

**INVITATION**  
International Road Victims  
CONFERENCE

Bloomfield House Hotel,  
Bullington, Westmeath,  
Ireland

Sunday 25th March 2018  
starting at 9:00 a.m.  
both specialist training  
for delegates on  
Friday 16th &  
Saturday 17th March

For full details of the  
programme visit  
www.roadvictims.com

**Thematic:**  
Post Crash Response in the 10th Decade of Action  
for Road Safety including sessions on:  
- Rescue and Rehabilitation  
- Victim Information and Support  
- Police Investigation  
- Data collection and sharing  
- Coroner's Inquest  
- Criminal Prosecution  
- Civil Compensation and Justice

50th anniversary of the Road Safety Council

50 NGOs from 47 Countries from all regions of the World have come together to form the International Road Victims Partnership. Our inaugural conference is in Ireland on St Patrick's Weekend. This Global event is hosted by IRVA with the support of the Road Safety Authority, An Garda Síochána, and AXA Insurance. #RoadSafety #RoadVictims. Theme: Post Crash Response in the UN Decade of Action for Road Safety including sessions on Rescue & Rehabilitation, Victim Information & Support, Police investigation, Data collection & sharing, Coroner's Inquest, Criminal Prosecution, Civil Compensation & Justice.

**DATE AND TIME:** Fri, Mar 16, 2018, 9:00 AM – Sun, Mar 18, 2018, 6:00 PM GMT

**LOCATION:** Mullingar, Bloomfield House Hotel, Ireland.



The Luigi Guccione Foundation in the 20 years of activity – (June 3, 1998 – June 3, 2018) – has received 16 medals and silver plates from the Presidency of the Italian Republic. There are 4 Presidents of the Italian Republic who have conferred the Representation Awards: Oscar Luigi Scalfaro, Carlo Azeglio Ciampi, Giorgio Napolitano and Sergio Mattarella (up, from left). The Foundation has also received 8 Messages from the same Presidency of the Italian Republic and 10 Messages from the Presidencies of the Chamber of Deputies and the Senate of the Republic. The Luigi Guccione Foundation, Moral Authority of road victims, has the Ministry of the Interior as its Supervisory Authority.

fondazione  
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fondazione  
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#VINSTRADA  
Rete in movimento per la sicurezza stradale

## AN INTERNATIONAL MOVEMENT OF ROAD VICTIMS

Investigations, Compensation for damages, Justice, Assistance.  
Social alliances necessary for change

THE NEW MOBILITY AND ROAD SAFETY.  
TIME FOR ACTION!



**GIUSEPPE GUCCIONE**  
Born in Rende (Cosenza), June 18, 1956. Visionary. He attended scientific high school and university studies in communication and politics. Administrator in the field of public health management (Hospitals). In the past Officer of the Italian Army (Tanks Army). Founder and administrator of the Luigi Guccione Foundation, Moral Authority of the road victims, accredited to Calabrian social entrepreneur who died at the age of 36. Experiences and significant work skills in the public, private and social fields: attendance of national and international systems, knowledge of the media and communication system.



**GIUSEPPE MASTRANGELO**  
Born: Cosenza, July 10, 1963. Practice Areas: Administrative, tender and construction law, insurance, textiles, and warehousing. Admitted: 1992. Education: University of Rome, 1989. Academic Awards: Admitted State Council and Supreme Court of Cassation. Outstanding Achievements: member of Italian Center for Administrative Studies and S.I.A.A. (Italian Association for Administrative Lawyers), member of the Council of the Cosenza's bar association, sole delegate of the National Lawyer's Council for the Center of the lawyers professional updating, rapporteur at several conferences, professor at the school of legal specialization of administrative law at University of Catanzaro. Language: Italian, English, Spanish. E-mail: avvmastr@tin.it



**ALFREDO GIORDANI**  
Born: Roma, July 12, 1964. Practice Areas: Public transport, sport teams and associations, constitutional organs, road safety advocating. Education: Scientific high school. Outstanding Achievements: President of Rete #Vinstrada APS, Italy, Vice President of Road Safety, Soft Mobility and Sustainability Citizen Council of Rome. Languages: Italian, English. E-mail: alfredotri@gmail.com. Blog: Vvinstrada

# ASSISTANCE AND JUSTICE FOR ROAD VICTIMS

NEW MOBILITY AND ROAD SAFETY



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*Via Cassia 36/300 - Nepi (VT)*

Closed book in typography in Mars 8, 2018

FLG Publishing  
Marsala Street, 14 - 00185 Rome

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Tax Code FLG: 980361407



**MESSAGES LEFT BY PEOPLE WHO SIGNED OUR PETITION  
ON CHANGE.ORG FOR A "LAW TO ASSISTANCE FOR ROAD VICTIMS".  
THE PETITION WAS SIGNED BY 16,201 PEOPLE!**

*I lost my two sons in a road crash. **Catia Paravia***

*What has happened to us must not happen to others. **Anna Rosa Taranto***

*My husband was the victim of a traffic crash, a 43 year old, and i never had justice. **Luciana Martinelli***

*Because who, despite victim of widespread road violence, fortunately manages to have saved his life, do not left alone to manage the physical and psychological damage that inevitably follows, but can access at dedicated and qualified supports to make recovery a little less dramatic. **Vilma Ruggeri***

*My mother was a road victim at the age of 38. **Vero Gallino***

*Me too i lost my daddy on the crosswalk. **Marina Tesauro***

*I'm a survivor victim. **Umberto Aurora***

*I'm signing because my sister has been in a coma for 6 months. Invested by a car that has invaded its lane. **Nina Bartoli***

*It is shameful that the Parliamentarians take care of their teeth for free and there is no law to assist the victims of the road!! **Gianni Felici***

*And if I were in that situation what would I like? Assistance. **Luigi Domenico Cozzi***

*I sign because my son 11 years ago suffered a car crash and I do not know what kind of future he will have! **Grazia Anna Teresa Guerra***

*If you do not happen in first person of these things you never understand how truly horrible they are. And it happened to me twice. **Rodolfo Macaluso***

*My son Federico was hit by a car that invaded his lane on his way home on his bicycle. **Marina Pizzi***

*The civilization of a people also passes through the recognition of a just cause. Sign yourself too! **Ferdinando Lo Furno***

*My husband and my father died in two crash. **Fausta Capellini***

*I too lost my son in a car crash: he was 19 years old. **Filomena Longobucco***



DECADE OF ACTION 2010-2020 FOR ROAD SAFETY. ON MAY 15, 2011, 36 NATIONAL ORGANIZATIONS SIGN THE WASHINGTON CHARTER (MARCH, 15 AND 16 2011) TO THE ITALIAN DEPUTIES CHAMBER. THE LUIGI GUCCIONE FOUNDATION ORGANIZED THE EVENT.

**Insieme, possiamo salvare milioni di vite... è tempo di agire**

**SULLA STRADA E SUL LAVORO ...**

**LA SICUREZZA CONVIENE A TUTTI**

**In Italia, nel 2009, gli incidenti stradali hanno ucciso 4.237 persone e ne hanno ferite 300.258, con un costo di 28.500 milioni di Euro, il 7% del Prodotto Interno Lordo italiano. Oltre la metà degli incidenti mortali sul lavoro è causata da incidenti stradali.**

**1. AZIONI DI GOVERNO**  
Definire una strategia complessiva per la riduzione degli incidenti e creare un organo di coordinamento, valutazione e controllo. Assicurare adeguati finanziamenti. Creare sistemi di monitoraggio e valutazione dei risultati raggiunti.

**2. STRADE E TRAFFICO**  
Mettere in sicurezza le strade ad alto rischio per tutti gli utenti della strada. Promuovere una pianificazione urbana orientata alla mobilità sicura e sostenibile. Sostituire le esigenze di tutti gli utenti della strada.

**3. VEICOLI**  
Incentivare lo sviluppo di nuove tecnologie per migliorare la sicurezza stradale dei veicoli e accelerare la diffusione nel mercato.

