

CJEU: Victims of Crime Can Be Re-Examined if Judge's Bench Changed



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News

By judgment of 29 July 2019, the CJEU shared the opinion of Advocate General Yves Bot in case C-38/18 (*criminal proceedings against Massimo Gambino and Shpetim Hyka*), namely that Arts. 16 and 18 of Directive 2012/29/EU establishing minimum standards on the rights, support, and protection of victims of crime do not preclude national rules. According to the national rules, re-examination of a victim is held necessary if the judge's bench changes and the defence counsel of the accused persons do not consent to the court reading the written record of the oral evidence previously given by that victim. For the opinion of AG Bot and the underlying Italian rules that triggered the reference for a preliminary ruling, see [euclid 1/2019](#), pp. 28-29.

The CJEU stresses that the victim's right to be protected from secondary and repeated victimization is without prejudice to the accused persons' defence rights and their right to a fair trial. It also refers to the case law of the ECtHR highlighting the importance of questioning witnesses before the deciding judge.

However, the ECtHR case law also indicates that the Member States must recognise particular circumstances that may justify a waiver of witness examination if it is not important for the conviction. Hence, re-examination of the victim is permitted if the court in the main proceedings does not identify specific protection needs that would make specific protection measures necessary pursuant to Arts. 23 and 24 of Directive 2012/29. This is up to the referring Italian court to decide.

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