

## NATIONAL REPORT



**Victims of Crime  
Implementation Analysis  
of Rights in Europe**



**VOCIARE**  
Victims of Crime  
Implementation Analysis  
of Rights in Europe

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### DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission.

Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.

The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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## EXECUTIVE SUMMARY

The fate of victims was considered by the European Council in the Stockholm Program, adopted in December 2009, which calls on the Member States to make a major change in the rights of victims. More specifically, EU competence in this area is provided for the article 82 - Paragraph 2 of the Treaty on the Functioning of the European Union (TFEU), which concerns cooperation in criminal matters.

The rights of victims of crime are covered by this provision.

In this follow-up, on 8 June 2011, the EU Council adopted a “Roadmap to strengthen the rights and protection of victims”, called the “Budapest Roadmap”, providing for the implementation of a plan in several measures.

The Directive 2012/29/EU adopted on 25 October 2012 establishing minimum standards for the rights, support and protection of victims of crime is the first step in this far-reaching plan.

It replaces the Council Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA), which was the first international legal instrument largely covering the rights of victims. However, the assessment of its transposition by the signatory countries has proved rather inconclusive, in particular because of an excessive margin of appreciation left open to the Member States by this type of instrument, hence the idea of a more binding text with the affirmation of a strong objective.

This Directive extended to all victims the rights previously adopted in European instruments for specific categories of victims, either because of their personal characteristics (child victims) or because of the seriousness of the offenses they have suffered (trafficking in human beings, sexual violences, etc).

In a general way, it can already be said that this text brings more effectiveness and readability to the victims and the guarantee of their rights.

Effectiveness is illustrated by the fact that this text has a greater legal force, which clearly links the States in the result to be achieved.

This VOCIARE report aims to assess the practical implementation of the Victims’ Directive in France by providing a detailed overview of the situation in this country on this subject.

A general observation is needed: this Directive of 2012 did not require many adaptations for France. Indeed, most of the rights enshrined in this Directive already existed in French law. However, the article 22 of the Directive introduces the right for all victims to benefit from an assessment with a view to identifying their “specific protection needs”.

This provision represented the greatest novelty for France, which had to bring its domestic law into conformity.

This study was made “article by article” and it reveals that French law is already in full compliance with the provisions of the Directive and even guarantees more protective rules for victims.

On the victims’ topic, French legislation has so far focused much on strengthening rights, especially the right to information. This is in particular reflected in the emblematic preliminary article of the French Code of Criminal Procedure, which guarantees a right to information for victims during any procedure<sup>1</sup>.

The main challenge for France concerned rather the right to the protection of victims of crime. The Directive puts the emphasis on a new obligation towards the victim: that of ensuring his/her protection, through an individual evaluation.

This is very innovative in French law, because France does not have at all a culture of evaluation with regard to victims. It would be however inaccurate to say that French law was silent with regard to the protection of victims before the Victims’ Directive because, gradually, a real protective device was developed in French law, especially in the field of domestic violence.

In March 2014, an experimental project concerning the individual assessment of the article 22 of the Directive was launched in France. France is the only member state of the European Union to have set up an experimental project of transposition of this article 22.

This evaluation, which creates potential rights, does not resemble any of the tools currently used in France such as expertise or social surveys. There was therefore a real need for the establishment of “practical” tools to ensure an effective right of protection for victims, as provided in the article 22.

Concerning victims’ support, it is important to say that this Directive is a great step forward, in the sense that it consolidates the approach of France Victimes (Federation of French victim support associations), namely that all victims deserve to be helped even if there is no criminal procedure; the needs of the victims are multiple, affecting the social, legal and psychological spheres; the professionals have to respond with consideration and solidarity so that the suffering endured

<sup>1</sup> Preliminary Article of CPC - “II.- The judicial authority ensures the information and the guarantee of the victims’ rights in during any criminal proceedings”.

is received with tact, dignity and professionalism and allows full resocialisation and restoration.

The professional network of victim support associations multiplies initiatives and good practices, for example, via partnerships with stakeholders, to improve the consideration and assistance to victims, or through experiments to strengthen accessibility of victims to associations, allowing them to be helped. The goal is for these structures to be as well-known as possible to other professionals, to facilitate the guidance of victims, so that they can receive support as soon as possible after the offense.

In general, the existence of the rights granted to victims is not problematical in French law, but their effectiveness is sometimes debatable: their implementation can be unequal according to the regions, the professionals etc.

In the majority of cases, no sanction is provided in case of non-respect of a right afforded to victims. On this point, France has to move forward: French legislation does not need “more rights”, but rather “better rights”, applicable to a larger number of victims.

Victims’ rights have also to adapt with the changes of the society: it means, for instance, to allow the use of dematerialised ways for victims to implement their rights, and, above all, with the number of collective events where victims are of different nationalities, it is essential to harmonise as much as possible the rules between all the European states, for a true egalitarian care of the victims.

Lastly, the training of professionals in relation to the victims remains fundamental: here too France has made a lot of progress, but it is necessary to multiply these actions so that the victims are recognised and treated in a respectful, sensitive and professional manner according to their individual needs and without any discrimination, in order to avoid situations of secondary victimisation.

# INTRODUCTION

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime was adopted on 25 October 2012, had an implementation deadline of 16 November 2015, for all Member States.

More than two years after this deadline, it was important to make a first balance sheet about the implementation of this text in the European Union.

The present national report then aims at assessing the practical implementation of the Victims' Directive in France in the context of the project VOIARE: Victims of Crime Implementation Analysis of Rights in Europe.

This project intends to:

- improve the implementation of the Victims' Directive;
- assess the implementation of this Directive in all participating Member States;
- identify good practices in the implementation of the Directive to support the development of recommendations for changes at national level.

The main goal is to give a detailed overview of the French situation in what regards the practical implementation of the Victims' Directive.

In this perspective, two major steps guided the realisation of this work:

- Firstly, it was necessary to make a legislative analysis of French law: indeed, many provisions of the Directive already existed in domestic law, and it was important to understand when and how they had already been adopted in France, and who are the main actors in their implementation; the mapping of the competent authorities and organisations thus made it possible to identify who was involved in the question of victims, their role and competence.
- Then, three research approaches supported this work: desk research, online survey and semi-structured interviews with stakeholders.

The desk research was the first stage of the national research: it included legal and policy instruments, literature and existing studies, opinions, discussions and other sources which are relative to victims' rights. It is the basis of the research.

To have a concrete feedback, an online survey was made, which was particularly important as it enabled a much broader evidence base and allowed for statistical analysis. The main stakeholders in relation to the victims were requested to answer the survey: this was of great interest to the professionals because France Victimes received 90 questionnaires, from police officers, constables, magistrates, lawyers, departments of several ministries working on the issue of victims, victim support associations, specialist support associations etc.

Their answers constituted a crucial part of the research and helped to gain invaluable and complete insight into the current situation in France about the practical implementation of the Directive and the selected procedures.

Finally, the interviews of the main actors of victim support in France made it possible to deepen some answers of the questionnaires, and especially to exchange concrete examples on the progress made and the improvements which can still be realised regarding information on victims' support and protection in France.

The report first gives a general overview of the legal framework, in order to provide a better understanding of the current legal situation in France.

Then, the main section of the report deals with an evaluation of practical implementation of the Victims' Directive in France: this section consists of 26 subsections, one for each of the articles of the Directive. It explains if and how the different articles are implemented in France and how well their effective application works.

After this analysis, several general points will be made in relation to the transposition of this Directive, starting with an inventory of some good practices that can be identified in French law, then a chapter listing gaps, challenges and recommendations.

Finally, a conclusion will make an analysis of the study, with its main results and a development of a critical evaluation of the situation in France regarding the application of the Victims' Directive.

# BASIC OVERVIEW OF THE LEGAL FRAMEWORK

Until the 1970s, victims were not the main actors of criminal proceedings. However, in the past twenty five years, their role was considerably developed: the Milliez report, written in 1982 under the influence of Robert Badinter (then Minister of Justice), supported the creation of a network of victim support associations. The Guigou law of 15th of June 2000 is also greatly significant regarding victims' rights: this law integrated to the jurors' oath taking the fact that they had to take into account the interests of victims, besides the interests of the offender and society<sup>2</sup>. This law has a strong symbolism for the victims, and it also strengthens their rights at all stages of the criminal proceedings.

Great importance was especially attached to the information of the victim.

As the victims were more considered by judicial actors, and in relation with the terrorist attacks that have affected France since 2015, the annual budget of the public policy for victim support significantly increased: 27,7 millions of euros were allocated by the ministry of Justice in 2018 to victim support<sup>3</sup>, which represents an increase of this budget of 6,4% compared to 2017.

The use of these credits is dedicated to the help and assistance of a greater number of victims and a qualitative improvement of their support, especially by strengthening existing victim support schemes, but also through the implementation of innovative devices.

The European Directive has been transposed into French law through article 7 of chapter V of the law n° 2015-993 on the 17th of August 2015. Its provisions were codified into the Criminal Procedure Code (CPC), in articles 10-2 to 10-5, 40-4-1 and 183-1. Nevertheless, most of the articles of the Directive were already implemented within French law. The Directive has extended and strengthened what was previously established in the French legislation (for instance the right to information, to interpretation and translation), but it also created new tools such as restorative justice measures and the individual assessment. As such, some articles of the Directive simply replaced some articles of the CPC: the information of the victims' rights by the authorities was, for instance, transposed at article 10-2 of the CPC which repealed former articles 53-1 and 75 paragraphs 3 to 9 of the CPC.

<sup>2</sup> Article 304 of the CPC.

<sup>3</sup> 168 associations are accredited by the ministry of Justice, among which 132 belong to the Network France Victimes.

Not all articles of the Directive were transposed into French law. For instance, article 2 of the Directive which sets a definition of victims has not been implemented into our legal system, in order not to limit the definition of victims. Listing the qualities required to be considered a victim would mean potentially excluding any person who would not fit the description. The legislator wanted to keep the notion of victim as open and broad as possible, therefore no definition was implemented into French law.

In the same way, article 17 related to the rights of foreign victims has not been directly transposed into French law, as foreign victims are treated the same way French victims are: there is no distinction made, based on nationality, when the crime occurred in France.

Restorative justice measures were part of the new measures introduced by the Directive, even though some projects related to restorative justice were already being developed prior to the adoption of those measures into the CPC. The law of the 15th August 2014, and above all, the circular of the 15th of March 2017<sup>4</sup> determine the scope, conditions and principles of restorative justice.

France Victimes, in partnership with the French Institute for Restorative Justice (Institut Français pour la Justice Restaurative, IFJR), has put together training sessions for professionals, related to restorative justice measures.

Finally, individual assessment was the biggest change made by the Directive. France was part of the first few Member States to experiment the efficiency of individual assessments before implementing into its legal system.

The circular of the 20th of April 2016<sup>5</sup>, adopted in application of the law of August 2015, defines two steps of the assessment: the initial individual assessment carried out by the investigative services, and an in-depth assessment carried out by victim support associations. It also determines the scope of these assessments, as well as the protective measures to adopt depending on the results of the individual assessment.

France Victimes is holding several training sessions throughout to year to train associations' professionals to carry out in-depth individual assessments.

<sup>4</sup> Ministry of Justice, Circular JUST1708302C, on 15th March 2017 about restorative justice.

<sup>5</sup> Ministry of Justice, Circular JUSD1610817C, on 20th April 2016.

# EVALUATION OF PRACTICAL IMPLEMENTATION

## ARTICLE 2 - DEFINITIONS

*For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*

French law does not define what encompasses the term 'victim'. After the Directive has been transposed into French law, article 2 was not implemented.

French law does not differentiate the different types of victims, however it guarantees universal rights to victims.

The concept of victims is used for issues related to compensation and responsibility. It is notably the case in criminal law, according to which victims are concerned people who have suffered harm as a result of an offence repressed by criminal law.

In order to find some elements of definition, the French legislation usually refers to international and European definitions such as the United Nations definition set in 1985. According to this definition, a victim is a person who has necessarily suffered harm, as a result of an act or an

omission infringing criminal law<sup>6</sup>.

It also refers to the definition set in the Directive 2012/29/EU.

