

BeneVict: Benefits of full implementation of the Victims' Rights Directive Luxembourg

Part 1. Introduction

Please provide an overview about the process you followed to gather data for the research.
What resources did you go through? Where there any challenges?

In order to collect data for the desk research, I relied on several methodologies traditionally used in legal and criminological research.

First, I checked what legislative changes had been brought to the previous legal framework, considering the years 2018-2023. Due to the lack of specific amendments to the rules of the Code of Criminal Procedure (CCP) dedicated to the victim, I extended the study to the main legislative proposals currently under scrutiny of the Parliament. In particular, I analysed the Draft Proposal no. 7992 of the 7th April 2022 on the rights of the minors when they are victims or witnesses in the framework of criminal proceedings (*Projet de loi relatif aux droits des mineurs victimes et témoins dans le cadre de la procédure pénale et portant modification : 1° du Code pénal ; 2° du Code de procédure pénale ; 3° de la loi modifiée du 10 août 1991 sur la profession d'avocat*). Last amendments to the Draft date back to October 2022.

Second, I carefully checked the case law of Luxembourgish criminal courts for the years 2018-2023, including decisions adopted by the lower courts such as the *Tribunal de police* up to the *Tribunal d'arrondissement, chambre criminelle and correctionnelle* (i.e. the courts that are competent for the crimes and the délits). Higher courts such the Court of appeal and the Cassation court have been scrutinised as well as the Constitutional court.

Third, I collected information sheets and other materials which the police and the prosecutorial office distribute to the victims, to check their compliance with the Directive in terms of their right to information, including linguistic issues.

Fourth, I relied on reports drafted by various services dedicated to victims support or minors' protection in order to detect how best practices have evolved since our last report in 2018.

Fifth, I scrutinised to the maximum extent possible all protocols, procedures, guidance, memoranda of understanding, funding, contracts, agreements, strategies and action plans as well as training that were available to the public.

Sixth, I collected information from the press to verify how law enforcement communicates and disseminates to the public information related to criminal justice and victims specifically.

Lastly, I checked the data collected during the desk research with the practitioners I interviewed:

- Service d'Aide aux Victims
- Special Police Force on victims of THB
- Infotraite
- Parquet .

Part 2. Basic Overview of the legal framework

The objective of the first part of the research is to provide a better understanding of the situation of the legal framework in the EU-26 since July 2018.

No specific changes are targeting victims' rights as the main focus.

According to the Law of the 9th December 2021, the *Tribunal d'arrondissement – Chambre correctionnelle* (District Court – Criminal Chamber) can be composed of a single judge when dealing with a specific list of 'minor crimes' (see Article 179 CCP) but the victim can ask for the case to be decided by a panel of three judges instead. According to the amendments to Article 5-1 CCP operated by the same 2021 Law, Luxembourg is competent for all money laundering offences committed abroad by a permanent resident of the Grand Duchy or when the predicate offence has been committed abroad, even when there is no formal complaint. Even more relevant the amendment to Article 5-2 CCP according to which any foreign citizen can be prosecuted in Luxembourg for a crime committed abroad when the victim is Luxembourgish or a permanent resident. When the offence is a *délit*, prosecution is possible if the conduct represents a criminal offence in the country in which it has been committed and after the victim's formal complaint.

Minor changes are due to the adoption of the Law of the 22nd July 2022 aiming at adapting the Luxembourgish system to the introduction of the European Public Prosecutor Office (EPPO). However, the new title V (Article 136-3 ff.) only mentions victims' rights referring to ordinary rules applicable to victims before Luxembourgish courts. No specific change is worth mentioning.

Article 673(8) c.p.p., as modified in 2018¹, imposes the duty to inform the victim who previously asked for it, to be informed of the liberation of the convicted person or of the change of detention into a semi-detention measure when the liberation intervenes during the execution of the penalty. This duty applies as well to permanent than to temporary modification of the detention regime.

Part 3. Evaluation of practical implementation of the Victims' Rights Directive

General Question

This part of the research evaluates the practical implementation of Directive 2012/29/EU in the EU-26 **since July 2018**. Please remember, research and reporting is focused only on changes since 2018.

Answers for each article should respond to both the general question below as well as address specific issues that we have raised for each article.

Your answers to the general question and to article specific issues should all be provided in the text box relevant to each article.

GENERAL QUESTION

- **Were there any changes (improvement, worsening, expansion, reduction, addition) in the implementation of rights and obligations established in the Directive since 2018.** In particular, with respect to:
- Access to rights;
- Enjoyment or exercise of rights;
- Barriers and challenges in accessing and enjoying rights;
- Allocation of government funding;
- The existence and use of legal remedies for breach of rights.

Guidance

- When answering the above question, please examine and comment on the types of non-legislative measures that were introduced or changed e.g. protocols, procedures, guidance, memorandums of understanding, funding, contracts, agreements, strategies and action plans, training.
- When answering question 1, please also reflect on the frequency and impact of any changes, problems or improvements.
- When answering question 1, please reflect on any geographical variances e.g. if some rights or problems only apply at a regional level.

(Expected length: max. 1 page – for answering general questions plus up to 1 additional page for issues specific to an article.).

There have been improvements in the implementation of victims' rights since 2018.

Some improvements in the following fields via policy strategies and action plan:

- **Access to rights;**
- Specialized Police Unit dealing with victims of Trafficking, special victims in need of urgent support and witnesses' protection, Operative since 2018.

- **Allocation of government funding;**
- Targeted funds available for the Police to support victims of tricking in urgent need, but absence of funding for other victims in urgent need to abscond.
- Better training for Police officers;

- **Barriers and challenges in accessing and enjoying rights;**
- Better cooperation between neighbor Member States in offering protection to victims in danger (considering the limited dimensions of Luxembourg).
- More interaction between victims' Support services and law enforcement;
- i Better cooperation between neighbor Member States in offering protection to victims in danger (considering the limited dimensions of Luxembourg);
- More interaction between victims' Support services and law enforcement;

- **Enjoyment or exercise of rights;**
- Information leaflet has been updated and translated in several languages;
- Alert is given when the suspect or the convicted person is released.

Part 4. Article-specific question

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.

The only relevant legislative amendments are the ones we previously referred¹.

As for the victim status and the possibility to intervene as a *partie civile*, the case law confirmed the broad approach followed by Luxembourgish courts in welcoming the intervention of the victim as a *partie civile* via a statement before the investigating judge, accompanied by a complaint (art. 56 CCP), or before the trial courts by way of private prosecution (*par voie de citation directe*) (art. 145 and art. 182 CCP). In case of a lack of a specific family link, the victim who is not formally married or in a civil union with the direct victim, has to prove the suffering she claims has been caused by the criminal offence at stake².

It is worth mentioning a limitation related to the offences committed by a civil servant, for which Article 35 of the Statute of Civil Servants³ limits the power to prosecute to the action of the prosecutorial

¹ See « Legal framework », p.4.

² Cour d'appel correctionnel, 21.12.20, No. 430/20 : Il est de principe que celui qui a un intérêt personnel au succès ou au rejet d'une prétention a qualité pour agir. Toute personne qui prétend qu'une atteinte a été portée à un droit lui appartenant et qui profitera personnellement de la mesure qu'elle réclame, a un intérêt à agir en justice et donc qualité à agir. La qualité dans le chef du demandeur ou du défendeur n'est pas une condition particulière de recevabilité lorsque l'action est exercée par celui-là même qui se prétend titulaire du droit à l'encontre de la personne qu'il a assignée, l'existence effective du droit invoqué n'étant pas une condition de recevabilité de la demande, mais uniquement la condition de son succès au fond ou en d'autres termes de son bien-fondé. Dans la mesure où PC1 soutient avoir été la compagne de PC8 et qu'elle réclame indemnisation du préjudice moral, psychique et traumatique qu'elle affirme avoir subi au vu des souffrances de ce dernier suite à l'agression du 21 octobre 2013, sa demande est, par réformation du jugement entrepris, à déclarer recevable. (...) Le préjudice moral de la victime par ricochet consiste dans la vue des souffrances d'un être cher et ses préoccupations pour l'avenir compromis, et il faut pour que ce préjudice soit indemnisable, que les blessures subies par la victime directe revêtent une certaine gravité. En l'absence d'un lien de parenté entre le demandeur en réparation de ce dommage, il appartient à ce dernier de rapporter la preuve du lien d'affection existant avec la victime directe.

³ L'article 35, alinéa 1er, de la loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l'État dispose comme suit : « L'action civile en réparation de prétendus dommages causés par un fonctionnaire dans l'exercice de ses fonctions ne peut être portée devant un tribunal de répression que dans le cas où il est déjà saisi de l'action publique ».

office, excluding the possibility for the victim to act by way of private prosecution. The rationale is to protect the opportunity assessment on actions against civil servants conferred to the prosecutors with no possibility for the victim to circumvent it⁴.

The case law also confirmed the exclusion of the power for the *partie civile* to appeal an acquittal before the Court of appeal or the Cassation court. Consequently, the *Partie civile* is only entitled to lodge an appeal related to compensation of civil damages but it cannot challenge the previous decision when it excludes the criminal liability of the defendant.

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.

The description in the text box provides information on the type of data we are looking for per article. Please delete the text and write your answer in the text box below. Please also include your answers to the general question.

In Luxembourg, under Article 3-7 of the Code of Criminal Procedure (CCP), a victim of an offence must be informed by the police or the prosecutor's office, without delay and in a language that they understand, of the following:

- the type of support that the victim can receive and from whom they can receive it, including, where applicable, basic details of access to medical care, any specialist care, such as psychological care, and accommodation;
- procedures of filing a complaint and the victim's role in these procedures;

⁴ Cour d'appel, Chambre du Conseil, 6.10.20, No. 888/20.