**4. UTENTI DELLA STRADA**  
Creare programmi integrati di informazione, sensibilizzazione e prevenzione per migliorare i comportamenti di guida degli individui, per aumentare l'uso delle cinture di sicurezza e del casco, per contestare le guide in stato di ebbrezza e la velocità eccessiva.

**5. ASSISTENZA ALLE VITTIME**  
Migliorare l'assistenza post-incidente e rafforzare i servizi sanitari alle vittime della strada.

**6. MOBILITÀ PER IL LAVORO**  
Definire un programma pluriennale per la individuazione delle strade più pericolose e per la loro messa in sicurezza, dotata delle necessarie risorse finanziarie. Migliorare la sicurezza degli spostamenti casa-lavoro e per lavoro.

**7. MODI DI TRASPORTO E VEICOLI**  
Inferiorizzare i cittadini sui livelli di sicurezza dei diversi modi di trasporto e dei diversi veicoli e incentivare l'uso delle alternative più sicure.

**8. CITTÀ E UTENTI DEROLLI**  
Riorganizzare il traffico delle aree urbane e creare regole di circolazione per una mobilità più efficiente e più sicura per tutti i cittadini e in particolare per i pedoni e i ciclisti. Promuovere gli spostamenti ciclistici.

**9. ASSISTENZA ALLE VITTIME**  
Prevedere una legge di assistenza alle vittime della strada e realizzare un Centro Nazionale di Assistenza.

**Logos: IFILG, FISICO, and various international organizations like WHO, UN, etc.**

**WWW.DECENNIOAZIONE.IT**

## AN INTERNATIONAL MOVEMENT OF ROAD VICTIMS AND NECESSARY ALLIANCES TO CHANGE

The The First International Conference about road traffic victims is an important date. IRPV (International Association of Road Victims) has well done in calling for it. A global useful debate to give an impetus to each State's initiatives.

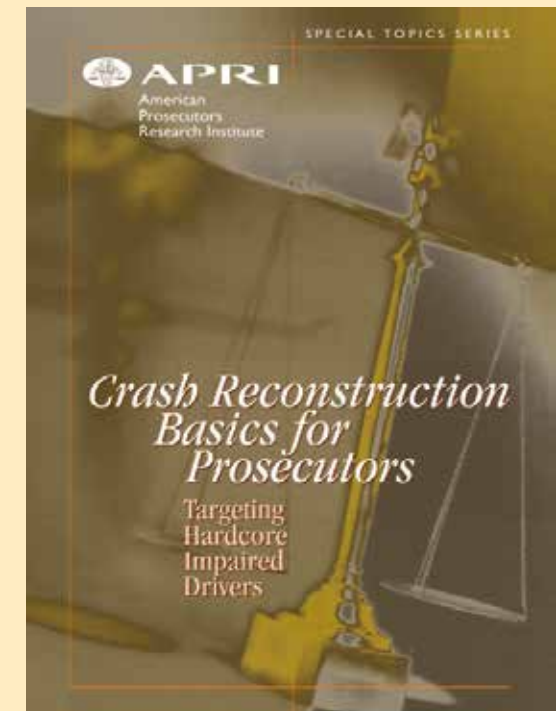
Often car crashes are real road murders but are not considered as such. To move from an accident reliefs culture to an investigation on the car crash scene culture (often the crime scene).

The case of the Scottish State of the Office dedicated to assisting the victims and the delays of the Italian system.

There are some Textbooks used by Prosecutors and Police. The Association of Police Chiefs in Scotland, "Road Death: textbook for investigations. Adoption of national common regulations", by the American Prosecutors Research Institute (APRI), "Accidents reconstruction. Basic notions for Prosecutors", and "Textbook on road death Investigations", produced, realised by the Association of Chief Police Officers and by National Policing Improvement Agency in the United Kingdom.

The Netherlands and the German Federal State of the RNW also use some of the guidelines.

Italy is backwards. To draft the guidelines of what it will be the Italian



Textbook for the investigations on the site of the road accident, we have launched the involvement of the national and local Police forces, the magistracy, the lawyers, the investigations Agencies and the world's academic skills, the same victims' families.

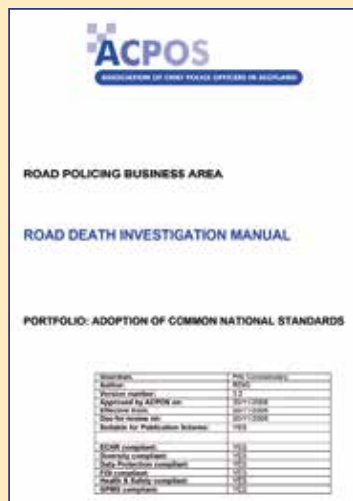
Changing culture and mind: moving from the culture of (simple) reliefs of the car crash, which caused so much damage to victims and their relatives, to the culture of investigation on the crime scene, because often car crashes occur in violation not only of the Highway Code, but also of the Criminal Code and not only in the case of road pirates.

Only in Scotland exists a structured service (VIA) which is part of the Crown and Fiscal Prosecutor Office and assists victims, witnesses and, in some cases, sudden, unexpected deaths, or crimes related to the death of close relatives. VIA is able to provide the following:

- information and advice on how the criminal justice system

- works • update on the state of progress of the case • advice and assistance on judicial procedures • details of other services for victims and their families. VIA can also help the relatives in case of deaths, which may entail criminal proceedings or the need that there must be an investigation into a fatal car crash or a more in-depth investigation.

After the Mullingar Conference (Ireland, 16/18 Mars 2018) - 3 days of interesting work are expected - we will call for an Italian Conference in Italy on the subject starting from the work already launched in the last years.



## ASSISTANCE AND JUSTICE FOR ROAD VICTIMS

### A LAW OF ASSISTANCE TO ROAD VICTIMS

We hope that the second decade (2011-2020) of road violence combat will not be closed without a law to assist the road crime victims. Every year in Italy we pay about 2,000 million Euros with car insurance to the Ministry of Economy and Finance and, through it, to the regions for assistance to road victims. This was possible because of the work of the Luigi Guccione Foundation Moral network, and the Italian Center for Democratic Legality proceeding with an access to the records three years ago to find out what was the standard fee" for refunding provided services to injured by vehicles circulation "introduced by Law no. 526/1982.

The sums were paid regardless of the amount and nature of the services effectively provided by the National Health Care Service to the injured from road crash and without being the subject of inspections and/or verification or accountability as the law prescribes.

As it is known the benefits provided by the National Health Service, are in fact, limited to the assistance and care of road crash victims till the eventual recovery of their physical mobility. While regarding individuals who require prolonged rehabilitative care, it is not provided any protection (it is so true that in many cases, respective families or ad hoc associations are to take charge of the problem), or the services and structures are completely deficient.





For example, according to the protocols of Health Ministry, there should be in the territory an awakening unit equipped to assist those in need of rehabilitative care as well as programs to support home care, semiresidential day care, and an ambulatory but in reality this was not done or, at best, it is managed by a wholly inadequate and often without specific skills staff.

Regardless of the nature of taxation or less of the contribution in question, remains the fact that there is a constraint destination ((health care to the victims of road crash ) of the amounts which the public body involved in the delivery of health services received from the insurance companies. There is money.

Since 1982, when a parliamentary Rossana Rossanda from the Italian Communist Party, suggested - with an amendment to the Law on Insurance Reform - the destination. It was approved and has become a State law.

In the “Decade of Action for Road Safety 2011-2020” Plan - approved in Washington on 15 March 2011 and presented in all the world on May 11, 2011 by the UN, WHO and some 100 NGO’s that have helped to process it - It is written on the 5th Pillar (they are five): **“Improving post crash care and strengthen health services for road accident victims”** and in its Italian translation - signed by 36 national Italian socioeconomic organizations on May 15, 2011 in Rome, Chamber of Deputies, Is reiterated: **“Provide a law to assist the road victims and create a national center for assistance.”** Victims have a recognized status of damaged from the circulation system by the State and have refreshment and assistance. Therefore it becomes necessary a proposal law that could become a proposal law presented by the Parliament to be discussed and approved by emergency procedure by Parliament.