In accordance with European law, the reasoning of French law is based on the criminal offence and the compensation for injuries: with reference to Article 2 of the French Criminal Procedure Code (CPC) about civil action, a victim is a person who has been injured because of an operative event which can be qualified as a criminal offence and results in the referral of criminal justice.

Therefore, the main criteria the French legislation selected to qualify someone as a victim is the event which can become a criminal offence: this criterion is wide enough not to exclude any hypothesis.

The French legislation considers that victims may be the person directly impacted by the offence (victimes directes), but also the person indirectly impacted by the offence (victimes indirectes) as well as any person involved in the event<sup>7</sup>.

According to France Victimes, being a victim is a trait, not a status. It is not a long-term and fixed situation. It simply results in the recognition and attribution of specific rights.

Making a distinction between the different types of victims does not seem relevant to the French system, which establishes universal rights for all victims independently of the type of event initiating the criminal offence. Only the methods of implementation of those rights can differ.

The definition of victims tends to evolve and broaden more and more, so there is no category of victims left out of this quality and the rights that ensue.

The article 2 of the CPC is restrictively defining victims as a civil party to the proceedings, however the French legislation has a broader vision of the people encompassed in its concept of victims than article 2 of the Directive.

<sup>6</sup> United Nations' Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34 29 November 1985 96th plenary meeting, annex, A.1: "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.  
<sup>7</sup> Creation of this concept with the Badinter law, law n°85-677 on 05/07/1985.

## ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

*Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.*

As a result of the implementation of law n°2015-993 of the 17th of August 2015 transposing the Directive, the right to information and the detail of this information can now be found in article 10-2 of the CPC. The right for the victims to be accompanied by a person of their choice in the first contact with the authorities can be found in article 10-4 of the CPC.

Those rights are guaranteed by the French legislation. However in practice, it seems that the efficiency of those rights is somewhat limited.

Some problems are arising for the communication and comprehension of the information, particularly, by persons with disabilities. There is a lack of training and available professionals to ensure the information is communicated properly to this specific type of victims<sup>8</sup>.

Outside the scope of the individual assessment conducted by the authorities, it appears that too many information is given to the victims by police officers and constables. Victim support services have observed that **victims are overwhelmed with information** and do not retain any of them. The lack of guidance by the authorities leading to this over-information is confusing the victims who do not understand the purpose of the victim support services nor the procedure<sup>9</sup>.

That is why generalising the creation of victim support offices has been fundamental: they make

<sup>8</sup> Feedback from the VOCIARE survey.

<sup>9</sup> Interview 1.

the information understandable for the victims, at the very first steps of the proceedings<sup>10</sup>.

The **language** used during the first contact is usually **very technical and not adapted** to the level of understanding of victims. However the situation is currently getting better<sup>11</sup>, even more with the implementation of individual assessments. Throughout this process, the authorities are focused on detecting the victim's vulnerability, therefore they adapt the language they are using when communicating with victims<sup>12</sup>.

As for the right of being accompanied by someone of their choice, not all victims are allowed to be effectively accompanied during interviews<sup>13</sup>. Some police officers or constables are **refusing that victims are accompanied by a professional** at the police station or gendarmeries when filing a complaint. When it is done in the context of an individual assessment, then it can be tolerated. It is more accepted when the person accompanying the victim is not a professional (for instance a friend or a neighbor)<sup>14</sup>.

In France, even if everything is legally ratified, no means are implemented in order to make sure that what is supposedly an obligation is actually respected by the different actors involved. Therefore, the **implementation of these rights heavily depends on the good-will of the professionals**. In this case, the victims are supposed to be able to be accompanied by someone of their choice. However if the authorities do not want to respect this right, they will prevent the victims to doing so. That is when victim support services can interfere and make sure the victims' rights are implemented.

Some evolution in this regard is notable though, mainly thanks to the individual assessments and the growing awareness of the authorities towards the victims' rights<sup>15</sup>.

<sup>10</sup> Interview 4.

<sup>11</sup> Feedback from the VOCIARE survey, interview 4.

<sup>12</sup> Interview 1.

<sup>13</sup> Feedback from the VOCIARE survey.

<sup>14</sup> Interviews 1 and 5.

<sup>15</sup> Interview 4.



## ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

*Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.*

The right to information set by the article 4 of the Directive has been implemented in the French legislation by law of August 2015 in article 10-2 of the CPC<sup>16</sup>.

Article 10-2 of the CPC details the content of the mandatory information the authorities have to give to the victim. In particular, the authorities have to inform the victims of their right to compensation and to benefit from measures of restorative justice (article 10-2 1°), of their right to become a civil party to the proceedings (article 10-2 2°), to be assisted by a lawyer they can choose or who can be designated (article 10-2 3°), of their right to be assisted by a victim support service (article 10-2 4°), to claim compensation (*CIVI*, article 10-2 5°), but also to be informed of the protection measures they can benefit from and the penalties incurred by their offender (article 10-2 6°), to have an interpreter or translator appointed (article 10-2 7°) and to indicate the home address of an outside party as their own address (article 10-2 8°).

**Most information is given to the victim by the authorities during their first contact** with the victim, which mainly takes the form of **leaflets** in addition to the receipt of the victim's complaint<sup>17</sup>. Victim support services then intervene and provide help, support and information related to the upcoming procedure: a human presence is important when handing out documents in general

<sup>16</sup> These rights existed before, but in a more scattered way, contained in several articles of the CPC.

<sup>17</sup> Feedback from the VOCLARE survey.

but also in order to present the information in simpler terms<sup>18</sup>.

It is of the utmost importance that victim support services can be found within police stations and gendarmeries: when no oral information has been given by the police, victim support associations contact victims prior to the hearing to make sure they understood everything correctly and if need be, help with the understanding of the information given by the authorities<sup>19</sup>.

After victims file a complaint, they get a receipt indicating all the information related to victims' rights contained in article 10-2 of the CPC<sup>20</sup>.

In practice, this **information is very long and not often read by victims**. Hence the importance of the presence of victim support organisations within police stations to better inform the victims by simplifying the communications and giving the main information mentioned in the receipt orally.

<sup>18</sup> Interview 4.

<sup>19</sup> Interview 5.

<sup>20</sup> Feedback from the VOCLARE survey.

## ARTICLE 5 – RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

*Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.*

In France, the right to make a complaint is not always fulfilled because, in some cases, authorities refuse to file victims' complaints<sup>21</sup>. Additionally, authorities do not register the complaint and redirect the victim to a *main courante*<sup>22</sup>.

When there are no difficulties about this complaint, during the first contact between victims and authorities, the victims are informed of their rights. This right of information is granted in article 10-2 of the CPC, and the subsequent articles explain the extent of the information to be provided to victims on each of their rights.

As explained above, this first contact with the authorities happens when the victims come to the police stations or gendarmeries to file a complaint.

In France, after filing their complaint, victims automatically get a **receipt** which contains all their rights prescribed in article 10-2 of the CPC<sup>23</sup>. This receipt is a formal acknowledgement of the complaint which comprises only administrative references to the case<sup>24</sup>.

According to article 15-3 paragraph 2 of the CPC, victims who request it, can also obtain a **copy of the complaint** they filed, which is more detailed and specific than the receipt.

<sup>21</sup> Although the Law provides for the obligation to receive complaints: article 15-3 paragraph 1 of the CPC: "judicial police has to receive complaints by victims of crimes".

<sup>22</sup> A main courante is only a statement, it is not a formal complaint as it does not lead to investigations or proceedings, it only registers the facts, what happened to the victim.

<sup>23</sup> Feedback from the VOIARE survey.

<sup>24</sup> For instance: date and place of the complaint, name of the police officer, crime concerned, prescription periods etc.

The authorities also sometimes require the victim to provide documents which they deem 'mandatory' for the victim to file a complaint when it is not the case.

Currently a complaint mechanism is being developed which will allow victims to file complaints online. This will facilitate the process for victims who do not want to face the authorities. Nevertheless, it requires every actor engaged in victim support to be cautious as victims can be all alone in this process. They might stay isolated at home and not fully understand the information related to their rights within criminal procedures.

## ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

*Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.*

The considerations listed in article 6 of the Directive were already taken into account in French legislation and implemented in several articles of the CPC. Therefore, the right to receive information about the case is highly developed in French law.

According to article 2 of the CPC, the **right to receive information about the victim's case is conditioned to the constitution of a civil party**.<sup>25</sup> This status grants victims the right to become a party to the proceedings: they can be heard during trial, have their interests represented by a lawyer or simply address their request directly to the judge, and require compensation for the harm they suffered.

A general information is given to every plaintiff regarding the status and outcome of the proceedings<sup>26</sup>. They receive a **notification (*avis à victimes*) containing information related to the date and time of the trial**<sup>27</sup> (articles 391 and 393-1 of the CPC).

Furthermore, when the offender has escaped, article 40-5 of the CPC (as modified by the law of the 5th of August 2013) is applicable. It establishes that the victim has to be informed by the

<sup>25</sup> According to article 2 of the CPC, a civil party means a person who has suffered harm and who is claiming compensation.

<sup>26</sup> Feedback from the VOCIARE survey.

<sup>27</sup> This notification also explains the possibility to become a civil party, and to obtain support by a victim support association.

Prosecutor about this escape<sup>28</sup>.

When the offender has been released, article 712-16-2 of the CPC allows for the issuance of a **prohibition on approaching the victim or a no contact order**.

According to article 40-1 of the CPC, when the decision not to prosecute has been taken, the victim has to be notified. However, the prosecutor does not often notify victims of this decision. Often, this task is performed by the victim support service when such partnership exists between the Court and the victim support association. In other cases, the victims will not be directly informed and will have to try to obtain this information on their own.

In relation to victims' right to receive information about their case, the main task for France is, therefore, to work on the efficiency of victims' rights. These and other rights are established by the CPC, however they are not always implemented evenly and no redress is prescribed for when such rights are not respected by the different actors working with victims.

The Taubira law of the 15th of August 2014 has formalised victim support offices within the jurisdictions: these offices, located in courts, are comprised by jurists who work in victim support services to ensure that victims are informed at any moment during the proceedings. Before the hearing, the jurist has access to the information related to the upcoming hearings (name of the offender, offence and victims who are to appear before the Court), have to look for the victims' contact information and call them to make sure they have all the information related to the hearing and give them complementary information.

The creation of these offices has been a great step in victims' rights.

Sometimes, victims are informed retrospectively of the escape or release of the offender.

There is a form that victims file alongside the judge in charge of enforcing sentences (*juge d'application des peines*), to be informed or not of the enforcement of the sentence.

Victims' rights to receive information was already protected by French law before the transposition of the Directive; however victims are not always informed in practice and, in most cases, victim support organisations are the entities facilitate obtaining these information for victims.

<sup>28</sup> Article 40-5 of the CPC: In case of escape of a person, the public prosecutor informs without delay of this escape the victim or his family, if this escape is likely to make them run a risk and except it does not seem appropriate to give this information in the light of the risk it may entail for the perpetrator.

## ARTICLE 7 – RIGHT TO INTERPRETATION AND TRANSLATION

*Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.*

The right to interpretation and translation is ensured by article 10-3 of the CPC, and the information of the victim about this right is mentioned in article 10-2 7°.

Pursuant to article 10-3, the victim **is allowed to request the assistance of an interpreter or a translator** so it can understand the essential information to exercise his/her rights. These interpreting and translating services are free of charge<sup>29</sup>.

In the French legal system, **the interpreter or translator is a legal expert**<sup>30</sup>. **Lists of experts** in interpretation and translation are **established within each Appeals Court and the Court of cassation**<sup>31 32</sup>. However there are too few of them to be mobilised frequently<sup>33</sup> and there are **no funds available to pay them fully or in due time**. Therefore, in the absence of an interpreter or translator available, any person capable of translating or interpreting the information will be requisitioned<sup>34</sup>: however, this does not guarantee the quality of translation or interpretation and, unlike official translators and interpreters, these persons are not legal experts.

The circular of the 20th of April 2016 defines the scope of the right to interpretation and translation, its implementation and the possibility to object to interpretation and translation.

According to the circular, any **victim can request the assistance of an interpreter** until the end

29 Feedback from the VOciare survey.

30 Article 3 of law n°71-498 of the 29th of June 1971 related to legal experts, modified by the law of the 11th of February 2004.