- how and on what conditions protection, compensation and access to lawyers and legal assistance can be obtained and the right to interpretation and translation can be exercised;
- the procedures available for making a complaint if the victim's rights are not respected;
- useful contact details for sending correspondence in relation to the victim's case;
- mediation and restorative justice options;
- how and on what conditions expenses incurred by the victim in order to participate in criminal proceedings can be reimbursed;
- the fact that the victim has the right to individual assessment by the Victim Support Service in order to ascertain whether special treatment is necessary to prevent secondary victimisation;
- the fact that the victim has the right to be accompanied by a person of their choice during their first contact with police officers, except where this is contrary to the victim's interests or the interests of the proceedings;
- the fact that child victims have the right to be accompanied by their legal representative or a person of their choice during hearings.

Luxembourg public authorities made a real effort to improve the level and quality of victims' support, acting both within the criminal law enforcement (especially via the creation of special task forces dedicated to victims and in particular vulnerable victims, see below) and improving the external victims' support (The Service d'Aide au Victimes (SAV⁵) within the Service Central d'Assistance Sociale – SCAS, the Gouvernement official support office for victims').

A specific flyer informs the victims of the services offered, in particular by the SCAS-SAV – Service d'aide aux victimes (information, legal support, psychological support). Unfortunately, these webpages are only in French.

The information sheet is written in a simple and accessible language, allowing the victim to determine what choices are available and what are the existing rights.

The only detectable weakness is the related to the right to individual assessment: the Infosheet only indicates for the victims' assistance service the duty to check if specific treatment is needed to prevent secondary victimization, without giving any example of vulnerability or special needs that might require an individual assessment.

The content covers all the mandatory indications of the Directive (last amendment July 2021)⁶:

INFODROIT intended for victims in accordance with the provisions of article 3-7 of the Luxembourg Code of Criminal Procedure. We indicate here the entire content of the Infosheet in its English version

⁵ <https://justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-aide-victimes.html>

⁶ <https://police.public.lu/fr/publications/2021/infodroit-justice-victimes-article-3-7-du-code-de-procedure-penale.html>

as we find it important to show the language and the level of detail victims are offered to understand their rights.

Definition of the notion of victim:

An identified individual who has suffered injury as a result of an offence is qualified as a victim.

This sheet is used to inform the victim:

- **of the type of support he/she can receive and from whom he/she can receive this support, including, where applicable, basic information concerning access to medical care, any specialist care, especially psychological care, and accommodation;**

You are entitled to contact a victims' assistance service proposing psychological care such as that provided by the Office of the Public Prosecutor. A list indicating the main services is provided at the end of this sheet.

Where applicable, this service will direct you to the accommodation services. You can also make an appointment with your general practitioner or consult a psychologist or specialist doctor.

- **proceedings for lodging a complaint concerning a criminal offence and the role of the victim in these proceedings;**

If you have been a victim of a criminal offence, you are entitled to lodge a complaint with the Grand-Ducal Police. The Police will register your complaint and write a report. A police officer will therefore record your declaration concerning the circumstances and the events which happened. At the end of the meeting, you must sign your complaint. It will then be sent as a report to the competent prosecution department which will examine the merits of the complaint and decide what action to take. Within 18 months after receiving the complaint, the Public Prosecutor will inform you of the actions taken.

You can also lodge a complaint with the territorially competent Public Prosecutor or exercise your rights by sending a complaint and filing a civil action for damages to the examining magistrate.

You can obtain additional information from the Legal Advice Service or from the Victims' Assistance Service.

- **terms and conditions for receiving protection;**

If you have been a victim of trafficking in human beings or domestic violence, you are entitled, under certain conditions, to receive special protection. If this is the case, you are invited to provide further information during your hearing by the police or legal authorities.

- **terms and conditions for accessing lawyers and legal assistance under the conditions provided by law and any other kind of advice;**

If you do not have sufficient income to pay for a lawyer, you are entitled to receive legal assistance under the conditions laid down by the law (modified) of 10 August 1991 on the profession of lawyer and the grand-ducal regulation of 18 September 1995 concerning legal assistance.

You must therefore make a request for legal assistance to the competent Bar.

- **terms and conditions for receiving compensation;**

You are entitled to file a civil action by sending to the examining magistrate a letter indicating that you are filing a civil action for damages for the prejudice you declare you have suffered. This request can be formulated at any time during the proceeding.

Your attention is drawn to the fact that if you file a civil action you can no longer be heard as a witness.

In many situations, your rights to compensation could remain theoretical, especially in the following cases: the author of the attack has not been identified, cannot be found or is bankrupt.

In this case, if you have been the victim of a deliberate criminal offence causing you bodily injury and if this injury has been established by judgement having the force of *res judicata*, you can make a request for compensation to the Ministry of Justice on the basis of the law of 12 March 1984 concerning compensation for some victims of bodily injury resulting from an offence and punishment of fraudulent insolvency.

A special Commission with the Ministry of Justice will examine whether the conditions of the law and in particular the condition of bodily injury of a certain gravity are met and it will assess your damage. Additional information concerning the procedure is available on the Ministry of Justice web site.

- **terms and conditions for exercising the right to interpreting and translation;**

You are entitled to be informed and make your declarations in a language you understand. During the hearing with the Police, you are invited to inform your contact of the language(s) you understand.

- **terms for exercising your rights as a resident of another Member State of the European Union;**

If you live in another Member State of the European Union and have been the victim of a criminal offence in Luxembourg, you can lodge a complaint with the Luxembourg police authorities.

- **procedures available for making a claim in the event that your rights are not respected;**

In the event that your rights are not respected by the competent authority acting in the context of criminal procedure, you can appeal according to the forms and methods provided for in articles 3-4 (6), 3-5 (8) and 23-5 of the Luxembourg Code of Criminal Procedure.

- **useful contact details for correspondence regarding your case;**

We draw your attention to the fact that all correspondence related to the complaint of a victim is sent to the official address which was declared when lodging the complaint.

- **mediation and restorative justice options;**

During any criminal procedure and at every stage of the procedure, including when serving the sentence, the victim and the author of an offence, provided that the facts have been recognised, may be proposed a measure of restorative justice.

A measure of restorative justice designates any measure allowing a victim and the author of an offence to play an active role in solving the difficulties resulting from the offence, and in particular the repair of any type of prejudice resulting from its commission. This measure may only be applied after the victim and the author of the offence have received full information on this subject and have expressly agreed to participate. Note that the measure of restorative justice does not stop the criminal prosecution.

Criminal mediation is an alternative to the criminal prosecution which can be proposed by the competent Prosecution department and which requires the consent of the author of the offence and of the victim.

In principle, it offers a means of settling a dispute without bringing the matter before the courts.

- **terms and conditions for reimbursement of costs incurred as a result of your participation in the criminal proceedings;**

As a victim, you can exercise your pecuniary rights at several levels by filing a civil action, requesting a procedural indemnity to the Court ruling on the merits of the case during the trial, or by paying for your travel and accommodation expenses as witness allowance.

The legal conditions must be met for these various requests.

- **your right to individual assessment by a victims' assistance service to check if specific treatment is needed to prevent secondary victimisation;**
- **where needed, additional information will, where applicable, be given to you at each stage in the proceedings;**
- **except if contrary to the victim's interests or to the smooth running of the proceedings, the victim is authorised, upon initial contact with the criminal police officers and agents, to be accompanied by an individual of his/her choice, when, as a result of the repercussions of the offence, he/she needs help to understand others or to make himself/herself understood;**
- **if the victim is a minor, he/she is entitled to be accompanied by his/her legal representative or by an individual of his/her choice during hearings.**

USEFUL ADDRESSES

(list follows)

The Infosheet is the main channel of communication to explain to the victims which rights they are entitled to. In case additional support or explanation are needed on the content or the extent of these rights, the SAV or the other services are ready to offer it whenever is possible. A possible obstacle might be the language and the difficulty to identify a competent interpreter in a short time. In this case, the right to understand and to be understood depends on how rapidly an interpreter can intervene. As Luxembourg is a very small country, when the only language spoken by the victim is very rare, it might prove difficult to ensure a prompt intervention of an interpreter.

Specific explanation on the legal parts of the leaflet are left to the lawyer in case the victim asks for legal support. However, difficulties and lack of specialisation from lawyers has been signaled during the interviews.

Special attention is given to the victims of human trafficking, for which a specific section of the police has been created. The task force « recherche de fugitifs et protection des victimes »⁷ aims at coordinating the investigation on human trafficking while offering the best protection to victims' cooperation with the task force on victims' protection⁸.

As for domestic violence, improvements have been done but many issues are still in need of a solution. On the side of positive improvements, a special webpage of the police website has been created⁹. It

⁷ <https://police.public.lu/fr/appels-publics/personnes-recherchees.html>

⁸ <https://police.public.lu/fr/aide-aux-victimes/traite-humaine.html>

⁹ <https://police.public.lu/fr/aide-aux-victimes/violence-domestique.html>

provides for crucial information for victims: a special unit of the police will be in charge; women will as far as possible be supported by female police agents; special protection measures as the expulsion of the offender from the family house are mentioned; a direct link with the Victims' support Service (SCAS) will be established via the police, the SCAS will then be in charge of legal protection and assistance. Legal rights such as the possibility to proceed with a formal complaint are also mentioned.

The Helpline «Häuslech Gewalt – Violence domestique – Domestic violence» is only active from 12 am to 8 pm, whereas it would be crucial to have it operative 24h¹⁰. The Service for *recherche de fugitifs et protection des victimes* of the Luxembourg police signaled the need to extend the hours but it is currently impossible for the lack of personnel¹¹.

