclusion

Those who will primarily benefit from JUSTeU! are the victims of physical and or sexualized violence themselves as well as professionals, working in the

field of forensics. Ideally these victims will have access to forensic examinations free-of-charge, regardless where the crime has been committed or which nationality they have. The low-threshold approach presented in this project will also assist victims, who may suffer physical and/or sexual maltreatment or abuse, but are not willing to lay criminal charges. Through acknowledgement of their abuse and its seriousness, and the possibility to obtain physical evidence in support of their claim (e.g. in a possible upcoming criminal procedure) may encourage victims to come forward and seek assistance. Furthermore, this process gives those affected by physical and/or sexual maltreatment or abuse a concrete contact point for information regarding additional protection and support services. JUSTeU! will provide information about the facilities, contacts and offerings via its project's homepage [13] to improve knowledge and raise awareness about these possibilities for victims of maltreatment or abuse to the general public, while trying to constantly improve its own standards through close cooperation with the project partners.

Since this project will raise awareness for the existing needs in this area at EU level, it can be reasonably assumed that related national activity models for clinical forensic examinations will also be taken up and further developed by the project partners, even after the end of the project. Furthermore, the Clinical Forensic Network for Europe (CFN Europe) – if proven valid, efficient and necessary – will be sustained. This will additionally give European decision makers a rich, sustainable source of specialised expertise regarding this topic in the future and will serve as the successful implementation, maintenance and development of a European minimum standard for clinical forensic examinations, if there is a need for cross-border regulations.

As socio-economic long-term consequences it can be deduced, that the individual citizen in the EU member states can obtain information concerning access and whereabouts of the next clinical forensic facility more easily as a result of this project. By constantly promoting the significance of clinical forensic services throughout and following the duration of the project JUSTeU!, awareness and knowledge of these kinds of facilities will be available to a wider audience. For forensic practitioners, the data collection concerning the legal requirements for physical examinations and the obligation to inform authorities in cases of suspected physical and/or sexualized violence functions as clarification of the legal dos and don'ts, which leads to (legal) security in taking action. Furthermore, it strengthens the cooperation between forensic practitioners and the prosecution, which helps to establish safety and support for the victims of physical and/or sexualized violence.

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