31 Article 2 of law n°71-498 of the 29th of June 1971, interview 6.

32 These lists are available to all victims, including those whose case is judged in lower courts (each Appeal Court has a competence for several courts - Tribunal de Grande instance).

33 Feedback from the VOciare survey.

34 Interview 2.

of the proceedings<sup>35</sup> when the lack of understanding of the French language is established (that means the victim declares that he/she does not understand the language, or the investigation services note that the victim does not speak or understand French).

According to the circular, the level of understanding of the French language is automatically checked as long as there is a doubt concerning this level of understanding for the victim. The authorities have to check this level of understanding. Prosecutors have to check that the authorities have done everything to check the victims could understand the French language, which should appear in the minutes<sup>36</sup>.

The circular also specifies that this assistance can be requested by a victim or the victim's lawyer, but that it will most of the time be applied automatically. In practice however, depending on the stage of the proceedings, this right will not automatically apply<sup>37</sup>. If victims have not required the assistance of an interpreter, the authorities will not automatically appoint one<sup>38</sup>.

Some issues have been reported when victims file their complaint at the police stations or gendarmeries, for example that it can indeed be difficult to find an interpreter talking rare or specific dialects<sup>39</sup>. Police officers and constables do not seek professional interpreters or translators, due to lack of contacts or resources, but they allow an acquaintance of the victim to come and translate what is being said during the filing of the complaint<sup>40</sup>.

During the **investigations**, the **assistance of an interpreter is exceptional**<sup>41</sup>. When the prosecutor decides not to prosecute however, there is no difficulty for the prosecution to require the assistance of an interpreter to notify the victim of the decision in a language the victim will understand<sup>42 43</sup>.

In practice, there is no effective control by the prosecutor of the diligence of the authorities.

According to the circular and pursuant to article D. 594-2 of the CPC, the victim can object to the lack of interpretation or to the quality of interpretation (that means to make observations that are mentioned in the minutes), but the lack of funds to pay experts who would ensure the quality of the interpretation and the unavailability of interpreters for some languages is rendering the effectiveness of this right difficult.

35 And from when they present a complaint.

36 Circular of the 20th of April 2016, II-b.

37 Interview 5.

38 Interview 1.

39 Feedback from the VOciare survey.

40 Interview 1.

41 Victims have to ask to benefit from a translation or an interpretation, because prosecutors do not resort systematically to translation and interpretation services at this stage of procedure.

42 Interview 1.

43 According to the article D 594-13 of the CPC, at least, three types of documents have to be translated (there may be more), if the victim requests it, included the decision to discontinue a case.

Moreover, the lack of funds to hire an expert also pushes the authorities to resort to asking an acquaintance of the victim to act as an interpreter.

Furthermore, it is easier to find available qualified interpreters and translators in bigger cities<sup>44</sup>, that is why in the countryside, the victim's relatives will be used more frequently for translation or interpretation rather than experts, who are much rarer.

The **right to translation** described in the circular is **limited to essential documents**. It refers to article D. 594-12 of the CPC, according to which when victims do not understand the French language, they can require a translation of the essential indications of the receipt of the complaint. It is the same rule in all stages of the criminal proceeding.

Article 10-3 of the CPC also specifies that the **civil party has the right to require a translation of the procedural documents** containing essential information. This encompasses the decision to not prosecute, the decision to dismiss proceedings and convictions, acquittals and releases. The reasons for those decisions or at least a summary of those reasons can also be translated if it is required by the victims.

Article D. 594-14 of the CPC, which specifies that the **translation** is limited to **parts of the documents essential for victims understanding of their rights**, which are determined by the judge<sup>45</sup>.

The **possibility of an oral translation** is determined in article 803-5 of the CPC, however the recourse to this type of translation remains exceptional. In practice, oral translation only encompasses information that is more relevant than the written translation<sup>46</sup>.

44 Interview 4.

45 Interview 2.

46 Interview 2.

## ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

*Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.*

At the beginning of 1980, under the impulsion of Robert Badinter, then Minister of Justice, France made the choice to assign the mission of victim support to associations. This is complementary to the State's mission, for a better consideration of the victim's needs.

The decree of the 7th of August 2017 created the **inter-ministerial delegate for victim support** (*Délégation Interministérielle de l'Aide aux Victimes, DIAV*). Attached to the minister of Justice, the inter-ministerial delegate is in charge of coordinating the actions of the different ministries regarding the support and compensation of victims and regarding their relationship with victim support associations and victims' associations. The main mission of the delegate is to improve the different mechanisms and systems in place to support victims.

The inter-ministerial delegate is also in charge of a more specialised service in the ministry of Justice: the Service for the access to rights and justice and for victim support (*Service de l'Accès au Droit et à la Justice et de l'Aide aux Victimes, SADJAV*), which has been established when victim support associations were created.

**France Victimes is a Federation of 132 victim support associations** spread throughout the entire country, within the **mainland and French overseas territories**. This network involves over 1300 trained and experienced professionals, allowing for a close and local intervention.

The associations' network intervenes towards victims of any offence. France Victimes' associations are professional associations, specialised in a **general support** of victims through a global and personalised help, as long as needed by the victim, in three main fields: legal support, psychological support and social support.

The role of victims during the criminal proceedings has greatly evolved. Progressively, they gained more and more recognition and more rights. A well organised trial is fundamental for victims' reassurance and well-being, which contributes to improve their situation and prevent secondary victimisation.

That is why victim support associations are essential. Not only do they **accompany victims during hearings**, but they also offer a **multidisciplinary and long-lasting support** which encompasses accompanying and informing the victim throughout the proceedings.

France Victimes also encompasses a social **telephony device**, by managing the national phone number 08Victimes<sup>47</sup> created in 2001 which aims at strengthening victims of crimes' access to associations and other competent services for a global and multidisciplinary support. This line is open 7 days a week. Victims can ask their questions, be heard, informed about the proceedings and redirected to one of the local associations.

Every year, 300 000 people get support from France Victimes in over 800 different facilities. However, victim support associations or at least information related to their existence can also be found in every premises the victim will have to go to, for every step of the proceedings: city hall, police stations, tribunals, forensic units, law centres (*Maison de la Justice et du Droit*), etc.

When providing support to victims, the staff of the associations can exceptionally go to the victim's house if the victim has difficulties in going to the associations' facilities.

**Victims are always referred to victim support associations by the authorities<sup>48</sup>**, which demonstrates the efficiency of the system of victim support relying on all those different actors (authorities, prosecution, associations mainly).

Since the 2000s, associations' methods of intervention have widely evolved. A proactivity was developed through the Guigou law<sup>49</sup>, included within the CPC. This legislation gives the **public prosecutor the possibility to request an association to provide help and support to the victim** by forwarding the victim's contact information to the association along with a summary of the facts. The association then contacts the victim directly to offer some support.

<sup>47</sup> Soon to be 116 006.

<sup>48</sup> Feedback from the VOCIARE survey.

<sup>49</sup> Law n°2000-516 of 15/06/2000, Guigou law.

Article 41 of the CPC<sup>50</sup> legally endorses associations' interventions: it legitimates their actions towards victims, attesting of their reliability.

France Victimes also has several partnership agreements with the private sector, as the State and companies realised the necessity to take into consideration the possible acts of violence happening within their companies. That is why some enterprises were more and more led to request the expertise and professionalism of France Victimes so, not only their employees, but also their clients or even the public could benefit from the support services provided by victim support associations.

Victim support associations are not supposed to provide emergency interventions, as they offer a long-lasting support throughout several appointments with victims. However, it is less and less the case as collective events are more frequent. **Victim support associations are now included in emergency plans<sup>51</sup>**.

Whenever an association worker is not available, victims can still be heard through the National number and several other specialised national numbers set by the government.

The main issues that victim support associations are facing are **a lack of funds** to employ more professionals<sup>52</sup>, which can make it difficult for them to accomplish their mission. Nevertheless, it does not impact the quality of service they provide. Indeed, when associations handed over surveys to victims in order to assess the support they received, the vast majority answered positively, indicating how much the professionals working for the associations have helped them. Some other associations have collected testimonies and put them together to be published for the European Day for Victims of Crimes.<sup>53</sup>

However, the use of surveys is not automatic and there is no national and unique document gathering all of this information.

<sup>50</sup> This article gives the public prosecutor the possibility to request a victim support association to provide help and support to the victim. This request is usually made for vulnerable or seriously traumatised victims, whether it is related to an individual or a collective offence.

In those situations, the public prosecutor forwards the victims' contact information to the association, along with a summary of the facts; the association then contacts the victim directly, on the basis of the request.

<sup>51</sup> During terrorist attacks or mass casualty events (involving a large amount of victims), victim support associations are included in the immediate devices providing support to victims. It is important because it shows that victims' support is complementary with emergency services (Red Cross, police officers, etc.) and must be provided quickly after the crime to the victims.

<sup>52</sup> Feedback from the VOCIARE survey.

<sup>53</sup> AVL 45 (victim support association in Orléans) : Témoignages de victimes.

## ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

*Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.*

As mentioned above, there are 132 France Victimes' associations in over 800 facilities spread throughout the entire country. France Victimes is the only general network for victim support.

The associations' workers will assist victims by listening to them in order to globally **assess their situation and target their needs**. We can compare the role of a victim support association to that of a "facilitator" for the victim in the different formalities to do after an offense.

There are **three main fields of actions** offered by France Victimes' victim support associations - whether there is a criminal proceeding or not - legal support, a psychological support and a social support. Then other answers can, of course, be offered according to the needs of the victim.

The **legal support** offered by victim support associations consists in an information related to the victim's rights. Associations have to explain the technical legal vocabulary used in criminal proceedings in order to be understood by victims. It is important for victims to know the stages of the the criminal proceedings and understand their rights.

It is fundamental that victims always receive clear and adapted information regarding their rights, their inquiries and their requests for compensation of the harm they suffered<sup>54</sup>.

In the area of **psychological support**, psychologists also support victims in what they are going through. Their task is not to judge or diagnose victims, nor finding a solution in place of the victim. They offer support so victims can see more clearly and talk about what happened to them and help them find, by themselves, a way to overcome the victimisation. Psychologists within associations are offering support to both victims and their families and they intervene at every step of the criminal proceedings.

Finally, when providing **social support**, social workers will help victims regarding their demands and needs in finding an emergency accommodation, with childcare, resettlement but also in accessing administrations related to social organisations.

France Victimes has also established an ethical framework that takes on the values of associative victim support and assistance. A Code of Ethics<sup>55</sup> and Services Charts<sup>56</sup> ensure the integrity and reputation of its network.

The main principles applicable to every association are an effective reception of any person without discrimination of any kind (provided that they consider themselves the victim of an offence related to their person or property, individually or collectively), free services, the confidentiality of interviews, the respect for the victims' decision-making autonomy, taking into consideration any complaint from the victim, the non-representation of victims at court (except for ad hoc administration missions) and the prohibition of referring to a designated professional in the commercial or service sector.

For a more specific support of victims, other organisations and associations exist in France, such as victims associations: these associations bring together victims or victims' families of the same incident or offence, they are initially composed with victims (not professionals specialised in victim support) in order for them to meet, talk about their pain but also collectively representing their interests in court.

The work of these associations is complementary to the work of victim support associations.

Amongst **specialised associations** existing in France, there are also Information centres on

<sup>54</sup> Feedback from the VOCIARE survey.

<sup>55</sup> Available in French at : <http://www.france-victimes.fr/index.php/docman/grand-public/26-code-de-deontologie-inavem>

<sup>56</sup> Available in French at : [http://www.adiav2000.org/ADIAV/media/telechargement/22\\_A\\_Charte-inavem.PDF](http://www.adiav2000.org/ADIAV/media/telechargement/22_A_Charte-inavem.PDF)

women and families' rights (*Centres d'Information sur les Droits des Femmes et des Familles*, CIDFF) and the National federation for women's solidarity (*Fédération Nationale Solidarité Femmes*) which are dedicated to victimised women. They provide them shelters, help with relocation and so on.

Victim support associations are also informing victims about their possible direct referral to these specialist support services<sup>57</sup>.