The website offers information in many languages.

However, this special force – the already mentioned Service for *recherche de fugitifs et protection des victimes* -

- is not sufficiently equipped, as only two police officers are assigned full-time to this mission jointly with THB victims protection and witnesses' protection. In particular, the police officers are intervening when the victim of domestic violence is facing a death or serious injuries risk but in terms of concrete protection, not much can be done as there is no special fund to intervene as a matter of urgency. If, for example, a victim is facing a death or limb risk and needs to leave immediately the family home, and there is no place available in shelters dedicated to domestic violence, the police cannot pay a hotel to hide the victim. Differently from what happens with THB victims, where special funds have been allocated to cover urgent expenses¹².

A specific phone line for minors victims of physical or sexual violence ("Actioun Bobby"¹³) and one specifically dedicated to cybercrime (including cyberstalking and cyberbullying) have been created¹⁴.

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

¹⁰ <http://www.helpline-violence.lu/>

¹¹ Interview with the Service for *recherche de fugitifs et protection des victimes*.

¹² Interview with the Service for *recherche de fugitifs et protection des victimes*.

¹³ <https://police.public.lu/fr/aide-aux-victimes/liste-organisation.html>

¹⁴ <https://police.public.lu/fr/aide-aux-victimes/cyber-harcelement-stalking.html>

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.

Here are some points to consider when you do your research

- Changes or improvements in the way that information is provided to the victims in regards to the language and the format; Is it available in different forms?
- Changes in the way that information is provided from the first contact with the competent authority; whether victims get information in a timely manner?
- Assessment of information provided.

See answer under Article 3.

The information sheet distributed by the police to the victims exists in 12 languages: French, English, German, Luxembourgish, Italian, Portuguese, Croatian, Albanian, Russian, Greek, Dutch, Spanish. Not all the European languages are covered. The SAV signaled that these translations are not enough as many victims come from third countries.

Information seems absolutely complete and effective, explained in plain language and offering a complete overview of the victims' rights and the support they might receive.

As we observed in the Vociare report, the law does not specify when the information should be given. The Infosheet is usually given to the victims to the first contact they have with law enforcement or with victims' services. Article 3-7 CCP limiting the indication to 'without delay'. However, it seems victims are promptly informed usually by the police at the very first contact they have on their rights. The SAV confirmed that the police is very careful in informing the victims via the InfoDroit (Infosheet) that represents an effective way for the victims to identify the support services and their basic rights¹⁵.

If official notifications of the date of the summoning for the interview or for the court summoning are the first contact, that is the moment in which the Infosheet is delivered attached to the notification. No additional information is given when the victim is called as a witness before the court during trial¹⁶.

¹⁵ Interview with the SAV.

¹⁶ Confirmed during the interview with the Prosecutorial Office.

Even though the contact with the SAV is always a free choice of the victim, police officers are very attentive to suggest to the victims to come in touch with the victims' support services¹⁷.

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.

No specific issue arose as for the need to translate the complaint or for the presence of an interpreter. However, the Infosheet still does not foresee the right for the victims to receive an official acknowledgement of their complaint in an accessible language.

This is the text of the Infosheet:

"If you have been a victim of a criminal offence, you are entitled to lodge a complaint with the Grand-Ducal Police. The Police will register your complaint and write a report. A police officer will therefore record your declaration concerning the circumstances and the events which happened. At the end of the meeting, you must sign your complaint. It will then be sent as a report to the competent prosecution department which will examine the merits of the complaint and decide what action to take. Within 18 months after receiving the complaint, the Public Prosecutor will inform you of the actions taken.

You can also lodge a complaint with the territorially competent Public Prosecutor or exercise your rights by sending a complaint and filing a civil action for damages to the examining magistrate. You can obtain additional information from the Legal Advice Service or from the Victims' Assistance Service."

There are no publicly available data nor statistics on the frequency or the quality.

As for the victims' of THB, the interviews highlighted that the complaint is not a duty nor a condition to obtain protection. When the victims are really scared to denounce the potential offenders, the Infotraite draws a report with the necessary element to identify the perpetrator(s). This allows the

¹⁷ Interview with the SAV.

victim to have a period of maximum three months to decide whether to report without the criminal investigations being impaired¹⁸.

However, the police somehow imposes the identification of the victim in order to allow the Infotraite to provide its services, anonymity not being authorised for the victims requiring support¹⁹. Victims are reluctant to declare their identity as they are often in breach of migration law and they risk, should the trafficking of human beings not being retained as a crime, to be reported for illegal immigration²⁰.

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 wish of victims as to whether or not to receive information shall bind the competent authority.

No legislative amendment on the content of the right has been operated in this regard and lacunas already signalled in our previous report are still there.

The sole legislative reform concerns the adaptation of the Luxembourg system to the EPPO : the European Delegated Prosecutor has the duty to alert the victim that the suspect is going to be prosecuted and that the victim has the right to intervene as a partie civile, including the modalities to do so²¹.

As we already mentioned, the Infosheet only refers to the communication of the Prosecutor to the victim after a formal complaint.

The main weakness is the lack of a legislative duty to alert the victim in case of escape or release of the offender during trial. However, despite the lack of legal provisions, the judicial practice is still compliant with the Directive on a case-by-case approach. The SAV confirmed that, since 2021, the

¹⁸ Interview with Infotraite.

¹⁹ Interview with Infotraite.

²⁰ Interview with Infotraite.

²¹ Article 136-72 c.p.p.

victim is informed in case of liberation of the suspect previously subject to pre-trial detention²². Police also confirmed that the specific information on the release of the offender is given to the victims²³. However, the lawyer signaled that this is true only in mediatized cases, or when the SAV is involved, and especially for domestic violence cases, and cannot be defined as a common practice.

There is no real assessment procedure: the victim is asked to what extent he/she intends to be informed but the final decision is taken by the prosecutor²⁴.

A major improvement will derive from the adoption of the Draft legislative proposal on the rights of minors' victims or witnesses in criminal proceedings. According to the current draft, the minor as well as his parents or legal representative will be informed ex officio of the liberation of the convicted offender or of the adoption of measures that are alternative to detention.

When liberation intervenes during the execution of the penalty, Article 673(8) c.p.p., as modified in 2018²⁵, imposes the duty to inform the victim who previously asked for it, to be informed of the liberation of the convicted person or of the change of detention into a semi-detention measure. This duty applies as well to permanent than to temporary modification of the detention regime.

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.

No change has been applied to the rules related to interpretation and translation, already in full compliance with the directive. Meaningfully, no decision has been adopted in the relevant timeframe, showing how low litigation on these issues is in Luxembourg. As we already mentioned in our previous report, Luxembourg is a multilingual country, where law enforcement is very much used to the variety of different languages.

²² Interview with the SAV.

²³ Interview with the Service for *recherche de fugitifs et protection des victimes*.

²⁴ Interview with the SAV.

²⁵ Loi du 20 juillet 2018.

A formal accreditation is required to be added to the official list of interpreters and translators of the Ministry of justice²⁶. The professional quality is ensured by the registration to the Luxembourg Association of Translators and Interpreters²⁷.

Despite the fact that the Infosheet (Infodroit) is translated in 12 languages, the victims' support services and the police highlighted how this is not enough especially for victims of THB. When the victim does not understand any of the 12 languages of the infosheet, an interpreter is called to intervene and offer linguistic assistance²⁸.

As for the quality of the translation during hearings, the SAV highlighted the difficulty to check the correspondence between the statements and what has been translated. The SAV said that in some cases, when the victim comes from the same region as the perpetrator, it is the victim herself suggesting the bad translation operated by the interpreter of the defendant²⁹.

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.

First and foremost, the Infosheet which the police distributes to all victims provides for the following list of Victims' support offices, including a legal office, governmental and non-governmental services (updated 2021).

Legal Advice Service
Legal Advice Service
Diekirch 80 23 15
Legal Advice Service

²⁶ https://mj.gouvernement.lu/content/dam/gouv_mj/professions-du-droit/experts-asserment%C3%A9s/experts/Liste_des_experts_juridique.pdf

²⁷ <https://www.traducteurs-interpretes.lu/en/>

²⁸ Interview with the SAV and with the Police Service for *recherche de fugitifs et protection des victimes*.

²⁹ Interview with the SAV.

Esch-sur-Alzette 54 15 52
Legal Advice Service
Luxembourg 22 18 46

Victims' assistance service:

Government service

Victims' assistance service (VAS), 47 58 21-627 / 628/ 605/689
GSM 621 326 595
Service Central d'Assistance Sociale (SCAS) du Parquet Général (consultations only upon appointment)
L-1839 Luxembourg, 12-18 rue Joseph Junck (Plaza Liberty building - entrance C)
Monday to Friday from 8 am to 6 pm
scas-sav@justice.etat.lu

Non-governmental organisations

Crime Victims Assistance - Wäisse Rank Lëtzebuerg Asbl
40 20 40
84, rue Adolphe Fischer
L-1521 Luxembourg

Victims of traffic accidents – AVR 26 43 21 21
4, rue Joseph Felten
L-1508 Howald

Domestic violence victims assistance service –
SAVVD 26 48 18 62
contact@savvd.lu
Fraenhaus 44 81 81 (24/24)
infoMann
5, Cour du Couvent
L-1362 Luxembourg
info@infomann.lu

Child violence victims – ALUPSE Asbl 26 18 48-1
8, rue Tony Bourg
L-1278 Luxembourg
FMPO
Centre Ozanam Trafficking in human beings (COTEH) 24 87 36 22
64, rue Michel Welter GSM 621 351 884
L-2730 Luxembourg
coteh@fmpo.lu

FED
Assistance Service for the Victims of Trafficking in human beings (SAVTEH)
26 48 26 31
2, rue Fort Wallis GSM 621 316 919
L-2714 Luxembourg
traite.humains@visavi.lu

As it appears from the list, some of the services are general, whereas others are dedicated to specific crimes, in particular trafficking in human beings. Compared to the past, the amount and specialisation of victims' services increased. Unfortunately, this does not mean that victims are relying on the services. The very few reports existing on victims of physical violence in Luxembourg show that only the 9% of the victims came in touch with the police and only 16% contacted a professional for support³⁰. Less than 1% of the victims refer to the victims' rights services. As for the causes, one-third of them esteem that their pain was not serious, being no serious need of help. 20% of men and 20% of women think that referring to the victims' services would be useless. 9% of men and 8% of women did not know where to go or how to contact the service³¹.