*FEVR delegation to Washington on March 15, 2011 at the launch of the Decade of Action for road safety 2011-2020.*

## LAW FOR THE ASSISTANCE OF ROAD TRAFFIC VICTIMS

### Article 1

#### Law application scope

The dispositions of the present law are applied to the victims of road circulation crime and on the workplaces on the Italian territory. By victim of road crime and on the work places we intend the deceased, offended or made invalid person in consequence of the crime, his/her close relatives, those that are related to the victim by the adoption bond and who permanently coexists with him/her.

### Article 2

#### Discipline Objectives

The State promotes, organizes, care assistance to crime road traffic victims and on workplaces by providing them of psychological and psychiatric, moral, social-health and legal supports operating in the territory and the local ones in the field of justice, education and training, information.

The State:

- Encourages and supports voluntary organizations in coordination with those of the public sector services
- Promotes and organizes presidia and support services for road victims and on workplaces according to their specific needs
- Provides legal assistance while respecting the application of the rules relating to legal aid for the victims' families of Presidential Decree no. 115, 30.5.2002 (Official Gazette no. 139/2002).

### Article 3

#### House of mutual-help for road crime victims and on workplaces

A house for road crime victims and on workplaces is formed at local authorities offices. The house for road crime victims and on workplaces:

- a. Coordinates the activities of public and private institutions existing and operating in the area.

- b. Provides adequate information on the rights of victims for assistance and social care for the surviving victims and for the families of the survivors and deceased ones, legal assistance including encouragement of the implementation of the rules on legal aid.

Organizes all those actions of information and connection with the informative and scholastic system fit to remove the vision of the road

accident as fatality. d. Favors the meeting between the victims and their relatives, their representative Organizations, the groups of auto-mutual-help in affixed spaces equipped in public and central places of the cities.

#### **Article 4**

##### **Memory Day**

The United Nations, with Resolution 60/5, adopted by the General meeting in October 26<sup>th</sup> 2005 has established that the third Sunday of November is the road victims World Memory Day. The State recognizes the World Memory Day for road victims and undertakes to celebrate it every year in schools of all levels; exposing the national flag in public buildings along with the banners of the Global Alliance NGO, s for Road Safety and the European Federation of Road Victims.

#### **Article 5**

##### **FEVR Recognition and Global Alliance NGO, s for Road Safety**

The State recognizes FEVR - European Federation Road Victims and the Global Alliance NGO, s for Road Safety that represents the Organizations of road victims.

#### **Article 6**

##### **Financial coverage**

The cost of the current nature arising from the implementation of this Act is met through the funds of art. 334 of Legislative Decree no. n. 209 of 07.09.2005 and subsequent amendments and additions.

We have to start from social - care organization services of home care services, particularly, psychological and psychiatric ones, also care activities to recover stomatognathic apparatus damages (it consists of the teeth, jaws, muscles of mastication, epithelium, the temporomandibular joints and nerves that control these structures) and maxillofacial which is also one of the causes of functionality and "Residual" imperfections important to many people every year under 40 (about 150,000 people a year, with more or less visible scars).

One answer wants a real service center for road and work victims (medical-legal, psychotherapeutic and dentistry, maxillofacial and cosmetic surgery assistance) in the territory that foresees the realization of an information activity, assistance, consultation and patronage to people victim of an accident of medical-legal nature, particularly:



*General Assembly of the European Federation of Road Traffic Victims in Brussels, September 25, 2015. Delegates meet the Special Envoy of the UN General Secretary for Road Safety, Jean Todt*

- on assistance immediately after the crash
- on starting procedures for compensation, on how to receive assistance during the processes (civil and criminal) and during negotiations
- on legal advice, medical, psychological and psychiatric services The social objective must be avoiding that suffering becomes, loneliness and neglect, despair and pathology. Information and advice may be received by activating a free number and also through the web portal to be realized. It is the duty of the State and its institutions to offer, however, the necessary help by setting up special service centers in the different provinces - Managed with the involvement of civil society organizations - where victims can receive qualified assistance.

Italy lacks highly specialized home care for the Cranial Traumatized (C.T). To facilitate an early family reintegration, there are no operators able to provide valuable psychological support to the patient and the family.

No less serious are the economic problems: the traumatized often lose the job. And if the patient is not self-sufficient, to the previous medical costs (such as additional therapies that need to overcome the shortcomings of public health facilities) must be added assistance costs. But given the sheer consistency of the latter, most often a relative takes care of the traumatized assisting, controlling and helping him in his needs with an effort necessarily constant. In these dramatic cases the victims of accidents are two: in one hand the patient and in the other the family. The family often s to give up not only work, suffering its economic damage,

but also suffer the consequences of social isolation. Unfortunately, we are faced with inadequate social services and labor market that is not sufficiently permeable to the rehabilitation of persons with cognitive and behavioral disabilities.

**In view of these problems we have to take action to:**

- prevention through direct testimony of young cranial Traumatized (C.T) in schools
- home care and support services for people especially during medical appointments
- training of volunteer able to assist the encephalic cranial traumatized (E.C.T)
- organizing day care centers for rehabilitation and relief for families.



*"Marcel Haegi"  
National Center of  
Assistance to the  
road victims.  
Luigi Guccione  
Foundation, Rome,  
Marsala Street, 14.*

*Inauguration of the  
"Marcel Haegi" Center  
in Rome with the  
Special Envoy of the  
UN General Secretary  
for Road Safety,  
Jean Todt*



## VISION AND GOVERNANCE OF THE SMART CITY

**A** "vision" of the city redesigning its urban asset of soft and sustainable mobility. People and not cars at first place in transport systems. Ideas of the smart city from which "adaptation" and coherent organisation project should have impetus. Possible and necessary urbanistic interventions, urban design, urban development (spaces redesign, environmental zones, public green, mobility for study and work).

Redefinition of shares in different transport modalities. An Office for soft and sustainable mobility and road safety in big urban areas is necessary. As a lever in the hands of the Mayor to exercise the necessary, legitimate, government action, coordinating the efforts of all the departments and to enhance their coordinated action. An Office with a staff and a coordinator available to the mayor (his delegate).



### SOFT MOBILITY AND SUSTAINABILITY

**Vulnerable users:** a "cultural overturning" of the current practice of the mobility paradigm is needed.

Gradual decrease of private motor mobility. Rebalancing and security of travel (pedestrian, cycle, goods and people, Local Public Transport and intermodality), traffic moderation, safe infrastructures and scheduled maintenance, technological innovations; enforcement: checks and repression, speed, wild parking, safety for pedestrian crossings, sidewalks and slides, cycle paths.

### CULTURE, EDUCATION AND COMMUNICATION

**New culture of soft and sustainable mobility and road safety.** Involvement of schools and universities, local and national media, training in the sector (public and private), operators and schoolchildren/students, schools of all levels. Participation of city halls.

Application of article 230 of the Highway Code; education in schools: a new vision of mobility not centred on private motorization, responsibility and the right to health and life. Training of operators in schools and pupils/stu-



dents. Parts of the city increasingly free from private motorization. Educating autonomously shared driving, Car sharing, bike sharing, etc.

**Promoting a Chart of the rights of people on the move**, especially for children on the move: meetings with communication operators (printed paper and social media and television editors, journalists, creatives, agencies, Universities). Ask for a Code of ethics also in order to define shared communication strategies.

## ROAD, ENVIRONMENT, HEALTH

Not only deaths and serious injuries because of car crashes but also damages to health due to the mainly use of coal and fossil hydrocarbons (road circulation, heating, industries, etc.) and road collisions. By 2040 (but we must speed the times up and anticipate them if possible!) no more use of coal and fossil hydrocarbons in the urban area and stop for cars using fossil hydrocarbons.

**Direct participation of citizens** in the choices, local administrators (Districts) and Councils of Municipalities. Local and national health agencies. How to make cities more sustainable and improve our lives. Reversing the route: more public transport and less cars, more cycling and pedestrian in the cities. Meetings with specialised national and foreign Companies (which have certified experience in the field) to redesign the “new” ancient city and give dignity and connection to the suburbs with the heart of the city.