## ARTICLE 10 - RIGHT TO BE HEARD

*Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.*

The victim's role during criminal proceedings has evolved a lot since the 1980s. Since then, more rights have been granted to victims during the proceedings but their role has also been greatly improved.

In order for the victim to be a party to the proceedings, the victim has to become a civil party<sup>58</sup>. Victims can do so by filing a specific request before the investigating judge<sup>59</sup>, during the pre-trial stage<sup>60</sup> or even during trial before the prosecutor's requisitions<sup>61</sup>, which means the moment in a trial where the Prosecutor will present findings and in general request a prison sentence against the offender. The conditions to become a civil party are set in the CPC at articles 419, 420 and 420-1<sup>62</sup>.

Becoming a civil party is mandatory for victims to provide evidence and to be heard during hearings. The right for a victim to be heard is part of the requests a victim, as a party to the proceedings, can address to the judge. In case of rejection by the judge, a reasoned decision will have to be provided. The victim will then be able to object to this decision.

Victims only have a few minutes to express themselves. If they have questions to ask, their lawyer will have to inform the President of the Criminal Court who will then pose the questions to the offender.

However, victims are considered as a party to the proceedings only for civil matters - the civil action (*action civile*) granting compensation to victims<sup>63</sup> whereas the public action (*action publique*) punishes the offender. Therefore, victims can only appeal decisions related to civil interests (i.e. the amount granted as a compensation to the harm suffered) and not the criminal sentence.

<sup>58</sup> Article 1 of the CPC.

<sup>59</sup> Article 85 of the CPC and decision of the criminal Chamber of the Court of cassation 08/12/1906, decision Laurent-Atthalin.

<sup>60</sup> Article 87 paragraph 1 of the CPC.

<sup>61</sup> Article 421 of the CPC.

<sup>62</sup> Here are mentioned explanations about when, how and with whom the victims have to do if they want to be parties in the criminal proceeding.

<sup>63</sup> Article 2 of the CPC.

<sup>57</sup> Feedback from the VOCIARE survey.



The victim's role during proceedings is different from the role of a witness: both are heard and can provide evidence during criminal proceedings, but **there is a specific significance to the right for the victim to be heard**. Victims have the right not to seek compensation for the harm they suffered, but still participate in the proceedings by sharing what happened to them and being considered and recognised as victims.

Witnesses have to appear before the court to testify, **when it is not mandatory for victims**. Additionally, anyone who has information related to the case can be a witness as long as they are not victims or the person suspected to have committed the crime for which they are being prosecuted. Witnesses have to take an oath to tell the truth, they do not have the right to be assisted by a lawyer and do not have the right to remain silent (they have to answer all the questions asked). Judges are not bound by their testimony, they will decide whether they will take those testimonies into account or not when making their decision.

Children can be witnesses as well, judges will determine whether their testimony is valid or not. Similarly, child victims can also become a civil party to the proceedings and be heard during hearings. When heard by the authorities within police stations and gendarmeries, children benefit from a specific procedure: they are interviewed in special premises, for a shorter time than adults and by specifically trained professionals. They are systematically recorded, which can prevent several and unjustified interviews<sup>64</sup>.

Their age and maturity are always taken into consideration by the judges<sup>65</sup>.

If victims want to have an active role during criminal proceedings (to be heard and to provide evidence), they have, most of the times, to be constituted as civil parties (except if they have the status of witness, which, however, does not have the same goal - see above); so it is supposed that victims are informed about this possibility. It is free, but it is also recommended for the victims to be represented by a lawyer, because of the complexity of criminal proceedings, so it is important for them to receipt good advices about their place in the judicial system.

<sup>64</sup> Interview 3.

<sup>65</sup> Feedback from the VOCIARE survey.

## ARTICLE 11 - RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

*Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.*

The public prosecutor in charge of criminal investigations can, sometimes, decide not to prosecute. In these situations, the case is closed during the investigations without further action (*classé sans suite*).

The prosecution has to present a reasoned decision, with a legal basis explaining why the case is closed. Several reasons can be given to explain why it has been decided not to prosecute, such as the prescription of the facts or the lack of evidence, for instance.

The victim has to be informed of such a decision: this right can be found in article 40-2 al 2 of the CPC initiated by the law Perben II of the 9th of March 2004. Since the 31st of December 2007, the **obligation to notify the victim of the decision to close the case** without further action has been globalised and is applicable whether the offender is identified or not.

The circular of the 9th of October 2007 related to victims' rights during trial and their implementation specifies the modalities to implement the victims' notification: a personalised notification during a meeting with the victim for the most serious offences, a proposition to the victim to be accompanied by a victim support association during this meeting, the mention of the possibility for the victim to be accompanied by an association within the notification of the decision not to prosecute.

The notification of this decision by the prosecutor is done automatically for the most serious crimes. However, associations are usually in charge of notifying the victims of other offences

and are requested by the prosecutor to meet with the victim so a jurist of the association can explain to the victim the meaning of this decision. The jurist also has to explain all the different possibilities the victim has.

If the associations should not be perceived as responsible for the decision to close the case, the intervention of associations addresses a real need of understanding from the victims and prevents secondary victimisation.

The association's workers can talk to the magistrates to understand the reasoning behind their decision not to prosecute, in order to better explain it to the victim<sup>66</sup>.

Unfortunately, this partnership does not exist in all courts.

There is however a **possibility for the victim to object to the prosecutor's decision and to request review**<sup>67</sup>. This is a recourse right, not an appeal of the decision to close the case without further action<sup>68</sup>.

The victim making this request has to be the one who had reported the facts which have not led to prosecution.

The Attorney General will analyse the case and determine whether there are grounds to initiate prosecution of the offence or not. If he disagrees with the decision not to prosecute, he can order the opening of proceedings.

There is no time limit for objecting to the decision not to prosecute, it is only required that the offence has not been prescribed.

If the victim is a civil party and a decision not to prosecute is adopted, the victim can also file a complaint alongside the constitution of civil party to the investigating judge, meaning that the victim could require, on his/her own, the investigating judge to initiate the investigations.

The victim can also use the writ of summons: the victim can initiate the proceedings and prosecute the offender him/herself by summoning the person to appear before court. This possibility is open for less serious offence where there is evidence of the veracity of the facts and harm suffered and when the offender is identified.

<sup>66</sup> Interview 5.

<sup>67</sup> Interview 1.

<sup>68</sup> This is not the same formalisation as an appeal. The victim who wants to do it has to write a letter with the reasons and the justifications why he or she contests the decision not to prosecute. It is not necessary to go to the Appeal Court.

The victim turns to the registrar of the tribunal of the area where the offence has been committed or where the offender lives so a hearing date can be determined, and a summon will be delivered to the offender.

In conclusion, in France, victims have several possibilities in the event of a decision not to prosecute, established even before the transposition of the Victims' Directive. It is essential that all these solutions are explained to victims, with the assistance of a lawyer, or a victim support association, so that they make an informed choice about how to proceed in case the prosecutor in charge of the case decides not to present charges against the perpetrator.

## ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

*Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.*

Restorative justice was implemented within the CPC with the Taubira law (15th of August 2014): a whole new subsection was indeed created within the Criminal Procedure Code dedicated to restorative justice. Restorative justice gives another approach of justice.

The general presentation of restorative justice can be found at article 10-1 of the CPC: it defines measures of restorative justice as any measure allowing a victim and the offender to actively participate in the resolution of the difficulties resulting from the offence.

It specifies that at any stage of the criminal proceedings including during the enforcement of the sentence, victim and offender can be offered measures of restorative justice.

Restorative justice proceedings can only after the victim and the offender receive a full information about the measures and consented to participate. The mandatory information related to these measures for the victim can be found at article 10-2 1° of the CPC.

An independent third party is specifically trained to put these measures in place, which take place under the control of the judicial authority or the penitentiary administration.

These measures are confidential unless the parties required otherwise. Under the impulsion of the European Directive 2012/29/EU, France has developed and implemented restorative justice measures in its legal system.

France Victimes has worked alongside the ministry of Justice to implement restorative justice within the legal system. This has led to the creation of the Taubira law, which contained for the first time, indications about the implementation of such measures in our CPC.

Since many of the rights prescribed in the European Directive were already contemplated in French law, the Directive, as mentioned above, brought two main innovative contributions to the French legislation: measures of restorative justice and the individualised assessments.

Before this law was adopted, an original experimentation was put together by France Victimes, which encompassed meetings between sentenced prisoners and victims, organised for the first time in Poissy in 2008, inspired on the Canadian model.

The partnership between France Victimes and the IFJR has been enacted in the circular of the 15th of March 2017. Working with the Institute, France Victimes offers trainings to the professionals working for its associations and other partners.

In order for the restorative justice measures to be efficient, several partnerships have been concluded with the penitentiary administration (*SPIP*), victim support services and so on, depending on how makes the request for the measure (the offender or the victim).

Other organisations have also signed agreements to hold measures of restorative justice, such as the National School of prison administrations (*École Nationale de l'Administration Pénitentiaire*, ENAP) and Justice Citizens (*Citoyens Justice*, the Federation who is in charge of offenders and also offers specific trainings).

The circular of March 2017<sup>69</sup> determines the scope, the conditions, the main principles and the modalities of restorative justice measures, based on the European Directive.

In practice, measures of **restorative justice have not yet been widely developed** and implemented. Most of the involved professionals are at the fundamental stage of training.

Restorative justice services can be offered to victims however **not a lot of organisations are yet properly trained** for it. Measures of restorative justice involve mobilisation of many stakeholders and take time, which is why their implementation is still quite limited, even if it is a very interesting and complementary answer to the criminal proceedings.

<sup>69</sup> Ministry of Justice, Circular JUST1708302C, on 15th March 2017 about restorative justice.

## ARTICLE 13 - RIGHT TO LEGAL AID

*Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.*

As mentioned, most of the rights promulgated by the Directive 2012/29 were already implemented within the French legislation. More specifically, access to legal aid was established by law in 1991<sup>70</sup> (which has been modified since then by several different laws in accordance with European law).

In what concerns conditions to benefit from legal aid, French law establishes that legal aid can be total or partial, depending on the income of the victim requesting to benefit from the aid<sup>71</sup>. Moreover, the person requiring legal aid has to either be a **French national, a citizen from one of the European Union's Member States, or a foreign person usually and legally living in France**<sup>72</sup>.

The legal aid is also made available to people who do not fill these prerequisites set in the law<sup>73</sup>, if their situation is deemed of particular interest regarding the object of the conflict or the predictable expenses related to the trial<sup>74 75</sup>.

Finally, it is also important to mention that the legal aid is granted without residence requirement in France to foreigners if they are civil parties in the French criminal procedure.

Resource ceilings determining the possibility to access a full or partial legal aid are assessed each year. They depend on people's income and the number of dependants.

In 2018, a person with an income of a maximum of 1017 euros per month without any dependant will be granted a full legal aid. If the income is comprised between 1018 and 1202 euros per month, 55 % of the legal aid will be granted to the person. If your income is over 1525 euros per month, you are not entitled to legal aid.

Since the adoption of the Perben I law, in 2002, the income of the person is not taken into

70 Law n° 91-647 on 10th July 1991 about legal aid.

71 Articles 2 and 4, law of 1991.

72 Article 3, Paragraph 1 and 2, law of 1991.

73 For instance, a foreign person who does not live in France.

74 Article 3, Paragraph 3, law of 1991.

75 For instance, an American person victim of a rape in France (during her vacations) could benefit from legal aid.

consideration for granting legal aid in case of certain offences, such as terrorist attacks or some cases of domestic violence, and so on<sup>76</sup>. In these situations, the legal aid is automatic, if the lawyer chosen by the victim accept to be payed with this system. If the victim does not know a lawyer, there will be a designation for the victim.

The legal aid is however secondary to the 'legal protection' insurance<sup>77</sup>. Victims have to check whether they have concluded a contract of legal protection or not and can require the legal aid for the surplus.

In relation to limitations in accessing to the right to legal aid, first there can be a **delay between the victim's request** to access legal aid **and the answer of the Office of Legal Aid**. If there is any urgency to the situation, the victim support association, within the jurisdiction can facilitate the proceedings and get things sorted out quicker.