When looking specifically into violence against girls and women, the percentage of victims referring to the services does not go over 1%³². Reasons are: the episode was not serious (36%); it would have not been useful (19%); they did not know how to contact the service (9%); they were ashamed (3%); they had fear (2%); did not answer (14%)³³.

Additionally, many activities and training planned for the last years had to be cancelled because of the COVID19 pandemic³⁴.

As for the cases related to trafficking of human beings, The SAVTEH service of the NGO *Femmes en détresse* and the COTEH centre of the NGO Foundation *Maison de la Porte Ouverte* remain responsible for co-ordinating and providing assistance to victims of trafficking. In October 2020, these two services merged their services related to victims of trafficking under the umbrella of the Infotraite service, an independent support service financed by the State. The latter finds accommodation for victims and provides them with all necessary assistance (social, socio-educational, material, financial, linguistic, medical, psychological or therapeutic). In 2022, 80 victims of THB have been identified by the police, 6 directly from the service. 45 have been retained as THB victims.

These services and the reception centres that accommodate victims are fully financed by the government. If the victim qualifies as victim of THB, he/she will have the right to be hosted, to receive a financial support, medical care, language classes or professional courses. She/he will be accompanied all the way by the Infotraite service, offering psychological support to start a new life in the country. They also have the right to have a little time to decide whether they intend to report the authors of

³⁰ <https://statistiques.public.lu/fr/publications/series/regards/2022/regards-13-22.html>

³¹ <https://statistiques.public.lu/fr/publications/series/regards/2022/regards-13-22.html>

³² Contre les violences faites aux femmes et aux filles, 2022, <https://statistiques.public.lu/fr/publications/series/infographie/2022/infographie-06-22.html>

³³ Contre les violences faites aux femmes et aux filles, 2022, <https://statistiques.public.lu/fr/publications/series/infographie/2022/infographie-06-22.html>

³⁴ Femmes en détresse, Rapport d'activité 2020, <https://fed.lu/wp/wp-content/uploads/2021/06/Rapport-FED-2020-final.pdf>

THB or not³⁵. However, the police imposes the identification of the victim in order to allow the Infotraite to provide its services, anonymity not being authorised for the victims requiring support³⁶.

In-facility assistance from the Infotraite service stops three months after criminal and civil judgments become final³⁷. After this moment, no housing nor financial support are possible. It is not always clear how the person can stay on the Grand Duchy territory without a proper job or a visa for humanitarian reasons. Consequently, many are staying illegally³⁸.

In his Report of October 2022, GRETA noted “with satisfaction that the authorities have acted on its recommendation to increase the resources of support services: since February 2021, the number of hours of assistance services financed by the government has increased from 40 hours per week to 100 hours per week (30 hours of psychological support and 70 hours of social assistance). However, this increase is still not sufficient for assistance services to be available at all times and for victims housed in accommodation facilities to be supervised at all times. GRETA noted “with regret that the assistance provided to trafficking victims is still linked to their co-operation with the police”.

Additionally, the Infotraite service officers highlighted that their intervention is linked to the status of ‘victim’ as conferred by the police. In case such a qualification is not recognised by the police, the Infotraite service can only provide for information or psychological support but the core services – like logistical supports like housing or financial support - are denied³⁹.

As for children victims of domestic and/or sexual physical abuse, a special non-governmental organisation of social paediatricians exists called ALUPSE⁴⁰.

I would finally signal that domestic violence and in particular sexual abuse seems to have been a taboo in a very small country with stronger than usual family connections within small communities. Recently the debate opened up and the press is actively taking a leading role on that, supporting the existing services in informing potential victims of the help they can receive⁴¹.

However, the police officers of the Service for *recherche de fugitifs et protection des victimes* signaled the lack of funding to support victims of domestic violence in strong need of leaving the family house in case of life or limb danger. There is indeed no specific resource allocated to pay a hotel room in case usual accommodation are not available on spot, contrary to what happens in case of THB victims⁴².

³⁵ Interview with Infotraite.

³⁶ Interview with Infotraite.

³⁷ GRETA, Group of Experts on Action against Trafficking in Human Beings Evaluation Report Luxembourg, (2022)13; Published on 4 October 2022; at <https://rm.coe.int/greta-evaluation-report-on-luxembourg-third-evaluation-round-/1680a85a61>; § 173.

³⁸ Interview with Infotraite.

³⁹ Interview with Infotraite.

⁴⁰ <https://www.alupse.lu/en/alupse-association/>

⁴¹ <https://today.rtl.lu/news/luxembourg/a/2024464.html>

⁴² Interview with the Service for *recherche de fugitifs et protection des 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.

On paper the SAV offers all the protection indicated by the Directive. However, the statistics mentioned under Article 8 clearly show that improvement is still needed in order to inform about their existence and to boost the victims' confidence on the opportunity to refer to them.

The support offered to victims of THB seems highly satisfactory, exception made for the duty to be identified by the police as a pre-condition to access to the support. Additionally, when a victim is not recognized as a proper THB victim, only the right to appeal against this decision allows the victim to continue to receive support from the Infotraite⁴³. The Infotraite signaled a lack of staff more than a lack of funding⁴⁴.

As for statistical data, in 2022, the SAV supported 507 victims, two-third were women (350 out of the total), of various origin but official statistics do not consider these data⁴⁵. Unofficially, the nationality of the victims mirrors the Luxembourg society, with no specific dominance of any specific national origin⁴⁶.

As for the coordination among different Services, when a victim of specific crimes for which a dedicated support service exists, the general rule is to privilege specialization. In all those cases, the SAV will direct them to the **apposite** service: the Infotraite for the THB victims or the Service for road offences, for example⁴⁷. As for minors, the SAV will support the victim but they will direct the minor to other more specialized services – such as the Service the violence domestique ou la LUPS, association des

⁴³ Interview with Infotraite.

⁴⁴ Interview with Infotraite.

⁴⁵ Interview with the SAV.

⁴⁶ Interview with the SAV.

⁴⁷ Interview with the SAV.

psychologies spécialisés – for the psychotherapy that is necessary. As for the teenagers, the SAV is competent to ensure the psychological support⁴⁸.

The lawyer confirmed that cooperation with the SAV in order to protect the victims is highly satisfactory.

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.

No legislative change has intervened since 2018 on the right to be heard nor new limitations have been introduced.

As we stated in the Vociare report, the victim who decided to intervene as a *partie civile* cannot be heard as witness under oath. However, the Luxembourg court established that, even when a victim has been heard as witness on oath after she communicated her willingness to intervene as a *partie civile*, her statements are admissible as evidence, but their evidentiary value needs to be carefully appreciated by the judge according to his *intime conviction*, i.e. they won't have the same probative value as a fully-fledged testimony⁴⁹.

⁴⁸ Interview with the SAV.

⁴⁹ Tribunal d'arrondissement du Luxembourg, correctionnel, 29.11.18, No. 3094/2018.

Finalement, en ce qui concerne le fait que la victime a été entendue sous la foi du serment en tant que témoin par le tribunal, malgré le fait que dans son courrier adressé au tribunal elle avait déjà informé ce dernier de sa demande civile chiffrée à 10.000 € contre le prévenu, le tribunal relève que, même avant que le mandataire du prévenu ait soulevé formellement la nullité de la procédure pour violation des droits de la défense, il avait déjà informé les parties, suite à leurs réserves soulevées quant à la possibilité d'entendre la victime encore comme témoin, de sa décision de ne pas tenir compte de la déposition de la victime comme une déposition faite sous la foi du serment, mais à titre de simple renseignement afin, justement, de garantir l'égalité des armes entre le demandeur au civil et le défendeur au civil. Il est en effet admis qu'en matière répressive, seule la partie lésée qui ne s'est pas encore portée partie civile peut être entendue comme témoin. (voir dans ce sens : CSJ corr. 15 décembre 2014, 537/14 VI) Au vu du fait que dans son courrier daté au 8 novembre 2018, PC1 demande « I would like the attacker repays all my medical costs [...] and above that – for all psychological and physical losses I have due to the aggressive attack and for the lifelong scar on my nose the attacker caused – I would like to ask for 10,000.00 EUR (ten thousands euro) financial compensation from the attacker. » et qu'aussi bien le ministère public que le mandataire de la défense ont soulevé qu'il s'agit d'une demande civile, le tribunal retient que cette demande adressée par courrier au tribunal est à considérer comme une véritable demande civile, qui a par ailleurs été datée et signée à l'audience par Monsieur le Vice-président et le greffier à ce titre. La victime était dès lors à considérer comme une partie au procès dès avant sa déposition comme témoin à l'audience et le tribunal ne saurait, en conséquence, tenir compte de sa déposition qu'à titre de simple renseignement au même niveau que de la déposition du prévenu, tel que déjà précisé à l'audience.