**Different skills are needed:** urban planning, philosophy, traffic psychology, anthropology, sociology, experts in the world of labour, environmental medicine, art historians, environmental law, urban arboriculturists, climatology, engineering, architecture, agronomy. We can not start without an idea, we need to define a “vision” of a city to be “rebuilt”.

The Legambiente “**decatalogue**” that we share is very interesting:

- **Redesigning streets, squares and public spaces in cities;**
- **increase urban green;**
- **A mobility towards “zero emissions”;**
- **Priority to public mobility;**
- **Diesels and the most polluting vehicles out of the cities;**
- **Road pricing and ticket pricing;**
- **Enhancement of public and private buildings;**
- **Heat without pollution;**
- **Strengthen controls on car emissions, boilers, buildings;**
- **intervene on industries and port areas;**
- **Make a planting plan of vegetable gardens starting from the suburbs.**



## ASSISTANCE TO THE ROAD VICTIMS. A MORAL DUTY FOR THE STATE: TO COMPLY WITH A LEGAL OBLIGATION. CHANGE.ORG HAS HANDED OVER TO THE GOVERNMENT AND PARLIAMENT THE LAW PROPOSAL PREPARED BY THE LUIGI GUCCIONE FOUNDATION

**LAW NOW!** On Change.org 16,201 citizens have signed our law proposal for the assistance of survived road victims and of those who died and survivor’s families. For 36 years, 10.50% of the third-party motor insurance is paid to the State for the assistance to the victims of the road (it was introduced by the law 526/1982 “for the reimbursement of benefits paid to the damaged people by the circulation of vehicles” And the law also states how to finance it, without any new tax levy: “The current charge deriving from the implementation of this law is provided by the funds referred to in the art. 334 of the Legislative Decree n. 209 of 7/9/2005 and subsequent amendments and integrations”.

**We demand that of 1,850 million euros that the State takes, at least 100 million must be used to equip the provincial cities with Centres of assistance for road victims.**

**Giuseppe Guccione**  
*Luigi Guccione Foundation President*

# The largest human bicycle in the world: in 3,000 in Mexico City.

About 20,000 square meters (like 4 football pitches!) occupied by the giant bicycle in Constitution Square.

For a new mobility.







The following proposals come from the need for a deep and honest **analysis** of the theories, actions and solutions about road safety issues. We must be aware that if we go on following the same paradigm and strategy of the last unsuccessful decades we risk getting the same bad results. We need to overcome some dangerous **stereotypes** and a psychological and economical subjection that came from industrial dictates.

We must attribute the right dignity and importance to several disciplines usually left guiltily aside.

We need to recognize the **human factor** as the main element acting in road safety, and promote disciplines as Philosophy, Anthropology, Sociology and Psychology for the right comprehension of bad driving behaviours and understand how to correct them.

## HUMAN IMPLICATIONS

Each one of these elements has **deep consequences** on behavioural models of driving.

Human factor deserves not less consideration and attention than road





infrastructures and vehicle conditions. And there is more.

### HUMAN SUBJECTS

Urban planning, architecture, statistics, law, communication, education, training, economy, environment, health and other human matters and disciplines give

all important and decisive elements that **everyone who want to manage road safety** and prevention needs to know.

All these knowledge help us to face traffic issues, such as how and how much we use private transport with the aim of a **minor and better use** of it.

Getting our cities free from car traffic and making our roads safe, healthy, liveable and shared have to be our main goals.

Now that we have defined that the so many categories of knowledge deserve an equal importance, we can establish the classification of prevention actions.

### PRACTICAL ASPECT

While on the theoretical science side we put all the disciplines at the same level of dignity, on applied science side we need to sort the solutions in a **strict priority order**.

The three following aims represent the priority fields of actions.

### ROAD CULTURE

It means awareness of all human implications in driving, as described above. It means mindfulness about what I'm doing, who and what are around me when I'm driving, it means maturing the ability to perceive and recognize most of the possible markers of risk in order to prevent troubles and collisions.

All these good practices, together with the theoretical principles, have to be communicated and teach to politicians, decision makers and road professionals. And a proper life-long learning has to be given to common road users.

### TRAFFIC MITIGATION

Mechanical and kinetic sciences, with medical and traumatological ones, tell us how central and decisive is the speed factor of the vehicles for the

consequences of impact on human body. And for the probability that the crash happens itself.

We must impose a human-compatible urban speed limit, that have to be not higher than 20 mph, generally, except for certain main roads, that anyway doesn't have to exceed that limit too much.

We can use preferably structural and technological solutions. Firstly we can make it physically impossible to overcome speed limits and secondly we can ensure that every infraction will be properly detected and fined.

The third solution for facing speeding is using human resources such as traffic police.

### TRAFFIC REDUCTION

Road congestion has several types of consequences:

- Directly **statistic**: the more vehicles and journeys you have, the more collisions you get.
- On **people behaviour**: when you are stuck in the traffic and you feel stressed and frustrated so that you develop aggressiveness and violence on driving.
- On **health**, for air and acoustic pollution.

These are the reasons why this problem has to be considered with the same priority as the previous two.

To solve this issues we need policies to **promote** public, collective and shared transport, to **encourage** pedestrian and cycling modalities and to **discourage** private vehicles use.

Urban planning and design can help to achieve that goal too.

Now that we have established the priority solutions we can say that all the remaining actions are complementary and secondary.

It means that if we act a complementary intervention without any primary solution we don't have positive results.

This is the case, for example, of seat belts, helmets, high visibility clothing, road and vehicle conditions, street lighting, forgiving roads, contrast to alcohol, drugs and cell phones use.

**Notice**: we don't have to give up on these solutions, we have to observe the right priority, otherwise we would subtract vital resources from immediately resolving actions.

**Alfredo Giordani**

*Rete #Vivin strada, Luigi Guccione Foundation*



Turin (**down**) is the first city in the world to transpose the UN resolution for World Day of remembrance for road victims with an extraordinary City Council on November 23, 2016. Rome (**up**) is the first Capital of a State to do so on March 3, 2017. In both ceremonies The Special Envoy of the United Nations General Secretary for Road Safety was pre-



## CHANGE THE CITIES, CHANGE LIFESTYLES, FOR A NEW MOBILITY. TOGETHER!

In 2016, **570 pedestrians were killed in Italy and 21.155 were seriously injured** (+ 3% compared to the previous year) and **49 children were killed** (aged from 0 to 14 years) with an increase of 25,6% compared to 2015. The number of victims of the road, in fact, grows again in Italy and beyond, with increases between 6, 7 and 8.2% (Istat data, National Institute of Statistics, first half of 2017 comparing with the same period in 2016).

It is very likely that the end of the year has scored about 10% more in deaths and especially in serious injuries, 17.000 about. The month of January 2018 ended with an alarming 20% more deaths compared to January 2017!

It was not enough, and could not serve the purpose, a law such as the road murder one to stop the massacre in the streets. It is not thought as a deterrent like many, however. Thousands of victims without justice and without assistance.

**A dead pedestrian out of 10 in Europe is Italian.** A genuine emergency. In the silence of the many!

It is necessary, by hard or easy ways (with our lawyers), to secure pedestrian crossings near schools (primarily): horizontal and vertical signage, local police checks, cameras and environmental zones. Pedestrians, children, elderly, cyclists, they are the most defenceless people on the roads. They have no protections. Moreover, they are the least protected people in the cities.

Pedestrian crossings are generally not supervised and their maintenance is often non-existent.

Also the Gentiloni premier government and its precedents (centre, right and left wing) responsible for the complete abandonment of road safety poli-







cies, justice, fair compensation, assistance for victims, new mobility policies. Assured to the interests of insurance Companies, vehicle, oil and coal industries polluting the cities with their fumes (tumours, heart disease, neurological diseases, etc. (more than 90.000 people per year die from it in Italy). Not only dead from car crashes, but also from pollution.

We had foreseen it for months and we believe that 2017 will end this way (but we will only know it in November of this year!). **Easy prophets**, in the absence of actions to combat road violence and a radical change in the mobility policies of people and goods, especially in urban areas. It is necessary to reduce the cars, especially in urban areas, to give importance to pedestrian and cycling, to moderate speed, to enhance local public transport.