Secondly, **the form** available to require legal aid **is only available in French**. If a victim does not speak French and wants to benefit from legal aid, the local association supporting the victim in the proceedings can ask the referring lawyer to find an English-speaking lawyer for instance, who will fill in the form with the victim. However, some difficulties arise when specific languages cannot be easily translated because of the lack of people available to do so<sup>78</sup>. Therefore, as the Office of Legal Aid does not provide any translation of the documents, different methods and solutions have to be found locally<sup>79</sup>.

76 Article 9-2, law of 1991.

77 If the victim has concluded a contract of insurance, there are some possibilities that the insurance covers, for instance, his/her legal fees.

78 Interview 4.

79 Interviews 1 and 5.

## ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

*Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.*

To be reimbursed of expenses resulting from his/her participation in criminal proceedings, the victim has to be a party of the proceedings. This means the victim has to become a civil party. When filling the form to become a civil party to the proceedings, the victim has to indicate the amount of damages estimated in relation to the harm suffered and after the trial, the civil party can also obtain the reimbursement of the expenses which incurred due to the participation in the proceedings.

The possibility for the victim to require the reimbursement of the expenses incurred due to the proceedings is codified at articles 375 and 475-1 of the CPC. These articles establish that there is no systematic reimbursement of those expenses for the victim, instead, it has to be requested, and that the reimbursement is always at the expense of the sentenced party.

The victim can get reimbursed for travel and housing expenses if the victim does not live in the same region as the tribunal, but also the loss of wages or anything else which results from the victim's participation in the proceedings. Exceptionally, an advance for expenses can be made for the people in need<sup>80</sup>.

For independent professionals, the loss of salary resulting from their participation to the proceedings can be more significant. That is why a fixed amount refund system has been developed for independent professionals.

The fact that those expenses are being reimbursed and not advanced, with the exception that can be made for people in need, has deterred some victims from participating in the proceedings<sup>81</sup>.

<sup>80</sup> For instance, if a trial for a victim with low incomes takes place far from home, he or she can request to the court an advance for him/her expenses.

<sup>81</sup> Interview 5.

Victims are informed of their right to be reimbursed of expenses by receiving a letter from the court which provides information on the procedure to follow, on how to establish a bill of costs and how they can get reimbursed. This information can also be given by the local victim support association.

There is no official time limit to receive the reimbursement, but it can sometimes take up to six months between the trial and the request for reimbursement. This can be frequent in proceedings with a lot of civil parties.

There is no record of a victims' complaint regarding a usually long delay for being reimbursed<sup>82</sup>.

<sup>82</sup> Interview 1.

## ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

*Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.*

Either a person is designated as the guardian of the property, or the property is put somewhere for instance in a garage if the property seized is a car (in this case the expenses will be included within the legal expenses<sup>83</sup>).

This text is quite former in the French Law and the Directive of 2012 had no influence about its content.

The right to return of property can be found at article 41-4 of the CPC. Victims have to request for their property to be returned within six months from the decision not to prosecute or the last judgement made by the competent jurisdiction, otherwise the seized property will belong to the State.

People whose request for return of property was have one month to reclaim it, otherwise it will belong to the State.

Victims' property is only seized if they are essential to the qualification of the offence. In case of murder, the property is not seized but sealed on the place where the murder happened and in this case, a compensation can be requested to the ministry of Justice. In case of criminal investigations, the request for the return of property has to be done at the very end of the proceedings because judges usually need to keep the property for the purposes of the investigations. In case of a rape, clothes for instance are cut, analysed for DNA samples and then destroyed when the proceedings are definitely over.

Restitution of seized property can be requested, by the civil party or the owner of the property if they are not the same person, to the investigating judge at any time during the proceedings. If items were seized during the investigations but turn out not to be useful, they can be returned at any moment.

The unsealing of the property can also be required at any time during the proceedings, however dangerous products are never returned to their owner. The property seized can also be brought to the tribunal, and its value is put to an account at the *Banque de France*: the value of the property is then given to the owner.

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83 Interview 3.

## ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

*Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.*

Pursuant to article 10-2 1° of the CPC, victims have to be informed of their right to compensation of the harm they suffered.

The request for compensation is made by the victim during the proceedings and most of the time, judges will rule on compensation at the same time they sentence the offender. After the court's decision about the civil action, sentencing the offender to compensate the victim, the **difficulty for the victim is to exercise his/her right of compensation**. As a matter of fact, there is still quite an important gap between the right to compensation and its actual application.

That is why several mechanisms have been developed in order for the victim to get compensated, without contacts with the offender<sup>84</sup>: originally a Guarantee Fund (*Fonds de Garantie*) has been created in 1951 for traffic accidents. Its missions were progressively extended and, in 1986, a special Guarantee Fund was created for terrorist attacks (*Fonds de Garantie des victimes d'actes de terrorisme et d'autres infractions*, FGTI).

Then, in 1990, this Guarantee Fund broadened its scope to all offences under ordinary law. The same year, Commissions on compensation for victims of crimes (*Commission d'Indemnisation des Victimes d'Infractions*, CIVI) were created to receive and analyse the compensation requests.

Finally, in 2008, the Service to assist victims of crimes in recovering compensation (*Service d'Aide au Recouvrement des Victimes d'Infraction*, SARVI) was established: it is a means by which victims can receive support from the Guarantee Fund in recovering the money due to them in application of a criminal judgment, either in its entirety or in the form of an advance payment.

<sup>84</sup> This mission of compensation played by the guarantee Fund allows it to exercise, wherever possible, the right of appeal against offenders, in order to be reimbursed - Article 706-11 of the CPC and Article L 422-7, Insurance Code for the SARVI.

This mechanism is based on national solidarity : the Guarantee Fund is fed with policyholders' contributions, equal to a withdrawal of 5,90 euros on any insurance contract for goods, and so without depending on state budget

The right for the victim to seek compensation through those mechanisms can be found at article 706-3 et seq. of the CPC. Getting several compensations for the same offence is not possible.

There are two main compensation systems in France:

- On the one hand, there is the CIVI<sup>85</sup>, competent for sexual offences, murders and the most serious violence. In these cases, compensation is full, whether there has been a definite judgement or not. The Commission is a civil and independent jurisdiction which can follow the decision of the judges. The services of a lawyer by the victim is not mandatory.

This Commission can also be competent for less serious offences such as damage to property or deliberate violence resulting in a complete inability to work for at least thirty days. In this case, the compensation is subsidiary and limited, and the victim will have to prove that the offence has put him or her in a serious psychological state.

The CIVI's mechanism is independent to the criminal proceeding: the most important requisite is to prove that the claimant was victim of a crime, independently on whether judicial proceedings are possible (for instance if the perpetrator was unknown, died, or if the facts are prescribed).

- On the other hand, the SARVI, which requires a definite judgement, after which the victim has to wait for two months, in order to give some time to the offender to pay the compensation ordered by the judge. After this delay has passed, the victim has ten more months to send a request to the SARVI which will be the one compensating the victims.

The compensation can be full if the damages are under or equal to 1000 euros and figures over 3000 euros are not entirely attributed. Then the Service has a right of recourse against the offender to require the reimbursement of the sum advanced to the victim.

Contrary to the CIVI which can decide on a different amount for the compensation of the victim, the SARVI has to follow the judge's decision on compensation<sup>86</sup>.

The processing time is usually of two months, but it can be longer depending on whether there should be discussions, difficulties to obtain some documents, and so one.

<sup>85</sup> CIVI: Commissions on compensation for victims of crimes (Commission d'Indemnisation des Victimes d'Infractions).

<sup>86</sup> <https://www.fondsdegarantie.fr/sarvi/>

With the SARVI's system, everything depends on the execution of criminal convictions, and so on the effectiveness of the judgements passed in the name of French people, with the goal of speeding up and facilitating the collection of compensation already established by the judges for victims that are civil parties.

The SARVI's system represented a big progress for the subject of effective right to compensation to victims (because only the most personal injuries were compensated with the CIVI's system).

In addition, it is important to note that there are also some specificities for victims of terrorist attacks in what concerns their compensation: they are in direct relation with the Guarantee Fund, there is a compensation prior to any criminal proceedings, a new types of harms have recently been recognised<sup>87</sup>, etc.

<sup>87</sup> For instance, harm of anxiety about imminent death.

## ARTICLE 17 - RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

*Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position:*

*a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.*

*Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.*

*Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.*

There is no difference made in the CPC between French victims and foreign victims<sup>88</sup>. Since there is no legal definition of victims, the notion encompasses any person being a victim of an offence on the French territory without any nationality requirement.

<sup>88</sup> Feedback from the VOCIARE survey.



If a victim is not a French resident and wants to initiate proceedings in France, that person will enjoy the same rights as a French victim. Moreover, if the offence occurred in France, the CIVI will be competent to give victims compensation whether they are French or not.

In order to be a civil party and participate in a French proceeding, foreign victims will have to declare a French address, which can be of a person of their choice, even their lawyer's office<sup>89</sup>.

The possibility to use videoconference and teleconference is set in article 706-71 of the CPC. Those means of communication can be used when the foreign victim cannot be present during the trial. In practice however, it depends on the possibility for the jurisdiction to have some adapted materiel.

As for the interview of victims by the authorities, in relation to the presentation of a complaint, the victim's signature is necessary. Therefore, in order to do so, victims have to meet with the French authorities or to go to the authorities of their own country if there is a partnership agreement between the two countries through a rogatory commission.

The authorities will try and get as much information as needed when a foreign victim files a complaint, so they will not have to hear them again. Nevertheless, the means required of the authorities for the purposes of interviewing a foreign victim are rather insufficient<sup>90</sup>. Therefore, the efficiency of these methods will heavily rely on their financial resources, which can create gaps between big cities, that have more resources, and smaller cities.

If there is an international cooperation in place, foreign authorities can hear the victim and transfer everything in France<sup>91</sup>.

It is extremely rare to hear foreign victims who have already left France to go back to their own country. They can be asked to come back during the investigative stage<sup>92</sup>, but the fact that foreign victims are back in their own country does not mean the investigations and prosecution of the offender will not happen.

In France, at the time of the trial, the expenses of all civil parties will be reimbursed, without consideration of the victims' domiciliation: this rule is an important guarantee to allow foreign victims to attend their trial.

89 Articles 10-2 9°, 40-4-1 and 89 of the Criminal Procedure Code.

90 Feedback from the VOCIARE survey.

91 Interview 2.

92 Interview 6.

## ARTICLE 18 - RIGHT TO PROTECTION

*Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.*

Progressively and under the influence of European law, a right to protection of victims has been developing.

Pursuant to article 10-5 of the CPC, **individual assessments will determine whether victims need specific protection measures to be put in place.**

Some specific protective measures are made available to victims, such as protection orders, attribution of an emergency phone for victims of domestic violence, prohibition to enter in contact with the victim<sup>93</sup>.

The protection order was created by a law on the 9th of July 2010<sup>94</sup>. According to this law, judges can enforce emergency protection orders in situations of domestic violence that can last up to six months.

Filing a complaint beforehand is not necessary. The victim has to prove any type of violence happened, whether it be physical, psychological or even economical, and, above all, the danger for him/her and/or for children.

The measure of attributing to victims of domestic violence an emergency phone was established by a law on the 4th of August 2014<sup>95</sup>. These phones have a pre-programmed switch which directly connects the victim of violence to the authorities for a fast intervention when the victim feels threatened: this intervention of police officers is often legitimate because offender does not follow the judge's order not to enter in contact with the victim. More than a physical assistance,

93 Article 712-16-2 of the CPC.

94 Law n° 2010-769 on 9th July 2010 about violence against women, domestic violence and their impact on children.

95 Law n° 2014-873 on 4th August 2014 for a real gender equity.

this phone represents a psychological relief for every victim of domestic violence or rape who feels reassured by having an emergency device close and effective 24/7.

Victim support associations assess the situation of the victim and inform the Public Prosecutor's Office which then decides whether the victim can get an emergency phone or not.

This specific protective measure was experimented in a few jurisdiction before being globalised by the law of August 2014<sup>96</sup>.

In general, there are no physical protective measure in place for victims. They can be escorted, as well as their families, by the authorities but that will be for a given moment in time (for instance they can be escorted out of the tribunal).