As it is possible to intervene as *partie civile* during the hearing, a victim may first intervene as a mere witness and then decide to act as a *partie civile*. This solution allows the statement of the victim to have full evidentiary value while allowing the victim to ask for damages via the constitution as a *partie civile*. However, this practice creates enormous problems to the defence that is not allowed to be informed nor to participate to the investigation as long as there is no intervention as *partie civile*. If the victim decides to intervene, their statement loses credibility.

The Luxembourgish system already provided for some safeguards when children are asked to intervene as witnesses, in particular the frequent use of videoconference when a minor is deposing.

The recent introduction of the European Public Prosecutor Office brought to the extension of these guarantees to cases in which the EPPO is competent⁵⁰.

However, the global picture is still unsatisfactory.

The main novelties and huge improvement will come with the approval of the Draft Proposal no. 7992 of 7 April 2022 on the rights of the minors when they are victims or witnesses in the framework of a criminal proceedings (Projet de loi relatif aux droits des mineurs victimes et témoins dans le cadre de la procédure pénale et portant modification : 1° du Code pénal ; 2° du Code de procédure pénale ; 3° de la loi modifiée du 10 août 1991 sur la profession d'avocat). Last amendments to the Draft date back to October 2022.

This proposal explicitly refers to Directive 2012/29 as a mandatory reference to improve the Luxembourgish system. It has to be considered that this proposal is part of a larger legislative package including the introduction of a juvenile criminal law for children above 14 years and reforming the Law on the protection of the youth (more infos if needed). The Draft Proposal is largely inspired by the 2009 UN Model Law Justice in Matters involving Child Victims and Witnesses of Crime⁵¹.

As for the right to be heard, the proposal introduces some rules on the need to assess the child's age and maturity. When there is a doubt about the child's competency to understand the steps of criminal proceedings or the questions that are put to him or the importance of telling the truth, the competent judicial authority may appoint an expert for the purpose of examining the child's competency. When the expertise concludes for the need to support the minor, the dossier is transferred to the Judge of Youth (Juge de la jeunesse) to allow the latter to adopt protection and support measures outside of the criminal proceedings⁵².

⁵⁰ Article 136-22 introduced by law 9 December 2021.

⁵¹ https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf

⁵² Art. 7. Examen d'aptitude à témoigner

(1) Lorsqu'il existe un doute sur la capacité du mineur victime ou témoin à comprendre le déroulement de la procédure pénale ou les questions qui lui sont posées ou à comprendre l'importance de dire la vérité, l'autorité judiciaire compétente autorise un expert d'examiner et d'apprécier l'aptitude du mineur à témoigner.

(2) Lorsque l'examen de l'aptitude à témoigner conclut à la nécessité d'une prise en charge du

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.

There are no specific changes concerning the decision not to prosecute and its impact on the victims' rights. There are no statistical data on how many appeals have been filed to the General Prosecutor to challenge the decision not to prosecute.

The case law confirmed that, in case of non prosecution, where no reopening due to fresh evidence has been filed by the prosecutor, the victim intervening as a *partie civile* cannot ask for the reopening of the investigation⁵³.

According to the Draft Proposal No. 7992 of 7 April 2022 on the rights of the minors when they are victims or witnesses in the framework of a criminal proceedings, the minor that is victim of a crime will have the right to receive a communication ex officio of the decision not to prosecute within 14 days. The aforementioned decision should state specific and detailed reasons in order to exclude negative effects on the minor, affected by the lack of trust in his words.

Article 12 – Right to safeguards in the context of restorative justice services

mineur victime ou témoin, l'autorité judiciaire compétente transmet une copie du dossier au juge de la jeunesse, qui propose des mesures d'aide, de soutien, et de protection ou un examen médical ou psychologique au mineur, à ses parents ou à ses représentants légaux, conformément à la loi du jj/mm/aaaa portant aide, soutien et protection aux mineurs, aux jeunes adultes et aux familles.

⁵³ Cour de cassation, 15.11.2018, No. 104/2018.

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

There are no changes, no specific development on victims' safeguards in mediation in restorative justice. There are only partial data related to the context of restorative justice services. According to the 2020 *Rapport d'activité du Centre de Médiation*, mediation related to criminal offences represents the 16% of the workload (48 in 2018, 57 in 2019 and 44 in 2020). Very few cases have been introduced to mediation by the Victims' Support Service (SCAS): 9 in 2018, 5 in 2019 and 6 in 2020⁵⁴. No data is yet available for the years 2021 and 2022. It is nevertheless to be expected that the pandemic had a strong negative impact on those practices.

As for the cooperation between the Centre de médiation and the victims support services, the Centre de Médiation has been presented to the SAV only in 2021. The SAV indicates the existence of this possibility to the victims but it is premature to assess the effectiveness of this procedure in better supporting the victim's need. The SAV also highlighted how long it takes for the procedure to be completed⁵⁵.

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.

No changes have occurred, exception made for an increase of the minimum wage due to inflation. Minors are always granted with legal aid but the State can ask the money back from the parents if they have sufficient revenues⁵⁶. The competence is still in the hands of the Bar Association that renewed its webpage on that with all the forms in multiple languages (German, French, English)⁵⁷.

⁵⁴ Centre de médiation, Rapport d'activité 2020, at https://www.mediation.lu/wp-content/uploads/2021/09/activites_CM_2020.pdf

⁵⁵ Interview with SAV.

⁵⁶ <https://guichet.public.lu/fr/citoyens/sante-social/action-sociale/assistance-judiciaire/demander-assistance-judiciaire.html>

⁵⁷ <https://www.barreau.lu/recourir-a-un-avocat/assistance-judiciaire/>

Unfortunately, the form is not mentioning the status of ‘victim’ among the categories of applicants. Only later one in the section “Dispute or problem for which legal aid is requested” of the form there is the indication of “civil party in a criminal case”⁵⁸. No mention is made to the simple ‘victim’.

Some data have been published on the press: in 2019, the Bar Association approved 1154 requests for legal aid linked to criminal justice⁵⁹. No data on victims’ requests seem available.

As for victims of human trafficking, the GRETA Report⁶⁰ observed that “In Luxembourg, presumed trafficked persons often receive legal aid only after being questioned by the police, as once detected they are referred to the police, who question them without ensuring that they have first consulted a lawyer (see paragraph 152). Decisions to grant legal aid to victims of trafficking are taken by the President of the Bar Association and are subject to the requirements of Article 37-1 of the Law of 10 August 1991 on the Legal Profession, namely: 1) the action must not appear to be manifestly inadmissible, unfounded, unreasonable or disproportionate in terms of its subject matter to the costs to be incurred (this requirement is only applicable to civil proceedings); 2) the applicant for legal aid must be a national of Luxembourg, a national of a Member State of the EU, a foreign national with permission to settle in Luxembourg or a foreign national who is treated in the same way as nationals of Luxembourg for the purposes of legal aid under an international treaty; and 3) the applicant must not possess sufficient financial means for legal representation”.

Additionally, “another obstacle to accessing legal aid, which was highlighted by specialised lawyers whom GRETA met, is the difficulty of proving that a victim who has a contract of employment has not in fact received the salary stated in the contract and therefore does not have sufficient income to hire a lawyer. It should be noted that according to Article 37-1 of the Law of 10 August 1991 on the Legal Profession, a person can be recognised as being entitled to legal aid where they would otherwise be excluded from it on the grounds of their means if compelling reasons relating to their social, family or physical situation justify”.

The conclusions were very critical: GRETA considers that the Luxembourg authorities should take additional measures to facilitate and guarantee access to legal aid for victims of trafficking, in particular by:

⁵⁸ <https://www.barreau.lu/wp-content/uploads/2022/08/Application-for-legal-aid-1.pdf>

⁵⁹ <https://www.wort.lu/fr/luxembourg/l-assistance-judiciaire-revalorisee-de-10-5f27d691da2cc1784e363006#:~:text=Pour%20les%20six%20premiers%20mois,de%20droit%20administratif%20%C3%A0%20r%C3%A9gler.>

⁶⁰ GRETA, Group of Experts on Action against Trafficking in Human Beings Evaluation Report Luxembourg, (2022)13; Published on 4 October 2022; at <https://rm.coe.int/greta-evaluation-report-on-luxembourg-third-evaluation-round-/1680a85a61>.

- ensuring that legal aid is granted in all cases where there are reasonable grounds for believing that a person is a victim of human trafficking, before the person concerned has to decide whether or not to co-operate with the authorities and/or make an official statement;
- revising the Law of 10 August 1991 on the Legal Profession so that access to free legal aid for victims of trafficking is not subject to means-related, nationality or residence requirements;
- raising awareness among Bar Associations of the need to encourage training and specialisation of lawyers so that they can provide legal assistance to victims of trafficking and ensuring that victims are systematically assigned a specialised lawyer.

As for the presence of specialized lawyers, the picture seems unsatisfactory. The Infotraite service addresses some of the victims to specific lawyers who are already experienced but no specific list is established⁶¹. The lawyer added that as for minors, there is a list of specialized lawyers but the registration is not strictly required.

On 7 July 2022, the current Ministry of justice presented a draft legislative proposal to amend the entire system of legal aid, introducing several changes, the most relevant being the possibility of a partial legal aid for cases in which the person does not comply with the conditions fixed by law for a total exoneration but he/she is still not able to cover legal expenses⁶².

Additionally, minors will be automatically admitted to legal aid, independently from the financial possibilities of the family⁶³.

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.

⁶¹ Interview with Infotraite.

