

AG: New Examination of Victim of Crime Possible if Judges' Bench Changed

News

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Victims of crime may give evidence before the criminal court again if it has a new composition. This is the main conclusion of Advocate General Yves Bot in his [opinion of 14 March 2019 in case C-38/18 \(criminal proceedings against Massimo Gambino and Shpetim Hyka\)](#). The opinion is not yet available in English.

In the criminal proceedings before the referring Tribunale di Bari, Italy, the hearing of the victim of crime as a witness had to be carried out a second time because one of the three judges was replaced by another judge after the first examination. The defence counsel of the accused persons did not consent to the court reading the written record of the oral evidence previously given by that victim. According to the Italian code of procedure, a new examination of the victim as a witness is necessary in this case, in order to maintain the principle of presenting the evidence directly to the judges who decide the case.

The question arose as to whether these provisions are in line with Arts. 16, 18, and 20 lit. b) of Directive 2012/29/EU. These provisions oblige Member States to protect victims of crime from secondary or repeated victimisation and emotional/psychological harm, which includes the obligation to keep questioning to a minimum.

According to AG Bot, the provisions must be applied on a case-by-case basis. The competent national authorities must carry out a personalised evaluation. Since the victim was of age and there were no indications for an undue burden, the principle that evidence must be directly presented to the judges deciding the case and the principle of fair trial (on the basis of Arts. 48(2) and 47(2) CFR) takes precedence. Therefore, a new examination of the victim of crime may be admissible.

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ISSN: 1862-6947

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



Co-funded by
the European Union