Protective measures often consist of prohibitions for the offender: an eviction order from the couple's home, a prohibition to enter in contact with the victim<sup>97</sup>, wearing an electronic bracelet as the result of a prohibition to go to certain places<sup>98</sup> and so on. It is a "passive" protection system for the victim. However, new tools, such as the emergency phones, are a step towards a proactive protection of the victim.

Pursuant to new article 40-4-1 of the CPC created by the law of the 17th of August 2015<sup>99</sup>, victims who file a complaint can give a third party's address instead of their own. According to article 10-2 of the CPC, the authorities have to inform victims by all means, as soon as they file a complaint, of their right to indicate a third party's address as their own.

The victim will have to notify the public prosecutor by registered letter with an acknowledgement of receipt. The third party's address can be the victim's lawyer's, the victim support association's, or any third party's of their choice.

Under specific circumstances, victims can also give the address of the gendarmerie or police station as their own address and even make anonymous statements<sup>100</sup>.

For specific offences such as war crimes or organised crime, victims and their families can use aliases and benefit from reinsertion measures<sup>101</sup>.

Protective measures in place in the French legal system are deemed efficient, even if the efficiency of those measures differs from one situation to another. It is essential for all the actors who contact with victims (authorities, magistrates and associations) to develop good

96 Law n° 2014-873 on 4th August 2014 for a real gender equity.

97 Article 712-16-2 of the CPC.

98 Interview 4.

99 Law n° 2015-993 on 17th August 2015 adapting the criminal procedure to the EU law.

100 Interview 2: articles 706-57 and 58 of the CPC.

101 Interview 2.

communication channels between them, in order to correctly assess the needs of the victims regarding protective measures and to implement them accordingly. Individual assessments have helped and developed the communication between services<sup>102 103</sup>.

Moreover, judges can also order a judicial review or suspension sentences with probation to avoid the indicted person to enter in contact with the victim. The victim is automatically informed of this prohibition to enter in contact.

However, there are some issues with the effectiveness of these measures to avoid contacts between offenders and victims: if the offender violates those measures, the probation will be lifted in case of a suspension sentence with probation, the offender will be held in provisional detention in case of violation of the judicial review, a new offence will be constituted in case of violation of refusing stay, and so on.

Protective measures like interdictions to enter in contact with victims have a limited efficacy, as there is a lack of human, material and financial resources<sup>104</sup> to ensure their respect: the offender is not all the time supervised by police officers or constables, so if he/she violates the interdiction, it will be a judicial response, but after the offence, which is not satisfactory for the victims.

102 Interview 1.

103 Between authorities (police officers, constables, prosecutor etc.) and victim support associations.

104 Interview 3.

## ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

*(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.*

*(2) Member States shall ensure that new court premises have separate waiting areas for victims.*

In France, the physical layouts within tribunals, police stations or gendarmeries is often made so that there are no real separate areas for victims and offenders<sup>105</sup>. Therefore, it could be complex to avoid contact between them.

In practice, the authorities and court staff are mindful of this issue and try to make sure victims do not stumble upon the offenders by having them wait in the victim support office within the tribunal<sup>106</sup> or interviewing them in different rooms at the police station.

However, it is not rare that victims are seating close to the offender in the courtroom of the Correctional tribunal while waiting for their turn, as there are several hearings in one afternoon.

Also, even if police officers are trying their best to give appointments at different times to hear victims and offenders, sometimes they cannot avoid the both of them crossing paths in corridors of the station<sup>107</sup>.

A contact can be made if a confrontation between victim and offender has been decided: since the law of 14th of April 2011 revising the conditions of detention, the victim can be assisted by a lawyer in case of a confrontation with the offender. This will apply even though the victim is not a civil party, throughout the different stages of the procedure.

The issue of the possible confrontation is to be tackled beforehand with the victim (with the

<sup>105</sup> Feedback from the VOCIARE survey.

<sup>106</sup> Interview 4.

<sup>107</sup> Feedback from the VOCIARE survey.

lawyer, or with the victim support association), as it requires the victim to be in a psychological capacity to handle it.

Beside the confrontation, the risk to cross the offender's path in the corridors of the police station or the tribunal is still present.

The victim is free to accept or decline the confrontation. However, the confrontation is not irrelevant for victims as it strengthens their word and it might be the only way for the truth to be told<sup>108</sup>.

The entrance for victims and offenders within the tribunal is the same. However, the individual assessment may indicate that contact should be avoided and some protection measures be put in place, for instance the victim support association can prescribe different arrival times, require security officers to be careful, and even warn the lawyers. The prosecution office also has to be informed of the situation. Nevertheless, the premises are not adapted to avoid contact between victims and offenders as there are no dedicated and separate waiting areas<sup>109</sup>.

It is less controlled at the tribunal as a lot of people come and go: family members and the offender might sit right next to each other<sup>110</sup>.

The prohibition to enter in contact decided in the case of domestic violence is fluctuating: protection orders are pronounced before the judgement. However, what if such an order was issued and then the judges decide to acquit the offender? It can send mixed signals to the victim, which can be a serious issue<sup>111</sup>.

Beside the confrontation, temporary detention or judicial supervision can be ordered to avoid contacts. The individual assessment can indicate that contact between the victim and the offender should be avoided or minimised.

In Paris, for example, there is a new Court, since April 2018 in which there are dedicated waiting rooms for victims. However there is a true material issue in other places: **there is not enough funding to ensure that contact is avoided** through the creation of separate zones. Nevertheless, court staff as well as the authorities try their best to find ways to find solutions, even before the Directive was transposed into the French legislation<sup>112</sup>.

The inter-ministerial delegate for victim support is currently working on the issue related to the separation of the victim and the offender the day of the trial<sup>113</sup>.

<sup>108</sup> Interview 2.

<sup>109</sup> Interviews 1 and 5.

<sup>110</sup> Interviews 2 and 5.

<sup>111</sup> Interview 2.

<sup>112</sup> Interview 3.

<sup>113</sup> Interview 4.

## ARTICLE 20 – RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

*Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.*

The information of victims related to applicable protection orders can be found at article 10-2 6° of the CPC. Determining if protection orders are needed is possible through individual assessments<sup>114</sup>.

The circular of the 20th of April 2016 uses the same terms as the Directive to define the conditions under which interviews and medical examinations of victims are conducted. These measures are applicable to every victim and have always to be implemented.

The circular refers to article 10-4 of the CPC: during interviews, victims have to be accompanied by their legal representative and a person of their choice if they request it, unless it is impossible to do so according to a reasoned decision given by the judge.

For the gendarmerie, victims must be interviewed only once: it is up to the investigator to collect every detail necessary to the investigation. Further investigation can be necessary during the initial interview in order to avoid other interviews of the victim. If the presence of another person in the interview can influence the progress of the criminal investigations or affect the interview of the victim, constables can refuse the victim to be accompanied however they have to provide a reasoned decision. If a child is victim of incest or abuse, constables will interview the child alone<sup>115</sup> (it depends nevertheless of his/her age).

114 Article 10-5 of the CPC.

115 Interview 2.

The circular also refers to article D. 1-5 1° of the CPC according to which interviews of victims are conducted without unjustified delays.

Indeed, there is no delay between the offence happening and the interview of the victim. It is an immediate procedure when the victim files a complaint. If the investigations are ordered by the Public Prosecutor's Office, the victim's interview is one of the first acts taken.

Finally, pursuant to article D. 1-5 2° of the CPC, secondary interviews are carried out only where strictly necessary for the purposes of the investigations.

In practice, police officers and constables are trying to limit the number of interviews to what is strictly necessary. There is usually only one interview carried out, a second one can happen if they received truly conflicting versions. On the other hand, if a victim wants to add something, it is way more complicated to hear the victim again, in order to supplement in the initial interview<sup>116</sup>.

According to the same article (D. 1-5 2° of the CPC), medical examinations are carried out only where strictly necessary for the purposes of the criminal proceedings.

However, before the Directive, medical examinations were not mandatory to file a complaint. Today not only do victims (of sexual, physical violences, above all) have to undergo medical examinations, but it sometimes is not limited to what is strictly necessary: they have to go through several different examinations.

Therefore, it is not unusual to have long delays: victims are required to go to the emergency room, then get an appointment with their treating physician to then be able to file a complaint.

In case of bodily injuries, it is often mandatory for the victim to go to a forensic unit. There is a delay of three to four days for the victim to get an appointment. For domestic or sexual violence, the authorities will systematically refer the victim to a forensic unit, which in turn is requisitioned by the authorities<sup>117</sup>.

The circular of 2016 also refers to some specific measures<sup>118</sup> applicable for victims when there are reasons to believe they are child victims, even if there are some uncertainties regarding their age<sup>119</sup>. These measures can be the mandatory assistance of a third party during interviews of the victim (article 706-53 of the CPC) or the audio and visual recording of the interviews (article 706-52 of the CPC).

116 Interview 5.

117 Interview 1.

118 Articles 706-49 to 706-53 of the CPC.

119 Article D. 47-11-1 of the CPC.

Despite these measures being implemented in French legislation, the effectiveness of these rights will heavily depend of the financial resources allocated to each police stations and gendarmeries: some premises are not equipped to guarantee the recording of a child's interview, or even have a specific and adapted room to hear the child victim. Some officers will hear the child alone at first and then have their legal representative present in the room. If the Police Brigade for Minors will always assess the age and maturity of the child victim and take it into consideration, regular police officers might not do so<sup>120</sup>.

Interviews of all victims by the authorities are conducted as much as possible without unjustified delays. When delays happen, it is usually due to a work overload or priority given to more serious crimes<sup>121</sup>.

<sup>120</sup> Interview 1.

<sup>121</sup> Feedback from the VOCIARE survey.

## ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

*Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.*

Article 9 of the French Civil Code guarantees the protection of privacy. Pursuant to this article, measures can be ordered by the judge. The violation of privacy is sanctioned at article 226-1 of the French Criminal Code. However only the direct victim has a right of action, so there is no recourse for family of a dead victim against the media that has published a photo of the victim, for instance, on social media or on the Internet.

There is a willingness coming from the Audiovisual High Council (*Conseil Supérieur de l'Audiovisuel*, CSA) to engage the media (e.g. press, television and radio) to respect victims' image related to traumatic incidents, following the excessive publication of photos of deceased victims after terrorist attacks. The CSA was currently holding hearings, namely with victim support associations and other authorities, in order to draft a Charter of good practices for the media in case of such events, including a reminder of ethical rules.

The main issue remains that the CSA does not have any authority over Internet publications, meaning that if a 'traditional' media subjected to the Charter publishes such pictures on its website, the CSA won't be able to enforce the Charter and have the media remove them from the internet.

In practice, photos of the victim can be taken and put in the case file. The prosecution finds a way to respect the right to privacy while ensuring the right to be informed in its communications with the media. During the proceedings, victims can specify that they want to remain anonymous and that their address is not to be divulged. They are, then, able to give their lawyer's address as a reference, which is usually the case for criminal cases.

During the terrorist attacks in Nice in July 2016, foreign victims were able to use the address of the location providing information and support to victims (*Espace d'Information et d'Accompagnement*)

established by the ministry of Justice as a result of the events<sup>122</sup>.

Some protective measures of privacy are therefore only applied to specific victims, such as victims of domestic violence, but also child victims<sup>123</sup>.

The part of article 21 of the Directive related to the protection of the identification of a child victim has been implemented in the French legal system with a former law of July 1891<sup>124</sup>.

According to article 39 bis of this law, the fact to dissemination by any means of information related to the identity or leading to the identification of a child victim is an offence punishable by a 15 000 euros' fine.

A Charter for Child Protection has been signed by the media, the then ministry of Solidarity and Social Cohesion (today's ministry of Solidarities and Health) and UNICEF in February 2012. It promotes the engagement of the media in protecting the image and the identity a child victim (beside the national kidnapping alert system)<sup>125</sup>.

122 Interview 3.

123 Feedback from the VOCIARE survey.

124 Law on the Freedom of the Press of 29 July 1881.

125 Interview 4.

## ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

*Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.*

In France, the biggest challenge arising from the Directive 2012/29/EU was the creation of an individual assessment of victims. The law of the 17th of August 2015 has transposed this individual assessment in article 10-5 of the CPC, in addition to its articles D. 1-9, 1-10 and 1-12. This was a new right, which was not present in the French legal system before the Directive was adopted.