⁶² Projet de loi portant organisation de l'assistance judiciaire et portant Abrogation de l'article 37-1 de la loi modifiée du 10 août 1991 sur la profession d'avocat, 7 July 2022, <https://gouvernement.lu/dam-assets/documents/actualites/2022/02-fevrier/07-tanson-assistance-judiciaire-partielle/PL-7959-Assistance-judiciaire.pdf>

⁶³ Projet de loi portant organisation de l'assistance judiciaire et portant Abrogation de l'article 37-1 de la loi modifiée du 10 août 1991 sur la profession d'avocat, 7 July 2022, <https://gouvernement.lu/dam-assets/documents/actualites/2022/02-fevrier/07-tanson-assistance-judiciaire-partielle/PL-7959-Assistance-judiciaire.pdf>. Art. 4. Si le requérant est un mineur d'âge impliqué dans une procédure judiciaire, le droit à l'assistance judiciaire totale lui est accordé indépendamment de la situation de ressources de ses parents ou des personnes qui vivent en communauté domestique avec le mineur.

The partial transposition of the Directive into Luxembourgish law we signaled in the Vociare report has not been solved. Criteria for the *partie civile* to be exonerated from the expenses in case of acquittal of the offender are still unclear (decision to participate “de bonne foi”) and data are lacking.

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.

■ .

In June 2022 a new law introduced the Office in charge of the Goods (Bureau de Gestion des Avoirs - BGA)⁶⁴, that will take care of the properties that are seized or confiscated. However, this does not change the procedure for the restitution. No data are available on the time management.

In December 2022 a new law has been adopted with the aim to adapt the Luxembourgish system to the EU Regulation on freezing orders and confiscation (2018/1805). This will strengthen the possibility for victims of transnational crimes to obtain the return of property.

The 27th January 2021 the Government signed an agreement with the World Jewish Restitution Organization in order to indemnify the victims of the holocaust. A draft proposal aims at offering a final answer to the issue of Jewish dormant bank accounts⁶⁵.

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.

⁶⁴ https://www.stradalex.lu/fr/slu_src_publ_leg_mema/toc/leg_lu_mema_202207_343/doc/mema_etat-leg-loi-2022-06-22-a343-jo

⁶⁵ <https://www.reporter.lu/luxembourg-comptes-dormants-la-restitution-des-biens-juifs-toujours-negligee/>

There are no relevant legislative changes to the rules on compensation.

As already explained in the Vociare report, the victim can choose between claiming the compensation before a civil or a criminal court, knowing that criminal assessment prevails on the civil one. It is the well-known principle of “le pénal tient le civil en l’état”. This principle has been criticized by scholars⁶⁶ and practitioners because it implies the suspension of the civil proceedings as long as a parallel criminal proceeding is dealing with the same facts, blocking the possibility for a fair trial on civil compensation. However, the Luxembourg case law on civil or labour law is very rigid on imposing the respect of this rule⁶⁷.

In the assessment of the compensation, the Luxembourg courts consider the current economic value of the damaged good (in the specific case, a car) as well as the particular affection the owner might have, but in this case the latter has to prove the additional moral damage⁶⁸.

The low rate of prosecution and absence of convictions for trafficking in human beings have raised concerns by the CoE GRETA group on Luxembourg. In its recent report, the GRETA exhorted Luxembourg law enforcement to act more effectively against human trafficking in order, inter alia, to grant compensation to the victims⁶⁹.

A local lawyer highlighted the lack of specific rules on compensation when the offender is a minor⁷⁰. However, in the absence of a specific juvenile criminal law stating criminal liability for minors, it is not possible to apply this Article of the Directive to minors.

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;

⁶⁶ Menetrey, Séverine, Le criminel tient le civil en état à l’épreuve de l’article 6 de la Conv. EDH, in Journal des Tribunaux Luxembourg (2022).

⁶⁷ Cour d’appel, II, 6 mai 2019, numéro 25854.

⁶⁸ Cour d’appel - correctionnel, 8.7.20, No. 242/20.

⁶⁹ G R E T A, Group of Experts on Action against Trafficking in Human Beings Evaluation Report Luxembourg, (2022)13; Published on 4 October 2022; at <https://rm.coe.int/greta-evaluation-report-on-luxembourg-third-evaluation-round-/1680a85a61>

⁷⁰ V. Dupong, Le droit des victimes et la réforme du droit de la jeunesse, Forum, Gesellschaft, Politik, Recht | 18. Oktober 2022.

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

No legislative amendment has solved the problems already signaled in our previous report: no specific rule allows victims resident in another MS to file a complaint there, but this is admitted in practice, as the interviews confirmed.

Videoconference deposition is regulated by the CCP (articles 553 ff.) but there is no case law on that. Ordinary provisions on videoconferencing might be used when the victim is resident abroad or the victim is resident in Luxembourg but the proceeding takes place abroad but these provisions are not tailor-made for victims⁷¹. The interview with the lawyer highlighted that the preference is to obtain the deposition in person, being very difficult to obtain the videoconference for the victim, with the exception of minors, for which this technique is often used.

There are no data showing a discrimination between victims, in particular with reference to interpretation and translation in relation to videoconferencing.

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.

⁷¹ Articles 553 and ff. c.p.p. Interview with the Prosecutorial Office.

No new measures have been introduced. However, a draft legislative proposal aims at introducing the aggravating circumstance of crimes based on sex as the main driver as a way to react to feminicides⁷². In a report of the Conseil national de femmes titled « Rapport alternatif sur les mesures d'ordre législatif et autres donnant effet aux dispositions de la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (Convention d'Istanbul) »⁷³, the importance of the expulsion order, provided for by the Law of the 8th September 2003 on domestic violence, is highlighted as a measure esteemed to be rapid and effective (see our Vociare report). Problems may arise in the long term: the expulsion measure ends on the 14th day following its entry into force at 5:00 p.m., unless the victim requests by way of a request to the family affairs judge a ban on the evicted person returning to the home for a maximum period. of three months. As for the restrain orders of article 1017-8 civil code, they end after 3 months. The lawyer highlighted how law enforcement is less prone to prorogate the restrain order (imposing to keep distance from the victim) for a very long time. Specific difficulties arise when the victim is not part of an identifiable community or the perpetrator is not part of the same house holding. Furthermore, the lack of additional measures alternative to the expulsion order needs to be signalled. There would be the need for more lenient ones (such as the notification to the offender that the victim is under judicial protection) or more intense ones. The report also highlights the high number of requests of expulsion refused by the court (more than the half are dismissed). Statistics show an increase in police interventions due to domestic violence cases: from 1075 in 2018 to 1695 in 2021⁷⁴. Another report shows different data as for the police intervention for domestic violence (up to 943 in 2020) and a partial reduction of the expulsion orders (they were 375 in 2012, only 278 in 2020)⁷⁵.

⁷² Projet de loi No, 8032 of 6.12.22 ; projet de loi n°8032 complétant le Code pénal par l'introduction d'une circonstance aggravante générale pour les crimes, délits et contraventions commis en raison d'un mobile fondé sur un ou plusieurs des éléments visés à l'article 454 du Code pénal, https://ccdh.public.lu/content/dam/ccdh/dossiers_th%C3%A9matiques/discriminations/avis/circonstance-aggravante-avis-ccdh-final.pdf

⁷³ Conseil national de femmes titled « Rapport alternatif sur les mesures d'ordre législatif et autres donnant effet aux dispositions de la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (Convention d'Istanbul), at <https://rm.coe.int/mise-en-uvre-par-le-luxembourg-de-tout-ou-partie-de-la-convention-d-is/1680a5e1b6>

⁷⁴ <https://observatoire-egalite.lu/violence-domestique/victimes-signalees-de-violence-domestique-au-moment-dune-intervention-policiere/>

⁷⁵ See Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence, Rapport au Gouvernement pour l'année 2020, p. 11, at <https://violence.lu/wp-content/uploads/2021/09/rapport-violence-vf.pdf>

Tableau 7 – Requêtes en interdiction de retour au domicile suite à une mesure d'expulsion (Articles 1017-1 et suivants de NCPC)

Requêtes déposées	120
Ordonnances prononcées	121
Ordonnances contradictoires	75
Ordonnances par défaut	46
Demandes rejetées	8
Prolongations accordées	111
Requêtes rayées	3
Mainlevée accordée	2
Opposition	0
Art.1017-8 et suivants NCPC	4

Decisions on expulsion and ban from re-entering the house are duly reasoned and taken in consideration, the concrete risk of violence escalation that is typical of domestic violence⁷⁶. However,