**A “vision” of the city** that redesign its urban structure of soft mobility and its (economic, social) sustainability. People, not cars, the first place for transport systems. Ideas of the smart city from which we can prompt “adaptation” projects and coherent arrangement.

Possible and **necessary urban interventions**, urban development (space redefinition, environmental zones, public green areas, mobility for study and work.) Redefining the shares of the different modes of transport. Rebalance and security of movement (pedestrian, cycle, goods and people, Local Public Transport and inter-modality), traffic moderation, safe infrastructures and scheduled maintenance; technological innovations; enforcement: speed control, wild parking, safe pedestrian crossings, sidewalks and slides, cycling paths, traffic light areas, interventions designed with accuracy and competence.

**We need to build a new “vision” of civil coexistence** looking at the development as a growth factor that does not threaten and destroy the environment, which gives equal opportunities to citizens and generations (which does not put parents and children in opposition). Youngsters, their parents



and grandparents are often together victim of the system, even in mobility field. A common sustainable economic development gradually leaving the energies from fossil fuels to alternative ones.

A mobility mainly focused on local public transport and on the shared one with low environmental impact giving, however, centrality to walking and cycling (in the Highway code too!).

**Social costs** amount at about 18 billion euros each year because of traffic collisions. In five years, the State “destroys” resources for over 90 billion euros.

#### **That is why investing in safety and prevention:**

**1. The set of an organised - political and technical - system of governance for road safety** through the appointment of an Undersecretary to the Presidency of the Council of Ministers with the delegation for mobility and road safety. To change urban mobility in particular: a strong “injection” of money (10 billion euros in five-years of mandate).

**2. A purpose fee** on powerful motor cars (beyond 2000 cylinder capacity, more than 2.477.236 vehicles.). Money that could (binding them) turn on the same size co-financing by the municipalities. All cities with 30 Areas as Paris and with the ban of using coal and fossil fuels for transport and heating.

**3. Set a chapter of expenditure on mobility and road safety** in the stability law that highlights and quantifies the total and broken down financing requirement.

**4. Routine maintenance** of roads with strict respect of the use of incomes from fines (Articles 142 and 208 of the Highway Code). Demand accounta-





bility by local authorities and Central Government and possibly exercise the subsidiarity.

**5. Reform of the Highway Code:** spin “behaviours” off the part concerning “vehicles and infrastructures”. Give centrality to walking and cycling.



**6. Launch a serious training and education activity** for a new mobility and road safety, but also a continuous action in combating the road violence by all the Police forces, both national and local, for respect of Highway Code. Presence in the street and checks with the aid of technology. Cancel the rule paragraph 6-bis of article 142 of the Highway Code (preventive electronic control equipment signalling).



Plants, green, “reliever” by concrete and bitumen (to be partially removed) on roads, civic gardens, the reduced use of individual and polluting vehicles, strengthening of local public transport are some of the governance actions on which engaging citizens in the cities. And we, victims’ families, must do it; we have paid a very high price to an economic **development and mobility pattern that should be changed.**

On foot, by bike, by public transport and by (independent) shared car. Polluting cars for individual use should be replaced by non-polluting shared ones and in the near future by self-driving ones. An extraordinary **investment plan in local public transport.** To overcome the old logic of the past.



**Giuseppe Guccione**

*Luigi Guccione Foundation President*

## NEW MOBILITY, ROAD SAFETY, PROTECTION OF VICTIMS

**Material and immaterial networks, development, eco-sustainable works:** new ideas and development and soft mobility and road safety patterns. Sustainability. Health, environment, rights, democracy, direct participation of citizens.  
**Justice, compensation, assistance for victims of road crime.**

**A**fter the transposition (formal and still not substantial for Italy) of Directive 2012/29/EU of the European Parliament on victims of crime (in which for the first time also victims of the road are included), it changes the paradigm of road violence and policies related to mobility and road safety.

There is a big difference between before and after this transposition, not only under a legal point of view but, above all, under a political and cultural point of view. We can no longer “do as before”!

There is the need of a democratic pact between the Organizations of victims and vulnerable users and those of the professional and mobility field that have a common goal: to really change the situation, not just in cities, and reduce the number of deaths, serious injuries (sharply increasing) and accidents on Italian roads to contain social costs and bring Italy back among the most virtuous countries.

But in 2015 the UN also approved **the 2030 Agenda for a sustainable development**, an important document that includes road safety in point 3.6 (Health and wellbeing) on 17 points. It must be understood that in order to achieve adequate standards in the field of mobility and road safety, we need a broader framework, an open horizon: “to put an end to poverty, to fight against inequality and social and economic development. Furthermore, taking up aspects of fundamental importance for sustainable development such as tackling climate change and building peaceful societies by the year





2030” (from the UN document).

We must understand that it is necessary to start from important, multilateral issues. We have thought about plugging the holes and when we hear saying that it is necessary to be concrete, we agree. This is concreteness, cultural and technical competence suitable to face “serious” but important changes. Which can change the lives of billions of people for the better. Even our lives.

Ten important points of the new political-social-cultural strategy:

1. Cultural, cognitive-behavioural, (dis)educational aspects of road violence.
2. Governance bodies, democratic participation of citizens.
3. Transport policies, local public transport, pedestrian, disability and cycling.
4. Subjective responsibility of users, vehicle industries and road owners.
5. Health, the constitutional good of citizens threatened by the current system of mobility.
6. Training and education, “arms” repression against road violence.
7. Defence of the rights to health and life of women, children, people with disabilities and elderly.
8. Enforcement on speed contrast policies.
9. Highway Code: from adjustment policies to a new code of conduct decoupled from the vehicles and infrastructures one. Modification of the form for the detection of accident data.
10. Ethical-legal aspects for effective sanctions and penalties, compensation and assistance policies for victims of road crime

After the General Road Safety States, 11 and 12 November 2015, there



were two and a half months of serious work, 19 meetings and 71 people involved, to define a strategic “vision” to combat road insecurity (violence) starting from the tragic events resulting from the **car crashes** that should not be considered **accidents (a fatality)** and that imply, instead, many political-economic-social-anthropologic-psychological-cultural risk factors:

1. **from the choices of the economic development** pattern to the transport ones, from the disasters made in the past decades in the uncontrolled growth of the cities (from the suburbs to the historical centres), more useful for “palazzinari” (real-estate developers) than to the residents and commuters.

2. **from educational and training policies**, willingly weakened (with obedience to the “Directives” of the International Monetary Fund) to social and health services (one of the most compromised sectors by criminal and private business powers, as the anti-corruption magistrate reminds us, Raffaele Cantone: “*in the health care of criminals. Corruption in 1 ASL out of 3*”).

3. **from the maintenance policies** of the roads, public transport, to energy ones that, as we see today, look after the interests of oil companies rather than those of the Country and its citizens; the failure in implementing the Article 32 of the Constitutional Charter that fully legitimizes the health rights of all citizens, starting with the disadvantaged, the victims of crime in primis.

4. **from fiscal and financial policies**: a budget chapter for road safety in all its aspects is missing in the law of stability (Education, Health, Justice, Transport and infrastructure, Social services, Information, Ministry of the Interior, Municipalities, Provinces, Regions).

We must “**build a “vision”**” of civil coexistence that looks to the develop-





ment as a growth factor that does not threaten and destroy the environment, which gives equal opportunities to citizens and generations (which does not put in opposition parents and children). Young people, their parents and grandparents are often victims of the system, also of mobility.

**Vision** that is lacking in Governments, local administrators, economic and social organizations, anchored to the logic of protection of selfish interests, but also to organizations of victims of crime and those of civil society almost always anchored to a sector vision.

A holistic vision of road mobility/insecurity is entirely lacking in Italian culture: we are the Country of particularisms, of partial visions. We must change the pace.

The fight against road violence immediately requires a new “political-social” subject on the scene: the Organizations of victims allied with those of vulnerable users (pedestrians, cyclists, young people, disability, elderly, women, children) to “impose” a new vision.