Two steps have been determined regarding the individual assessment of a victim. First, there is an initial assessment done by the investigators (police officers and constables). Some specific questions are added to the grid police officers use during interviews of victims<sup>126</sup>, related to the notion of influence and hold on the victim by the perpetrator, whether the victim feels unsafe and so on (constables do not have those specific questions police officers have, within their grid of questions to use for interviews<sup>127</sup>).

Then, depending on the results of this initial assessment, the prosecutor decides whether there needs to be an in-depth assessment done by a victim support association.

In France, the first experimentations of individual assessment happened in 2014 in seven jurisdictions different in size and criminal rates, to analyse how these assessments would be done.

It was broadened to every jurisdiction with the law of the 17th of August 2015, implemented in November 2015. The generalisation of individual assessments is nevertheless very complicated: the judges are not still convinced of the utility of the measure, which in addition, causes a workload.

126 Interview 6.

127 Interview 2.

In practice, there are two grids of questions to ask, suggested by the ministry of Justice: one for child victims and one for adults. Those questions are divided in three main parts: factors of victim's vulnerability, factors of the offender's dangerousness, the status and follow-up of the support the victim received.

However, the associations can freely decide how to conduct the assessment and which questions to ask the victim. In addition to the survey, the victim support association may recommend protective measures with regard to the individual situation and needs of the victim.

The circular of the 20th of April 2016 indicates that the law does not determine on which criteria the individual assessment has to be based on. Article D. 1-3 of the CPC suggests to examine the following criteria : the importance of the harm suffered by the victim, the circumstances of the offence especially if the offence occurred because of personal characteristics of the victim, if there was a discriminatory, racist, ethnic, religious motivation or a relation between the victim and the offender in particular if there is a familial connection, the vulnerability of the victim in particular because of the age, pregnancy or disability situation, the existence of risk of intimidation and retaliation.

However, the investigators can take into account other criteria justifying the applicability of specific protective measures. There is no formality laid down by law for the individual assessment.

Despite the importance of these assessments to determine victims' specific needs, several issues arose during their implementation. Police officers are not often resorting to individual assessments of victims: these assessments take a lot of time and police officers are not trained enough<sup>128</sup>.

On the other hand, constables identify less work overload because of these new assessments<sup>129</sup>.

The ministry of Justice has made a number of recommendations for these assessments: to sign an agreement with the jurisdiction to set a framework, to create specific tools such as an inbox for the associations to receive requests of in-depth assessments, or to systematically train all the actors of victim support<sup>130</sup>.

The individual assessment is a general measure applicable for all victims which does not create a prioritisation of victims. However, it is impossible in practice to resort to individual assessments for every victim of any offence. Within agreements between associations, jurisdictions and authorities, some offences are targeted as requiring an individual assessment: the victims concerned are the same as the ones described at recital 57 of the European Directive (victims of

128 Interview 6.

129 Interview 2.

130 France Victimes has been providing a training specifically dedicated to individual assessments for all of its members since December 2015.

human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, victims with disabilities and child victims).

Individual assessments are a new mechanism for victim support associations. However, for constables, the Directive is only formalising something that was already being done in practice without it being codified. Indeed, such assessments were done intuitively by constables in charge of interviewing victims<sup>131</sup>. The same considerations apply for police officers. The European Directive is solely ratifying a preexisting practice for investigators, but greatly involves and legitimates the work of victim support associations.

131 Interview 2.

## ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

*(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.*

*(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.*

*(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.*

Article 10-5 of the CPC establishes the individual assessment to determine whether a victim needs some special protective measures to be set during the criminal proceedings.

The circular of the 20th of April 2016 determines the special protective measures that can be applicable: pursuant to article D. 1-6 of the CPC, in case of domestic or sexual violence, or violence based on gender, the interview of the victim is conducted by an investigator of the same sex as the victim if the victim requires so.

In practice, police officers and constables were already doing so even if there was no legislation related to such measures before the Directive was adopted and transposed into French law. However, there can be some issues when trying to implement these measures: police officers and constables will try to appoint investigators of the same sex as the victim<sup>132</sup> but they might not be available. If so, this right will be infringed. Nevertheless, the authorities try their best to do so, even more when the victim requests it, as it helps the victim to speak out<sup>133</sup>.

According to article D. 1-7 1° of the CPC, depending on the results of the individual assessment of the victim, the interview has to take place in suitable or specifically designed premises.

Article D. 1-7 2° of the CPC indicates that in case of sexual violence, each interview is conducted by specifically trained investigators.

Finally, pursuant to article D. 1-7 3° depending on the results of the individual assessment, each interview of the same victim has to be conducted by the same investigators.

Article 400 of the CPC, modified by a law of the 9th of March 2004<sup>134</sup>, establishes the possibility for a hearing to take place without the presence of the public<sup>135</sup>.

The recourse to videoconference and teleconference is possible, however it requires financial resources and material that not every tribunal can get.

These rights can only be effective if it is materially possible for all the actors involved in victim support to do so. There is a discrepancy between what exists in our legal system and what is effectively done, in practice.

As a conclusion, some specific measures preexisted in French law long before the Directive was transposed.

<sup>132</sup> Feedback from the VOCIARE survey.

<sup>133</sup> Interview 2.

<sup>134</sup> Law n°2004-204, article 132.

<sup>135</sup> Article 400 of the CPC: if the publicity of the hearing 'is dangerous for the order, the serenity of the debates, the dignity of a person or in the interest of a third party'.



Moreover, the victim support associations have to be greatly resourceful to practically implement simple measures that will improve victims' well-being during criminal proceedings: for instance, having the victims wait in the victim support office within the tribunal so they can get information about their rights, help provided by associations, and avoid contact with the offender while waiting for their hearing, having the court staff arrange for the victim to enter the premises through a back-door, and so on.

The circular of 2016 defines the importance of the role of victim support associations as they are in charge of an in-depth assessment after the initial individual assessment done by the authorities: as a result, the help and support of an association can be considered as a protective measure itself to ensure the best support and assistance of the victim during the proceedings.

## ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

*Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.*

Juvenile criminal law is governed by a former ordinance from 1945. The French legal system has also established specific jurisdictions and judges; however, they are related to the age of the offender, not the victim's.

Even if the victim is a child and the offender an adult, the offender will be tried before a court of general jurisdiction.

The main issue when interviewing child victims (and in general in criminal proceedings) is the influence the family can have on the child, for instance to prevent visitation rights. The compensation can also be embezzled by the family as the compensation is not automatically transferred on a blocked account<sup>136</sup>. That is why **ad hoc administrators** have been created, to **represent children** in case of a conflict of interest with legal representatives<sup>137</sup>.

The problem is that ad hoc administrators are **not systematically designated**. This appointment follows a heavy procedure and requires a lot of financial resources. However, an ad hoc administrator should be appointed automatically in those cases to guarantee neutrality and

<sup>136</sup> Interview 3.

<sup>137</sup> Article 706-50 of the Criminal Procedure Code.

impartiality<sup>138</sup>.

When interviewing a child victim, specific measures are taken by the authorities or can be ordered, such as requiring a closed hearing. While this is systematic when the offender is a child, it has to be requested for the child victim<sup>139</sup>.

In the same way, the authorities will always record every interview conducted with a child victim<sup>140</sup>, within adapted premises (called “Mélanie rooms”) and for a limited amount of time. These rooms have been developed in some police stations and gendarmeries. They have been designed specifically to hear child victims in the best way possible and to facilitate, as much as possible, the communication between authorities and children<sup>141</sup>. They are widely used by police officers when interviewing child victims and the importance of the creation of those rooms has been reminded in the new bill of March 2018 related to the protection of minors from sexual offences<sup>142</sup>.

The recourse of Mélanie rooms is systematic for child victims of sexual violence<sup>143</sup>.

Mélanie rooms are allowing all assessments to happen in one location (psychological assessment, gynecological in case of sexual offences ...), eventually with a police officer dressed as a civilian if it can encourage the child to speak.

The European Directive has not changed anything in the practices of the authorities as everything was already in done in practice, even if not formalised in our legislation<sup>144</sup>.

138 Interview 3.

139 Interview 3.

140 Article 706-52 of the Criminal Procedure Code ; feedback from the VOciare survey.

141 More informations in “Good practices”.

142 <https://www.senat.fr/petite-loi-ameli/2017-2018/373.html>

143 Interview 6.

144 Interview 2.

## ARTICLE 25 - TRAINING OF PRACTITIONERS

*Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.*

*Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.*

*Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.*

*Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.*

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Training of professionals is one of the main missions of the Federation France Victimes. The Federation offers both general and specific trainings, such as how to receive victims, to help them in a juridical, psychological or social way, or measures of restorative justice.

These trainings are organised throughout the whole year, for the Federation’s associations but also external partners.

A one-week training is focused on receiving victims: this training is free in order to gather the largest number of people from associations possible and for them get the bases of the main fields of action of the Federation’s network.

The training of the association’s personnel is amongst the criteria that France Victimes checks when an association wants to join the network. For the future agreement with its associations,

one of the conditions will be that the association ensures regular training for its personnel, professionals and volunteers. Training is an essential aspect to guarantee the professionalism of the association's workers.

In general, trainings are divided between three groups of professionals: judges, lawyers and victim support associations.

Occasional specialist trainings are also organised and not mandatory. The global awareness regarding receiving and listening to victims is part of a common core of training.

Trainings related to restorative justice or domestic violence are the result of a personal request from professionals who register to specialised trainings.

As for lawyers, they can specialise in compensation for physical injury, but in order to do so they have to undergo a lot of specialised trainings on really technical subjects.

France Victimes intervenes towards police officers and constables to raise awareness of the rights of victims and the best ways to receive victims in the police station or gendarmeries.

Constables' initial training integrates a specific module related to victims' support and how to hear a victim. The continuous training they receive also encompasses national internships for some militaries, depending on their qualification, where the issues related to victim support are tackled. At a local level and depending on the needs, some missions are shared between constables and associations, and a continuous training can be organised.

After the Directive was transposed into the French legislation, a module was added to the initial training, dedicated to the individual assessment<sup>145</sup>.

As for police officers, some specific modules related to victim support during their initial training were created as well as some specific modules for instance for brigades for the protection of the family. Peacekeepers are not specialists, however when they integrate a brigade, they will undergo new trainings, notably related to victim support.

The way this training is implemented relies on the policy of the public prosecution's office: if it is involved in victim support, police officers will be involved as well. If not, police officers and the authorities in general will not get involved in victim support<sup>146</sup>.

Nevertheless, despite being more informed and trained on victim support issues, some police officers still refuse that victims file complaints, considering the harm they suffered is not serious

<sup>145</sup> Interview 2.

<sup>146</sup> Interview 6.

enough to do so. This depends on the people, more than it depends on their training: other police officers can be truly considerate of the victims<sup>147</sup>.

The Federation France Victimes also intervenes more often at the National School for Magistrates (*École Nationale de la Magistrature*, ENM). In 2017 and for the first time, a module was dedicated to victim support, encompassing a general support of victims and restorative justice. This module is part of the initial training at ENM, complementary training modules are provided by France Victimes as part of the magistrates' continuous training<sup>148</sup>.

This way, magistrates are way more aware of the issues related to victims. Victim support associations are widely sought by prosecutors as the public prosecution's office will request the association to support the victim<sup>149</sup>.

The Federation intervenes the least towards lawyers at a national level. However, there are a lot of partnerships locally with victim support associations which intervene regularly to raise awareness and train lawyers to victim support.

Some lawyers register to France Victimes' trainings and bond with victim support associations, which makes it easier to develop partnerships.

As for associations' workers, the main difficulty is to send every jurist from the association to Paris to be trained. A lot of instruments have been developed by France Victimes, however the associations sometimes have too much work to send people away to be trained. Every association worker needs to be trained, have their legal knowledge updated and exchange good practices. This is why some associations try to organise something similar internally or end up training themselves directly on the field when they cannot go to the federation's training sessions<sup>150</sup>.

There seems to be a lack of courses and trainings at universities: courses related to victims' rights are not well implemented. Law students are not very much informed of these issues<sup>151</sup>, even if university diplomas in victimology have been created<sup>152</sup>.

<sup>147</sup> Interview 1.