⁷⁶ For an example: Cour d'appel : Civil et commercial, 30.09.20, No. 221/20 : L'article 1er de la loi modifiée du 8 septembre 2003 sur la violence domestique permet au procureur d'Etat d'autoriser la police à expulser de son domicile, pendant quatorze jours, une personne contre laquelle il existe des indices qu'elle se prépare à commettre à l'égard d'une personne avec laquelle elle cohabite dans un cadre familial une infraction contre la vie ou l'intégrité physique, ou qu'elle se prépare à commettre à nouveau à l'égard de cette personne, déjà victime, une telle infraction. La mesure d'expulsion peut être prolongée par une interdiction de retour au domicile commun pour une durée maximale de trois mois, consécutive à l'expiration de la mesure d'expulsion. Le but du législateur était de protéger les personnes vivant dans une communauté de vie d'actes de violence exercés par un conjoint ou un proche parent. La juridiction saisie d'une demande d'interdiction de retour au domicile doit apprécier si les faits invoqués pour justifier la mesure de protection de la victime sont établis et s'ils constituent des indices de la préparation d'une infraction contre la vie ou l'intégrité physique de cette victime, les violences devant être d'une certaine gravité et être clairement établies. L'interdiction judiciaire faite à une personne de retourner à son domicile pendant une période allant jusqu'à trois mois constitue une mesure restrictive du droit fondamental de cette personne au respect de la vie privée et familiale, protégé par l'article 8 de la Convention européenne des droits de l'homme. Cette immixtion d'une autorité publique dans le droit au domicile d'une personne, dans la mesure où elle est prévue par la loi, ne peut être justifiée, conformément à l'article 8, paragraphe 2, de la Convention précitée, que par la nécessité de la prévention d'infractions pénales ou par la nécessité de la protection des droits à la vie et à l'intégrité physique d'autrui. Il résulte du procès-verbal numéro 22403/2020 de la Police, commissariat de Differdange, du 31 juillet 2020 qu'une dispute a eu lieu entre les époux A. et B. qui cohabitaient à (...) avec leurs deux enfants communs. A. a indiqué aux agents de police que son mari l'a menacée en pointant un couteau dans sa direction, qu'il l'a poussée et lui a donné des coups de poings et de pieds. Les policiers n'ont toutefois pas constaté de blessures apparentes chez A. Conformément à ce qu'a retenu le juge de première instance, A. n'établit pas le lien causal entre les blessures constatées par le docteur (...) le 11 août 2020 et l'incident du 31 juillet 2020. Devant les agents verbalisateurs B. a nié avoir menacé A. avec un couteau de cuisine, mais il admet ce fait à l'audience et explique la situation par le fait qu'il avait bu de l'alcool. L'arme aurait été destinée à impressionner l'épouse pour que celle-ci parte de l'appartement commun aux fins d'éviter des faits plus graves. B. a encore admis devant les agents avoir frappé son épouse à deux reprises avant les faits du 31 juillet 2020, à savoir l'avoir giflée cinq mois auparavant et l'avoir frappée au moyen d'une chaise dans le dos trois mois auparavant. A l'audience devant la Cour il explique qu'il n'a pas frappé l'épouse avec une chaise, mais qu'il a donné un coup à contre la chaise, la faisant ainsi tomber par terre lors d'une dispute entre parties. Il ne nie pas l'existence du climat de jalousie et de méfiance entre parties allégué par A. Les faits de pointer une arme blanche potentiellement létale en direction de l'épouse tout en étant en état alcoolisé et d'avoir giflé A. dans le passé constituent des violences tant psychiques que physiques à l'égard d'A. et des indices suffisants permettant d'admettre que B. se prépare à commettre à l'égard de son épouse avec laquelle il cohabite dans un cadre familial, une nouvelle infraction contre la vie ou l'intégrité physique.

the facts should be serious and clearly established, putting the charge on the victim to prove the real risk⁷⁷. The *Service for recherche de fugitifs et protection des victimes*, although specifically competent for victims of THB, they are also dealing with domestic violence. Strongly understaffed (currently 3 members are assigned to the Service), they signaled the lack of specific funding to protect victims of domestic violence when the dormitories are full and there is the urgent need to pay for an hotel room⁷⁸. Additionally, the police officers that are part of the *Service for recherche de fugitifs et protection des victimes* are only meant to protect victims of THB. As a consequence, to maintain their neutrality, they are not directly involved in the criminal investigation⁷⁹.

During the hard times of the COVID-19 pandemic, 5 associations involved in the victims' protection have established a helpline to support people under distress.

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.

No legislative amendments have unfortunately solved the lacuna in the legal framework. As for trafficking in human beings, the GRETA "urges the Luxembourg authorities to make full use of the

A. expose à l'audience qu'elle va introduire une requête en divorce le jour même, étant donné qu'elle souffre du comportement agressif et violent de son époux depuis un certain temps. Eu égard aux démarches judiciaires à entreprendre à cet égard et à la réaction violente à craindre d'B., la période maximale de la prolongation sollicitée est adaptée.

Par réformation de l'ordonnance entreprise, la demande de l'appelante est donc à déclarer fondée sur base de l'article 1017-1 du Nouveau Code de procédure civile et il y a lieu de prononcer l'interdiction de retour d'B. au domicile commun pour une durée de trois mois.

L'article 1017-1 (2) du Nouveau Code de procédure civile dispose encore que « la partie protégée demanderesse peut également, au moment de sa requête, demander au juge aux affaires familiales la prolongation des interdictions prévues à l'article 1er, paragraphe 2 de la loi modifiée du 8 septembre 2003 sur la violence domestique. »

Suivant ce texte « l'expulsion emporte interdiction pour la personne expulsée d'entrer au domicile et à ses dépendances, de prendre contact, oralement, par écrit ou par personne interposée, avec la personne protégée et de s'en approcher. (...) » Il n'y a pas lieu en l'espèce d'ordonner la prolongation de ces mesures qui sont contraires aux intérêts fondamentaux et légitimes de l'intimé en ce que les parties ont deux enfants communs mineurs à l'égard desquels ils exercent l'autorité parentale conjointement. L'ordonnance entreprise est donc à confirmer sur ce point.

⁷⁷ Cour d'appel : Civil et commercial, 04.05.22, No. 82/22.

⁷⁸ Interview with the Service for *recherche de fugitifs et protection des victimes*.

⁷⁹ Interview with the Service for *recherche de fugitifs et protection des victimes* and interview with the Infotraite. See sub Article 20.

available measures intended to protect victims and witnesses of trafficking from intimidation or further trauma during the investigation and during and after court proceedings, including by using videoconferencing and other appropriate arrangements to avoid cross-examination of victims of trafficking in the presence of the trafficker”⁸⁰.

However, the interview with lawyer confirmed that the videoconference is rarely used during the investigation or during trial, exception made when the victim is a minor. In first degree, there is almost no distance between the offender and the victim in court, especially for minor crimes (correctionnel). During appeal proceeding, major distance is due to the fact that the offender is in an apposite box. As for the draft proposal on minors that are victims and/or witnesses in criminal proceedings, see answer under Article 20.

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.

Here are some points to consider when you do your research

- Changes/improvements in regards to the right to protection of victims during criminal investigations;
- Changes in the optimal length between the time a crime is reported and the interview;
- New measures about the number of interviews a victim including child victims can have.

There are no rules nor public data on the number of interviews the victims need to undergo. Additional data will be collected during the interviews.

⁸⁰ GRETA evaluation report on Luxembourg, cit.. 30, see at <https://rm.coe.int/greta-evaluation-report-on-luxembourg-third-evaluation-round-/1680a85a61>

However, the defence lawyer affirmed that the amount of interviews and the modalities highly depend on the specific person in charge, being it the police officer or the juge d'instruction. In any case, the victim will be called to repeat everything in trial before the court.

As for the victims of trafficking, GRETA urged Luxembourg to offer an effective protection "particularly in order to prevent their names from being made public"⁸¹.

In order to better protect victims of THB, the police officers that are part of the *Service for recherche de fugitifs et protection des victimes* are not directly involved in the criminal investigation. The rationale is to differentiate victims' protection, for which the *Service* is in charge, from the investigative activities to be carried out in order to identify the persons responsible for trafficking⁸².

Special measures concerning minors will be introduced with the adoption of the Draft Proposal No. 7992 (see infra sub Article 24), according to which, "when the special assessment on the capacity of the minor as a witness shows a potential danger, the following measures will be adopted:

- Domicile elected with a person of trust;
- Imposing the in-camera hearing with no public;
- Transmission of the file to the juvenile judge for the adoption of protection measures;
- Interrogation of the minor outside the courtroom, in videoconference from a separate room, in the absence of the defendant.
- Ban any indication of the address of the minor in any act of the proceedings.
- Ban any publication of the minor's identity

Additionally, the Draft Proposal No. 7992 foresees the introduction of the right for children victims or simple witnesses to be assisted by a support person when called to testify during the investigations or before the court.

As for medical exams, a new service has been created in July 2018: the Medico-Legal Unit in charge of documenting violences within the National Health Laboratory (Unité médico-légale de documentation des violences du Laboratoire national de Santé – UMEDO). The UMEDO is meant to support adults that are victims of domestic violence, including physical harm, but have no immediate intention to denounce the potential offender. The goal is to document visible wounds and collect biological samples and freeze them for a potential later complaint. The result of medical examination will be filed and stored in a protected archive. They can only be used upon consent of the person concerned⁸³. These are the figures for the concerned years: 11 for 2018 (only female), 19 for 2019 (only female), 17 for 2020 (3 males) and

⁸¹ GRETA evaluation report on Luxembourg, cit.. 30, see at <https://rm.coe.int/greta-evaluation-report-on-luxembourg-third-evaluation-round-/1680a85a61>

⁸² Interview with the Service for *recherche de fugitifs et protection des victimes* and interview with the Infotraite.

⁸³ <https://observatoire-egalite.lu/violence-domestique/examens-physiques-effectues-sur-les-victimes-signalees-de-violence-domestique/>

16 for 2021 (2 males). No data in 2022. However, the SAV signaled that the UMEDO is only meant to collect physical evidence but it is not competent to offer psychological support⁸⁴.

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. 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.

Member States shall encourage the media to take self-regulatory measures.

In setting up the search tool for Luxembourgish case law – JUDOC – enormous attention has been put in protecting the privacy of all private parties involved. As a consequence, victims – being or not *partie civile* – are not recognizable.

New changes are expected in the next months. On the 25th January 2023, the Minister of Justice presented a bill to adapt the national legal framework on the retention of personal data in the electronic communications sector to the requirements of the recent rulings of the Court of Justice of the European Union in this area⁸⁵.

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.

As for the personal characteristics to take into consideration during the assessment, the Luxembourg case law does not offer any clarification.

⁸⁴ Interview with the SAV.