A widespread sustainable economic development that gradually abandon fossil fuel energies for alternative ones.

A mobility mainly focused on local public transport and on the shared one with a low environmental impact which gives, however, a centrality to pedestrian and cycling (also in the Highway Code).

We need a holistic vision that can enhance the particular skill of each of us to build a path that can reach, however together, the goal. **The starting point: the cities.** Innovating with courage as New York, Lisbon, London, Madrid, Berlin, Dublin, Melbourne, Amsterdam and others did. Cycling in Italy is zero! (the figure is not detectable unlike other European cities, Berlin



almost 15%, Amsterdam almost 35%). The subways have very low numbers both compared to the inhabitants/km and as absolute kilometres: this is what the data in the transport document attached to the Italian Stability Law 2016 show. *“Underground: in Italy there are totally 224 km of lines: the Spanish capital, Madrid, has 293 and Paris 220 [...] Milan has 101 km of subway, the capital of Rome only 60, a fifth of Madrid. Naples has about 20 km of subway, Brescia 14, Turin about 13 km, Catania 9, Genoa 7. Numbers from third world, if we consider that the metropolitan area of Rome counts 4.3 million inhabitants”* (Source: Corriere della Sera).

But without an alternative transport pattern instead of car, cycling has no future in the cities.

And the victims and their claims - assistance, respect for legality, justice, compensations - must find their place within this vision, not just be the last point added to the program. We must ultimately eschew, even more than the past, attitudes of victimization and subordination.

And we must be decisive, radical, there can be no middle ground. Radicality is a value in a world increasingly dominated by opportunism, selfish compromise, personal interest. Dignity of the role but also the claim of a subject who aims to change, turning the existing not only to reclaim their, legitimate, rights.

After the launch of the Decade of Action for road safety 2011-2020 (Washington, 2011), the second Highest Level Summit (Brasilia, 18 and 19 November 2015), the United Nations held the **Seventieth Session Agenda**, at point 13 of the agenda, **Improving global road safety**, on 4 April 2016, reaffirming the commitments not only by 2020 but also looking at the Agenda 2030 in a document that everyone should know starting from our



Government and all the stakeholders in the mobility field.

**Here is a set of measures for the goal of the 2020-2030 Agenda in the context of Italy (also useful for Rome and other cities):**

1. Funding of the National Road Safety Plan with at least € 15 per inhabitant, as already established by the law (L. 144/1999).
2. Giving the primacy back to skills by equipping the State with a National Road Safety Agency (technical governance body supported by the political coordination of the sector entrusted to an Undersecretary to the Presidency of the Council of Ministers) with 5 General Directorates (Cycling Mobility, Pedestrianism, Disability, Local public transport, Victim assistance).
3. Reform (and streamlining) of the Highway Code giving centrality, in the first articles, to the strong strengthening of the Environmental Zones in the cities (gradual closing of the historical centres) and protection of Children, Elders, Pedestrians, Cyclists, Disabled.
4. Establishment of a National Assistance Centre for the victims: for the care, assistance of victims of traffic accidents and in the workplace.
5. Reform the National Council on Road Safety.
6. To create a school for advanced training as a “gym” for a new culture of mobility government and road safety for technicians, operators, administrators, schools, etc.
7. Predisposition of a serious plan of efficient (and effective) controls in compliance with the rules of the Highway Code.
8. Request to establish the Offices for road safety in the Regions, in the Provinces to coordinate the policies of all the departments that have expertise in the matter and place them under the “direction” and control of the Mayors and Presidents through their Delegates.
9. Grants of at least 5,000 million euro of state incentives able to generate local, public and private co-financing in 10 years, for a strong development of non-polluting local public transport and the pedestrianisation and cycling of cities.

**Giuseppe Guccione**

*Luigi Guccione Foundation President*

**Alfredo Giordani**

*Rete #Vivin strada, Luigi Guccione Foundation*

## CIVIL COMPENSATION PROFILES FOR ROAD INJURIES AND FATALITIES

### A glance at italian legal system

**GIUSEPPE MASTRANGELO**

*Legal representative of the FLG Luigi Guccione Foundation*

About a year after the introduction of road crime and road traffic offenses into the criminal code, criminal lawyers aren't the only ones that can draw conclusions about the effective suitability of these rules to achieve the objectives set by the legislator, namely to **protect road victims and their families as much as possible**<sup>1</sup>. Also, and above all, civil lawyers have the opportunity to evaluate if the new discipline really improves the possibility of the families of victims to obtain compensation within a reasonable time on the basis of the first judicial proceedings in progress and judgments of the case.

What should be considered *prima facie*, without wishing to anticipate too much what the conclusions drawn by this discussion will be, is that the significant increase in penalties is leading to increasingly demanding court cases, in which the defendant and the insurance companies prefer to invest more in fierce defense rather than settling quickly. This causes a physiological increase in animosity between victims and offenders<sup>2</sup>.

In addition, there is an ever less frequent use of institutions such as plea bargaining, which calls for an agreement between prosecution and defense on the offense and



<sup>1</sup> *The popular legislative proposal* on the introduction of a charge for road kill and road injuries, materially prepared by cooperation between the Association Lorenzo Guarnieri, Gabriele Borgogni Association, Association of friends and supporters of the traffic police, the City of Florence and the Municipal Police of Florence, explains the objectives that were expected to be achieved with the new law *“With this proposal we intend to bridge what is perceived as an unacceptable legislative gap because it does not meet the criteria of proportionality between the goods that are endangered (life and physical integrity) and the psychological attitude of the offender. From this point of view it becomes crucial to influence not only the extent of the sentence and the measures that guarantee its immediate effectiveness, but above all the correct framing of the psychological approach of those who, aware of the dangers of their behaviour, accept the risk in total disregard of the almost inevitable consequences. This is why we intend to create an autonomous disciplinary framework, based on legislative cases that, in very precise and symptomatic objective circumstances of the indirect voluntariness of their work, imply framing them in these terms identifying for the first time, in Italy, the autonomous situations of murder and personal road injuries”*. (Proposed by popular law pursuant to article 71, second paragraph, of the Constitution, available at the link <http://www.omiciديوstradale.it/proposta>, consulted on July 14, 2017).

<sup>2</sup> See Guido Camera, *street murder, why it will be difficult to obtain damages*, “Il Sole 24 ore” (6 March 2016), p.5.



the admission of responsibility on behalf of the offender, both conditions would make insurance settlements easier and quicker<sup>3</sup>.

The importance of guaranteeing compensation to road fatalities and their families will be understood by considering that in the face of events such

as serious or very serious injuries or vehicular homicide the only possible redress is the one by equivalent, such as compensation according to civil law.

And yet, the new legislation has completely ignored the regulation of civil liability, which has remained completely unaffected and is the result, inter alia, of praetorian law consolidated over the years.

Wanting to examine the most salient aspects of civil liability, a further examination of the problems linked to compensation in favor of the close relatives of road fatalities is needed.

The right to compensation for damages to the families of victims has been definitively consecrated by the well-known **sentences of the United Sections of November 2008 (Court of Cassation No. 26972 et seq.)**, which have established that in accordance with art. 2059 of the Civil Code compensation for non-pecuniary damages consisting in the violation of the inviolable rights of the constitutionally guaranteed person (**Articles 2, 29, 30 of the Constitution**) is recognizable in favor of the next of kin.

However, compensation given to the family members of the victims (defined by doctrine and jurisprudence as “*damage from the loss of parental relationship*”) appears as damage *iure proprio* and non *iure hereditatis*, as well as **non-pecuniary damage** and decoupled from the income capacity of the victim.

To further clarify, compensation for death damages for the next of kin is not identified with the hereditary division, being, on the contrary, “*a sum of the individual*

*compensation due to each relative*” (**Cassation ruling No. 9231 of 17 April 2013**). Furthermore, the principle conceived by the Cassation judgments should not be overlooked (**Civil Code No. 26972/2008**) and following according to which, to avoid compensation for damages, the recognition of damage from loss of the parental relationship excludes non-pecuniary damage. Starting from 2008, the two main Italian courts, namely those of **Milan and Rome**, formulated “**tables**” for the settlement of parental loss damage.