<sup>148</sup> Interview 4.

<sup>149</sup> Interview 1.

<sup>150</sup> Interviews 1 and 5.

<sup>151</sup> Interview 1.

<sup>152</sup> Interview 5.

## ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

*Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.*

*Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.*

This article is not transposed into French law, however a practical implementation is in place. Indeed, France has been heavily involved on both international and European levels<sup>153</sup>. France has signed several international conventions and treaties, both with Member States and Third States.

France is part of several agencies in charge of the cooperation and coordination of criminal, civil and commercial affairs, such as Eurojust and the European Judicial Network in civil and commercial matters<sup>154</sup>. Both agencies are composed of contact points and liaison magistrates, established in many countries to guarantee an international cooperation.

Homeland Security officials within embassies and French consulates are in charge as well to act as the link between victims and the State where the offence happened.

Being part of Victim Support Europe, France has participated in several European projects, such as EQUAL Pro-Victima or CD-Diva.

<sup>153</sup> Feedback from the VOIARE survey.

<sup>154</sup> Interview 4.

One of the latest European project France tackled was 'Rights to Quality Services for victims of crime', which started in 2012 and finished in 2014. This project's goal was to assess the adequacy between the services offered by associations and the victims' needs.

The results showed that services deemed important to victims (being treated with respect, a clear information, support during the criminal proceedings) were all provided to every victim by the local victim support association.

The French Ministry of Justice is also part of the European Network of Victim's Rights (ENVR), a cooperation between Member States' experts working under the control of each government's authority.

The ENVR aims at developing sustainable knowledge especially for professionals and policy makers acting in the field of supporting victims<sup>155</sup>.

Moreover, the Federation launches national awareness campaigns every year: France Victimes has mobilised its associations on the 22nd of February for the European Day for Victims of Crime but also on several other dates for specific categories of victims, for example, the 25th of November for the International Day for the Elimination of Violence against Women (supported by the United Nations) and the 25th of May for the International Missing Children's Day. There are discussions currently to determine a date for victims of terrorist attacks.

Those dates are the occasion to put together campaigns and operations to bring awareness on victim support to the public.

Communication campaigns are also organised regularly through the use of social media, such as Twitter or Facebook. Those campaigns can be dedicated to specific groups of victims (domestic violence, discrimination, harassment ...).

These significant days and campaigns are organised to bring awareness and encourage debate about specific forms of crimes or abuse. It is celebrating surviving victims of crimes by allowing them to testify, for instance, or for the organisations and institutions of victim support to talk about and speak out against these forms of crimes.

<sup>155</sup> Interview 4.

# GOOD PRACTICES

## Victim support and partnerships

Promoting the care of a greater number of victims requires the earliest possible referral of the victim to a victim support association: this implies the development of partnerships and agreements between victim support associations and other stakeholders that can help and assist victims.

The main goal is to make these associations known from all structures on the victim's "procedural path": police officers and constables, hospitals, forensic, lawyers, town halls, courts etc.

Victims associations regularly sign agreements with courts, police services and constables, lawyers, and so on: this establishes the partnership, allows for a better articulation between professional actors and ensures equality of treatment throughout the territory. All victim support associations of France Victimes developed such partnerships.

Victim support associations can either maintain duty in these places, to inform victims as soon as possible of their rights and to propose them help and assistance, or provide a system of victims' referral with partners so that, if there is consent, the victim is contacted by the victim support association very quickly to offer help and support.

Victim support associations have been partnering for victims' assistance for many years. However, there has been a revival in these initiatives for some time now as these agreements allow a better identification of the victim with the partners, and they also permanently seal the action of the association.

It is therefore essential to develop them as widely as possible throughout the country.

## Victim Support and Videoconferencing

Victim support associations are established all over in France, however, in some rural areas, sometimes isolated, geographical distance brings difficulties for victims to access to these structures.

Thus, since November 2017, and until the end of 2018, in the region of Angoulême, an experiment was set up between a gendarmerie and the local victim support association, aiming at the

establishment of a videoconference by Skype between them. The goal is to provide help and support to the victims who are coming to the gendarmerie in order to make a complaint, and who can't go to the victim support association, because of the distance.

This initiative is a first on a national scale, it will provide better help and support for victims and improve the gendarmerie's quality of service with regards to victims. It concerns the most serious offenses (especially crimes, sexual violence, domestic violence, voluntary violence with significant harm to the victim, etc).

The videoconferencing is scheduled every Thursday morning, because the gendarmerie gets all the equipment to ensure its operation the day before.

There are one or two videoconferences per month: they take place in a dedicated office at the gendarmerie, arranged with the help of the victim support association. Victims are connected to Skype with the local association by the constables, who then withdraw during the interview.

The initiative is perceived very positively by the victims: they feel reassured, they are immediately informed of their rights and the predictable judicial consequences and a direct and personalised relationship with the victim support association is built. The initiative is intended to be extended to all gendarmerie brigades of the department, a grant application was filed by the victim support association.

This experiment is an efficient and proximity help for victims and this device is an integral part of the daily security police. It could easily be extended to other regions, provided that the necessary equipment is available.

## Child victims

The Directive states that child victims are presumed to have specific protection needs. In particular, Article 24 provides that in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings.

This protection of the child victim during the procedure was developed in France well before the adoption of the Directive in 2012.

The Law of 17 June 1998 on the prevention and punishment of sexual offenses and the protection of child victims provides filmed hearing of child victims of sexual violence. To guarantee a better application of this law, the Mélanie rooms were created, intended to collect the word of child

victims of violence, in particular sexual violence.

The room is named after the first girl auditioned according to this video protocol. The place, adapted to the child victims, is welcoming, warm, with toys, to facilitate a maximum freeing speech.

There are specialised constables who ensure the interview with the victim. During his hearing, the child victim is recorded and filmed by a discreet camera fixed to the ceiling or to the wall. The tape is then sent to the judge.

The aim is to prevent the child from reliving the facts at all steps of the procedure: during the hearings (to avoid multiplication) and at the time of the judgment (to avoid bringing the child to court).

The filming of the minors' hearing enables to account precisely of the child's gestures, of his behavior, and his rapidity to answer or not the questions. This recording will fill the gaps in the hearing's minutes, which, in the vast majority of cases, transcribe only the words of the child; it will also provide to the different stakeholders a more complete and detailed report of the minor's hearings.

The Mélanie rooms were born from a child protection association's initiative. They are not widespread (there are currently 25), but each year, their number is increasing. They contribute significantly to improve help and to take into consideration the word of the child victim.

## GAPS, CHALLENGES, AND RECOMMENDATIONS

In France, bringing domestic law in compliance with the European Directive of 25 October 2012 did not cause any textual difficulties.

The few adjustments were made by the adoption of several laws (the most impacting being that of 17th of August 2015).

On the other hand, there remains a big problem of effectiveness, which the Directive has not resolved: many rights are recognised to the victims in texts, but their implementation is very uneven. A lot of progress needs to be done on this point.

In addition, the Directive guarantees four major sets of rights, however, it is possible to go even further in France:

**- Right to information:** it is necessary to encourage the information of the victims by dematerialised way, with, for example the creation of an access to the file via a secure portal, or by the sending of documents more frequently by dematerialised way.

Moreover, after a collective event concerning several European nationals, it would be interesting to set up an European Victims Assistance Committee, aimed at better coordinating the care of victims and their support, and ensuring their information in an egalitarian way.

Finally, the right to information does exist in French law, but its disrespect is not sanctioned: it should provide for a right of appeal for the victim, systematic extensions of deadlines or a right to challenge in case of non-respect of an essential right (such as informing the victim of his right to information).

**- Right to support:** a global support has to be guaranteed for all victims, adapted to each situation. There is a need to further strengthen these victim assistance proposals by increasing the referrals of victim support associations so that they can be proactive towards victims (ie, contact the victims first, without waiting for them to contact the association spontaneously, which implies that they must be aware of the existence of these structures). Victim support must be able to adapt to the most vulnerable situations and victims (the elderly, the disabled, etc.), by favoring videoconferencing interviews, by encouraging home or institutional moving, by developing the use of sign language by teams, for example.

In order to encourage referrals in terms of support, it is necessary to link 116006<sup>156</sup> networks, but also to harmonise the status of victims in case of collective events at European level.

In addition, it may be useful to create a possibility for other countries to requisition an European victim support association to increase victims' access to these structures in their country of residence.

- **Right to participate in criminal proceedings:** victims must be able to benefit from support in their efforts to assert their rights (writing of testimony, preservation or collection of evidences, support during the filing of a complaint and throughout the judicial process if necessary). This includes a better visibility of the networks of victim support associations and a better coordination of the actors intervening with them.

For example, online files accessible to victims could be created, authorities could promote their pre-complaint, but also hear them in more procedures, including alternatives or other measures (guilty-plea, for instance).

Moreover, the voice of the victim must be protected and respected, by systematically adjourning the case to a later procedural hearing if the victim is not present and wished to be, by allowing him/her to attend the hearings by the advance of the costs he/she would have to engage (especially for French victims whose trial takes place abroad).

- **Right to protection:** prevention should be promoted to target audiences (children, the elderly, etc.).

Regarding protection, it would be possible to provide for mandatory alerts (as for child victims) for the most vulnerable victims. Moreover, the victim's image (and his/her family) must be protected and actions against its unallowed diffusion must be harmonised (especially in the area of social networks and Internet).

- Finally, a huge amount of work remains to be done at European scale with regard to the **right of compensation** for victims, with a systems' harmonisation and a simplification of procedures for victims.

<sup>156</sup> The 116 006 helpline for victims of crime gives people emotional support, informs them of their rights and how to use these, while also referring victims to relevant organisations.

The implementation of this Directive is, as other texts, faced with lack of financial, human and material resources. However, this text also fully dedicates the role of victim support associations in the mission of assistance and help to victims: thanks to their adaptability, and their creativity, these associations daily participate to the improvement for treatment of victims.

# CONCLUSION

France was already quite advanced in terms of victims' rights even before the adoption of the Directive 2012/29/EU: indeed, since the 2000s, the Victim has gained more and more place in criminal proceedings and has become a full-fledged actor, in adequation with a sustained criminal policy.

France therefore acts as a "good student" in relation to the four main rights guaranteed by the Directive: information for the victim, support, protection and participation in the criminal procedure, since, in a large majority, French law was already in full compliance with the provisions of the Directive. It sometimes guarantees even more protective rules for the benefit of victims, for instance, right to be informed, right to legal aid, access to free victims' support associations, right to appeal and appeal against some judicial decisions, or right to compensation.

Moreover, there has already been significant progress made, in particular for child victims, or vulnerable victims (sexual, domestic violences, terrorism etc).

Four major areas required changes in domestic law with the implementation of the Directive:

- the right for adult victims (more than 18 years) to be accompanied by any third party of his choice ;
- the right to interpretation and translation ;
- the establishment of restorative justice ;
- the individual assessment of victims, the measure of the Directive having the greatest impact in French law, with a view to identifying their specific protection needs.

For the rest, the major innovation introduced by the Directive was finally the formalisation of good practices already existing for many professionals.

Indeed, during the interviews, they all mentioned the "common sense" to explain that well before 2012 and the adoption of the Directive, everything was already done to make the procedure as painless as possible for the victim.

We must really make sure that the many rights of victims already enunciated in French law are more effective, so that their application becomes much more systematic, and ultimately not a "personal affair" (that's to say that the implementation of the law depends on the more or less developed sensitivity of the professional for the care of victims).

It is, in this sense, that the signing of partnerships between professionals, for a better assistance to victims, is important, guaranteeing the effectiveness of victims' rights with greater continuity and readability of victim support systems.

The Directive goes in the direction of a much stronger collaborative spirit among stakeholders: this means more frequent trainings on victims' rights and victims' assistance, and earlier in the curriculum.

A most important awareness is above all necessary that the support, then the restoration of the victim after the offense, must be multidisciplinary and not compartmentalised by field (justice, health, housing etc). The aim is that this assistance provided to the victims is as effective as possible, and guarantees to them a respectful, empathic and professional treatment.



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<https://www.fondsdegarantie.fr/sarvi/>

## APPENDIX 1 - CONTACT LIST OF INTERVIEWED PROFESSIONALS

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