⁸⁵ <https://gouvernement.lu/dam-assets/documents/actualites/2023/01-janvier/25-tanson-loi-retention-donnees-caractere-personnel/projet-de-loi-retention-des-donnees.pdf>

However, in relation to the offence of elder abuse, the courts established that the elder age cannot, alone, justify the status of ‘vulnerable victim’⁸⁶. It has to be proved a specific vulnerability such as “a physical handicap, an intellectual deterioration, a memory deficit, a depressive condition, a progressive weakness due to the senile condition, a fragile personality or a personality incline to be influenced or the incapacity to assess his/her own condition”. No presumption of vulnerability can be solely justified in light to the senior age.

The SAV confirmed the lack of a specific protocol to conduct the individual assessment of the victim. The practice will consider the specificity of the crime and determine the level of danger of the victim. There is a strong cooperation with the police and the prosecutors on how to assess the level of risk⁸⁷. Unfortunately the defence lawyer had no knowledge nor experience of such an assessment. If it does exist, it is not communicated to the lawyer of the victim.

As for the minors, the aforementioned Draft Proposal No. 7992 aims explicitly at implementing Article 22 of the Victims Directive via imposing the mandatory ex officio individual assessment of the minor. However, no additional information is given as to the methodology to be followed by the SAV, the organ in charge of the assessment.

There are no publicly available data on the training of the psychologists of the SAV.

Article 23 – Right to protection of victims with specific protection needs during criminal proceedings

No legislative change intervened on procedural protection for victims with specific needs. No open access data are available.

When the victim is vulnerable, the competent services are doing all their best to provide with an adequate support. However, the lack of specialized forces and the difficulties to identify experts or interpreters in rare languages in such a small country have been indicated by all the people interviewed⁸⁸.

However, no impact on the probative value is imposed in case of assessment of specific need as the judge is free to assess all evidence collected according to his intime conviction⁸⁹.

⁸⁶ CSJ corr. 31 mars 2015, 129/15 V.

⁸⁷ Interview with the SAV.

⁸⁸ Interview with the SAV and with the Service for *recherche de fugitifs et protection des victimes*.

⁸⁹ Tribunal d’arrondissement Luxembourg, criminel, 8.1.20, No. 1/20.

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 audiovisually 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.

For the time being, no legislative amendment has intervened to the guarantees foreseen for minors. Major changes, as we already signaled, will happen with the approval of the Draft Proposal no. 7992 on Minors that are victims or witnesses in criminal proceedings.

the new law will introduce specific guarantees such as:

- The right to be assisted by specialized lawyers chosen by the minor or by the President of the Bar Association: the presence of the lawyer is mandatory.
- The right for the minor to be accompanied by his/her legal representative and/or by a person of trust all along the criminal proceeding.
- The right of protection measures: anonymization of data, non disclosure of the address or identity, interrogation in a different room with videoconference, in the absence of the defendant (see answers to the previous questions).
- Police agents specialized in minors' protection.

It has to be highlighted that for the time being Luxembourg has no juvenile criminal law, in principle minors cannot be held accountable for the crimes committed. The Juvenile Court can anyhow impose protection and educational measures. However, it is possible to derogate to this rule and treat the minor as an adult and submit him/her to a criminal proceedings when the juvenile judge is convinced of her/his maturity and the minor is more than 16 years old⁹⁰. As a consequence, in many cases minors have been incarcerated with adults. Many critics have been moved against this lack of specific guarantees for minors and the current gouvernement proposed a total reform aiming at drawing a clear

⁹⁰ Article 32 Law 10 August 1992.

distinction line between protection and repression, introducing a proper juvenile criminal justice for minors over 14 years⁹¹.

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.

The SAV is offering specific training to the police officers and to the prosecutors. However, no specific request has come from the Bar Association to extend these training programs to lawyers⁹².

The lawyer confirmed that they receive no training on victims' rights, only rarely on minors as victims. The lack of education impacts negatively the support the lawyer is able to offer. The development of an efficient and sensitive legal approach is left to the sensitiveness of the single practitioner.

With regards to the training of practitioners it is worth mentioning that *ProFamilia* systematically offers training to various professionals, notably police officers, teachers etc., covering topics like domestic violence or various kind of abuses⁹³. Also, public officers had the opportunity to benefit from a training on the fight of trafficking human beings.⁹⁴

More generally, trainings on mediation, so called *formations continues*, which could eventually result helpful when it comes to restorative justice are being organized by the *Centre de Médiation ASBL*⁹⁵.

⁹¹ Draft Proposal No. 7991 of the 1st April 2022.

⁹² Interview with SAV.

⁹³ <https://www.profamilia.lu/Formations.html>

⁹⁴ https://fonction-publique.public.lu/fr/formation-developpement/catalogue-formations/secteur-etatique/05admdroit/05-1-sujadm/et_05-1-1-33.html

⁹⁵ <https://www.mediation.lu/stage-en-mediation/>

On legal services in case of trafficking of human beings, the GRETA report observed in October 2022 that “there is no training module on trafficking in initial or continuous training for lawyers. Very few lawyers have experience in trafficking cases. Representatives of the Infotraite service underlined that they routinely referred the victims they assisted to these lawyers. GRETA met some of these lawyers and the presidents of the Bar Associations of Luxembourg and Diekirch, who said that they intended to develop a training module focusing specifically on trafficking”⁹⁶.

As for domestic violence⁹⁷, it is unclear whether specialized police forces have been trained to deal with these sensitive cases. During the interview, the police officers of the special group Service for recherche de fugitifs et protection des victimes indicated that specialized training has been organized in cooperation with neighbor countries, in particular with Germany⁹⁸. The same lack of specialization concerns the prosecutorial office⁹⁹.

Meanwhile the Government organized some training in order to educate civil servants to deal with specific areas of crime such as the trafficking¹⁰⁰ but the COVID-19 pandemic has slowed down the process.

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.

⁹⁶ GRETA, Group of Experts on Action against Trafficking in Human Beings Evaluation Report Luxembourg, (2022)13; Published on 4 October 2022; at <https://rm.coe.int/greta-evaluation-report-on-luxembourg-third-evaluation-round-/1680a85a61>.

⁹⁷ <https://police.public.lu/fr/actualites/2020/05/w19/violence-domestique.html>

⁹⁸ Interview with the Service for *recherche de fugitifs et protection des victimes*.

⁹⁹ Conseil national de femmes titled « Rapport alternatif sur les mesures d’ordre législatif et autres donnant effet aux dispositions de la Convention du Conseil de l’Europe sur la prévention et la lutte contre la violence à l’égard des femmes et la violence domestique (Convention d’Istanbul), at <https://rm.coe.int/mise-en-uvre-par-le-luxembourg-de-tout-ou-partie-de-la-convention-d-is/1680a5e1b6>

¹⁰⁰ https://fonction-publique.public.lu/fr/formation-developpement/catalogue-formations/secteur-etatique/05admdroit/05-1-sujadm/et_05-1-1-33.htm |

A cooperation worth mentioning which was set up in October 2019 is the one between the three BENELUX countries (Belgium, Netherlands, and Luxembourg) to fight the trafficking of human beings. More concretely, the three countries signed a *déclaration d'intention*, notably to exchange good practices between the three countries¹⁰¹. At the basis of this cooperation lies their acknowledgment that when it comes to victims' protection the EU regulation shows some lacuna. To this end the three countries committed to strengthen the collaboration among them hoping to extend the cooperation to other countries notably Germany and France.

The Service for *recherche de fugitifs et protection des victimes* indicated that a strong coordination among police forces of different Member States exists in the following cases:

1. When there is the need to protect a victim in danger (or a witness who has been threatened) and due to the dimension of Luxembourg it is not possible to hide the person within the borders, a request to offer an adequate location and protection is asked to the neighbor countries. Luxembourg has to cover all the costs. Unfortunately, as we already observed, the lack of a specific law creates difficulties in terms of change of identity or rapid access to the necessary funds in case of urgent need to protect a witness (including a victim)¹⁰².

Part 5. Conclusions

Please summarize key findings in the text box below. Are there any additional data that should be sought further during the semi-structured interviews? If so, in which articles? Please list the articles and briefly provide a clarification.

Luxembourg adopted many concrete actions to improve victims' protection in the last five years. Although no specific legislative reform has been adopted, services have been increased in quantity and quality, cooperation seems to be smooth and efficient.

We can highlight the following main improvements:

- a Special service (Service for *recherche de fugitifs et protection des victimes*) has been created in 2018 and proved to be very effective in protecting victims of THB. As they are not directly involved in criminal investigation, they are entirely focused on protection.. However, their Unit is composed only of 3 people. A bigger unit would allow to avoid extreme workload.
- Cooperation between the SAV, the Service for *recherche de fugitifs et protection des victimes* and the Infotraite seems very effective.

¹⁰¹ https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2019/12-decembre/10-benelux-protection.html

¹⁰² Interview with the Service for *recherche de fugitifs et protection des victimes*.

- Alert in case of release after pre-trial detention is still not regulated by law but it seems to happen at least in very serious cases. However, the lawyer signalled this issue as a persistent problem. Release for end of prison time is finally communicated to the victim.

However, many weaknesses have been detected via the desk research and confirmed during the interviews. In light of these inputs, we could identify the several pivotal issues, where problems are still persistent:

- Improvement in protecting victims of domestic violence, in particular via the increase of specialised police forces (currently the Unit is understaffed);
- Improvement of witness (including victims-witness) protection via the approval of a specific legal basis, the establishment – or increase – of specialised police forces and of a special fund to be used in case of urgent needs;
- Improvement of minors when they are victims in relation to specific protection measures;
- Approval of a modern system of juvenile criminal law;
- Increase of training and hiring of specialised experts in the field of victims' protection.
- Increase of specialisation and interest from defence lawyers. A specific initiative should be taken by the Bar Association to improve the support to victims even beyond the mere intervention as a *partie civile*.

Part 6. References

Please add references below (APA style).

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