These tables have been declared **by the Supreme Court “national vocation” (Civil Cassation No. 24076/2015)**, given their considerable applicative diffusion on the territory.

Therefore, the concrete economic quantification of compensation is calculated by taking into account the following factors: the age of the victim, the possible cohabitation of the victim with the next of kin and the possible existence of other family members of the same degree of kinship. Considering these elements, which are used as reference by the case law, then further assessment on what the actual compensable damages are should be done.

We can strongly refer to the hypothesis of damage that can be recovered in the twofold sphere of **non-pecuniary damage**<sup>6</sup>, which includes *moral damage*, as well

5 Regarding the “*damage from the loss of the parental relationship*”, the principle enshrined in the Supreme Court states that “*the person who acts in court to request iure proprio, precisely the compensation for the damage suffered as a result of the death of a joint for the definitive loss of the relationship between relatives, complains of a prejudice concerning a different legal interest both from the good health of which he is the holder and whose protection is found to be rationale in art. 32 of the Constitution, and of the interest in moral integrity, whose defense is found in art. 2 of the Constitution. In this sense, in fact, it is noted that the interest claimed concerns the intangible sphere of affection and mutual solidarity within the family, as well as the inviolable freedom of a subject to fully operate in the family context... This constitutional interest, not having an economic nature, may be subject to reparation pursuant to art. 2059 of the Civil Code, without the limit provided for therein art. 185 of the Criminal Code because of the kind of value recorded, because the damage does not lend itself to a monetary market valuation*”. (**Civil Cassation Section III, No. 2557/2011**).

6 With regard to non-pecuniary damage, a change in orientation by the Supreme Court emerges. While, in fact, with the four judgments of identical content filed on 11.11.2008 the United Sections established the principle of law according to which “non-pecuniary damage is a unitary category not susceptible to subdivision into variously labeled categories (...). It can not refer to a generic named sub-category of existential damage, because through this also non-pecuniary damage becomes atypical, albeit through the identification of the apparent typical categorial figure of existential damage, in which however cases not provided by the law are included for the purposes of the redress of this type of damage, while this situation is not desired by the ordinary legislator, it is required by the constitutional interpretation of art. 2059 of the Italian Civil Code, which is satisfied by the compensation for specific values of the person presided over by inviolable rights according to the Constitution”. Sentences issued from 2009 onwards are in contrast with this.

Particularly relevant, on this subject, is the sentence of the Supreme Court of Cassation of 2013 according to which “**Biological damage, moral damage and damage to relationships respond to different perspectives of evaluation of the same harmful event**, as a given event can cause, in the person of the victim as in those of the family members, health complications for the victim and for family members, an inner pain and an alteration of daily life. This does not mean that the judge is automatically held to compensate of all these individual spheres of damage separately, but he is obliged to keep in mind the different aspects of the

3 The journalistic investigation conducted by Alessandro Cecioni for “Repubblica” (27 December 2016), defines Law 23 March 2016 no. 41 as “*A law that skids*”, providing the following data: “*Only 4.8% less: provisional numbers say that the new standard, unlike the introduction of driving license points, has had little effect in reducing road fatalities. At the same time the first months of application have brought out the limits of the provision: if on the one hand aggravating penalties have not been added for those who use smartphones while driving, which is the primary cause of accidents, on the other hand thousands of drivers risk not being able to drive for 5 years even for a of trivial pileup. Prevention and other means of contrast such as checks with breathalysers remain difficult to apply*”. (Alessandro Cecioni, *Road traffic lawsuit*, Repubblica (27 December 2016) Available at [http://inchieste.repubblica.it/it/repubblica/rep-it/2016/12/27/news/omicidio\\_stradale\\_bilancio\\_di\\_una\\_legge\\_inutile-154080835/](http://inchieste.repubblica.it/it/repubblica/rep-it/2016/12/27/news/omicidio_stradale_bilancio_di_una_legge_inutile-154080835/), consulted on 14.07.2017).

4 “*The constitutionally oriented re-reading of the art. 2959 of the Italian Civil Code, as a provision for the compensation for non-pecuniary damage understood in its widest sense, reports the system of liability in the context of the bipolarity provided for by the current civil code between pecuniary damage (Article 2043 of the Italian Civil Code) and non-pecuniary damage (Article 2059 of the Civil Code) (pursuant to Article 8,827 / 2003, No. 15027/2005, No. 23918/2006)*” (**Section Civil Cassation No.26972 / 2008**).

as *biological and existential damage*, and **pecuniary damage**, definable as a loss of the economic benefits that the deceased intended for the family.

According to the quantification of the most recent tables of the Courts of Rome and Milan, the sums paid as compensation for children and spouse are equivalent, while the sums paid to the brothers and grandparents of the victim are lower.

The main aspect in terms of compensation lies in the **2,054 of the Civil Code**, according to which the driver of a vehicle is obliged to compensate the damage caused to people or things from the circulation of the vehicle, *if he does not prove he has done everything possible to avoid such damage*. Therefore, this is important difference for civil lawyers: the reversal of the burden of proof between damaging and damaged. In fact, the driver of the vehicle has to demonstrate the unpredictability and the inevitability of the damage caused to the victim.

In order to examine the compensable damages as a result of personal injury, another distinction is made between pecuniary damage and non-pecuniary damage. Regarding the pecuniary damages, we refer to the classic civil distinction between the so called *emerging damage*, as direct damage to property (including damage to the vehicle and other property owned by the injured) and loss of profit, to be understood as indirect damage to assets that decreases the earning expectations of the injured party.

In turn, non-pecuniary damage can be articulated in the three configurations of biological damage, moral damage and existential damage.

**The law 5 March 2001 no. 57, in the third paragraph**, defines the *biological damage* as the injury to the psychophysical integrity of the person, susceptible of technical-legal investigation.

Biological damage is a category developed by jurisprudence, which concerns the injury of a constitutionally guaranteed right: health and physical integrity. Starting from the famous **judgment of 2003, 19.057**, biological damage falls within the cases provided for by article **2.059 of the Civil Code** (that is, non-pecuniary damages) and no longer by those in 2.043, which is the general rule on property damage<sup>7</sup>.

Then there is a distinction between slight biological damage (disability up to 9 percentage points) and serious biological damage (disability of more than 9

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*damaging situation, avoiding duplication but also "gaps" in compensation; with regard to the damage caused to the family relationship, the judge must ascertain, with the burden of proof on the part of the family members, whether as a result of the detrimental event there has been a disturbance of normal habits in the survivors that impose radically different life choices". (Civil Cassation No. 19402/2013).*

7 *"Having considered the tort responsibility of the bipolarity provided for by the current code between pecuniary damage (Article 2043 of the Civil Code) and non-pecuniary damage (Article 2059 of the Civil Code) and having considered that non-pecuniary damage is indemnifiable not only in the cases provided for by ordinary law, but also in cases of injury to the values of the constitutionally protected human person, according to the recent aforementioned interpretation of art. 2059 of the Italian Civil Code, since biological damage is related to health, it is fully part of the provisions of art. 32 of the Constitution, among the values of the human person considered inviolable by the Constitution, and since this rule (as well as others that pertain to the inviolable rights of the person) not only has a preceptive effect on the state but is also immediately effective among individuals (according to the so-called drittwirkung theory), it follows, coherently with the system, that its protection is provided by art. 2059 of the Civil Code and not from art. 2043 of the Civil Code, which relates exclusively to property damage." (Civil Cassation, Section III, No. 19057/2003).*

percentage points). The minor damage has a clear legislative provision, as it covers micro-permanent lesions, which are covered by law as up to 9% of invalidity.

In terms of road accidents, the reference standard is **art. 139 of the Insurance Code (Legislative Decree No. 209/2005)** which introduced a compensation settlement mechanism, based on a

table prepared by decree of the President of the Republic, following deliberation by the Council of Ministers on proposals put forward by of the Minister of Health. It is in agreement with those of labour and social policies, justice and productive activities, and is periodically updated according to the ISTAT indices by an annual decree issued by the Ministry of Economic Development.

Regarding minor biological damage, **Law 27 of 2012 art. 32 paragraphs 3 and 3.4**, excludes compensation for permanent biological damage, which is also slight (0.5 - 1 point of invalidity), and not open to objective clinical assessment. As a result in regard to this, in practice, in courtrooms it is difficult to identify this aspect, which is often entirely at the discretion of the consultant on duty.

What are the requirements for the existence of biological damage? The existence of a physical or psychological injury to the person, something which compromises the vital activities of the subject and the existence of a causal link between the injury suffered and the compromise of the life of the injured person. On this aspect there can sometimes be speculation over whether a pre existing pathology should be included in the request for compensation.

In turn, damages are recognised by the judge in the event that the accident has caused significant changes to the lifestyle of the injured person. In other words, all that could potentially hinder the free expression of the personality of the offended subject in the social sphere is considered relevant.

However, a fundamental question remains to be considered: which is the best road to take in order to claim compensation for damages suffered? Is it more convenient to form a civil party in the criminal trial, or to establish an autonomous civil procedure for damages? And what are the differences between these two possibilities?

The Supreme Court, for many years, but particularly with **sentence no. 4,758 of 10.3.2015** - established that in our legal system the principle of unity of jurisdiction, or of the prevalence of one judgment over another does not hold. Therefore the two judgments, the civil and the penal one, remain completely autonomous<sup>8</sup>.



8 *Actually, already in the period of validity of the principle of prejudiciality and pre-eminence of the criminal action on the civil action (overcome today), the Constitutional Court no. 102/1981 had reached the "declaration of illegitimacy of the 5th paragraph of article 10 of the decree of the President of the Italian Republic no. 1124/1965, in the part in which it does not allow ... that the assessment of the crime can be performed by the civil court ... even in cases where the criminal proceedings against the employer or his employee have been concluded with the acquittal in the preliminary investigation or there is a provision to dismiss the case", asserting that, if in the aforementioned regime (now no longer in force, as already stated) "it is justified that the civil action is not possible if the criminal trial is pending, but does not find any rational justification that it is also ... the possibility of asking the civil court, for the purposes of its action, the verification of the offense to be limited to mandatory hypotheses...". The clear intents of the judges of the Council, as highlighted above, have resulted, after the fall of the principle of prejudiciality and pre-eminence of the criminal action on civil, in a peaceful and consolidated liberal jurisprudential orientation on the full existence of an effective*





In the criminal trial, as is known, the constitution of a civil suit can take place at the preliminary hearing or, at the latest, during the first hearing of the trial, before the judge verifies the correct constitution of the parties (**Article 79 of the Italian Criminal Code**). Once a civil suit is undertaken, the injured person actively participates in the process, for example: s/he can present evidence against the accused, examine witnesses, etc.

In the criminal trial the citation of the civil

liability, which is generally, the insurance company, can be requested.

Note that the accused is obliged to pay compensation only when the sentence has become final: that is, generally, after the final appeal.

Therefore, the injured party may have to wait several years before obtaining what has been requested. If the criminal proceedings judge is not able to determine the amount of damages, as is almost always the case, the decision is referred to an independent civil hearing. However the defendant can be ordered to pay a partial sum (**provisional**). This is what usually happens: the criminal case is made, the provisional judgement is obtained (**former Article 539 of the Code of Criminal Procedure**) and then the case is continued in the civil court. This procedure, for the victim, can involve many years of legal proceedings.

In particular (Article 539 of the Code of Criminal Procedure), the amount awarded in favour of the damaged party is an advance of the total final amount. It is due as compensation for part of the damage suffered, that part of the damage proven during the criminal proceedings, and is immediately enforceable (**Article 540 of the Italian Criminal Code**).

It follows that the injured party, in whose favour the provisional award is made, will be able to act directly against the defendant, notifying him/her of the sentence and award, and then undertake to recover the total amount due.

As regards the provisional judgement, a problem that arose has recently been resolved with the sentence of the **Supreme Court, sect. III, no. 6022 of 9.3.2017**. This issue was determining whether in the event of a conviction to pay a provisional order issued in criminal proceedings, it was necessary to wait for the statement of the sentence to be filed, or whether the reading at the hearing was sufficient to act upon in an executive manner. On this point the Court of Appeal has ruled that *"for the forced execution of the provisional sentence pronounced by the criminal court, the notification of the judgement where the hearing takes place is sufficient - if the party is present or must be considered as such. It is not necessary to wait for the filing, nor to proceed with the notification of the provision including the reasons for the decision"*. (**Civil Appeal Section III, No. 6022/2017**).

Another fundamental clarification is offered by the **sentence of the Supreme Court (no. 35570 of 29.08.2016)**, which established that the request for the provisional ruling can take place at any time during the trial.

In particular, the case brought to the attention of the court concerned the appeal of

autonomy of the civil court in the investigation of the crime (see, for all, **Civil Cassation, No. 817/1990, Civil Cassation No. 4179/97, Civil Cassation No. 4758/2015**).

a 60-year-old man against the sentence of the Court of Appeal of Catania. It had sentenced him, as well as 5 years and 8 months in prison for the crime of sexual violence to a minor, to a provisional one, which had been requested by the injured parties, who for the first time had been able to appeal.

According to the defendant, the sum imposed as provisional would have represented a pejorative reform of the first degree and therefore not allowed by law.

The Supreme Court, however, rejected the objection, stating that, provided that in the first instance there has been a general ruling of compensation for damages, the provisional in the second instance does not constitute a new application and, in fact, the judge is required to rule on this.

In defining the relation between civil judgment and criminal trial, there are two hypotheses which can be distinguished. If no criminal sentence has yet been made, the two judgments remain totally **independent** of each other and the victim of the crime must also prove the responsibility of the alleged perpetrator in the civil judgment. It is otherwise if the criminal trial has already been concluded and a final ruling made. In the latter hypothesis distinctions still have to be made.

In the case in which the criminal trial has been defined with a **conviction (article 651 Code of Criminal Procedure)**, the criminal conviction and associated proofs can then be used as facts already established, during the civil trial; while the sentence of acquittal only has a binding effect in the civil trial if the defendant has been acquitted because the crime does not exist or for not having committed the crime, or if the crime was committed in the performance of a duty or in the exercise of a legitimate right (**Article 652 of the Code of Criminal Procedure**).

In any case, the decision to opt for one of the two approaches (constitution of a civil party in a criminal court or autonomous civil judgment) is not final. Anyone who has decided to initiate a civil lawsuit may still renounce it before the judge pronounces the sentence and request compensation for damages in the criminal proceedings. If instead the civil proceedings begin after the victim of the crime is constituted civil party or after the judge has pronounced the first degree sentence, the civil trial is suspended until the end of the penal one.

So, what influences the choice the defender makes when s/he has to protect, from a civil point of view, the victim of one of these events? The constitution of a civil party certainly, in the criminal trial, is less difficult during the trial, because most of the evidence is collected and produced by the public prosecutor and, often, the testimony of the victim alone is sufficient for the sentence. On the other hand, the criminal proceedings generally involve lengthy waits, even as much as several years, before the sentence becomes definitive and the obligation for the guilty party to pay compensation arises. The civil trial, in contrast, has several advantages, such its speed with respect to the criminal trial, and particularly regarding the restricted terms referred to in art. 183, sixth paragraph of the Italian Civil Code, and the possibility of obtaining payment of the full compensation from the first sentence, which is generally provisionally enforceable. Naturally, the disadvantage lies in the greater difficulty of collecting the proof, demonstrating responsibility, the civil ruling having an equal weight.

In the final analysis, neither of the two "avenues," the establishment of a civil party in a criminal court or the initiation of an independent civil trial for compensation for the damages relating to a crime, is a priori, better. Any appropriate assessment can be conducted only in relation to the specific case by the lawyer, who will initiate the relatively quick civil proceedings where

s/he has solid evidence against the perpetrator, or wait for the setting of a criminal trial in case the evidence against the guilty party of the crime in question is not sufficient to satisfy the scrutiny of the civil judge.