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VOCIARE:

Victims of Crime Implementation Analysis of Rights in Europe

National research template for Luxembourg

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GUIDELINES AND CONTENT OF THE NATIONAL RESEARCH

Each national research and thus each national report should reflect the results of the national research carried out in each EU Member State. The national research aims to assess the practical implementation of the Victims' Directive in each participating EU Member State, thus the resulting national report must provide a detailed overview of the situation in each country in what regards the practical implementation of the Victims' Directive.

In order to ensure comparability and quality of national reports, it is essential that authors follow a common structure in their national reports. If there is no data available on certain subjects or the template cannot be followed exactly due to other reasons, this must be explained in the report.

The national research for the report should start with the two preparatory steps:

Step 1: Legislative analysis

Please note that this project is not focused on legislative implementation. The priority is to explain the practical reality. However, legal implementation can have an important influence on the practice.

In researching each article we therefore ask you to use your existing knowledge and existing research (including that provided by us) to set out in basic terms the legal situation. In particular, you should focus on:

a) the main steps of the national criminal procedure and b) record and analyse national legislation transposing Directive 2012/29/EU. This analysis will show how the specific Directive provisions have been integrated in the national legal order, the rules applicable in relation to victims and identify potential challenges and problems. It will also identify existing secondary provisions, internal guidelines or other related material on identification of victims, identification of vulnerable victims, identification of victims' needs, referral mechanisms, etc.

Step 2: Mapping of competent authorities and organisations

This step aims to map the institutions involved in victim identification, support and protection and their competencies. Given the different organisation of every EU Member State, competencies are assigned to different bodies. It is important

at this initial phase to determine who is competent for what in relation to victims. The mapping will involve a schematic presentation of the procedure and the role and involvement of each institution in it. For example, the role and competencies of the prosecution, the police, health institutions, and victim support organisations. This will highlight potential gaps and overlaps but will also clearly show authorities/entities with a central or secondary role and who should be invited to participate on the national research. National authorities/entities will include police, prosecution, health authorities, victim support services/organisations, NGOs offering services to victims, etc. The list of authorities/entities will be used to identify the most important stakeholders for the national research, in particular for the interviews.

Research Tools

Three research approaches will support your work: desk research, online survey and semi-structured interviews with stakeholders. Each research tool is complementary to one another and you may choose to run them in parallel depending on your situation and requirements. Information and data that is not found, collected or incomplete through desk research, should be sought through interviews or online survey and vice-versa.

1) Desk research

The desk research is the first stage of the national research in each participating EU Member State.

It should include research of legal and policy instruments, literature and existing studies, opinions, discussions and other sources which are relative to victims' rights. You should use this research to answer the set of questions which are listed in the section **Evaluation of Practical Implementation** of this document and provided by the project management team.

We have tried to be comprehensive with the questions here and in the other tools. However, if you see that some questions are answered through one tool, you may avoid duplicating them in other tools. Given that interviews cannot be overly

long, it is recommended that you use interviews to complete unanswered desk research and survey questions. Before any modifications, a consultation with the project management team should be sought.

Desk research will collect and systematize existing quantitative and qualitative information on the research topic. It can cover, indicatively:

- Statistics on the situation of victims;
- Academic literature on the topic of victims' rights implementation;
- Media reports on the topic;
- Relevant NGO researches;
- Government reports to Intergovernmental Organizations (e.g. CPT).

Other sources of information can be used, as the abovementioned list is not exhaustive. Every citation and reference to the desk-research during the completion of the national report should be properly acknowledge (please consult the section *Referencing* for further detail).

You may also find it useful to look at other reports/projects already developed about the implementation of the Victims' Directive:

- IVOR Report: Implementing victim-oriented reform of the criminal justice system in the European Union, available at: <https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>
- Victims of crime in the EU: the extent and nature of support for victims, available at: <http://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims>

2) Online Survey

The national online survey is a particularly important tool for the research as it enables a much broader evidence base and should allow for statistical analysis. A survey template was developed mostly consisting of closed-ended questions and

is directed at organisations and practitioners having contact with victims (police, prosecutors, judges and court staff, policy makers and victim support organisations).

The survey template was developed in English. The researcher should translate their content to the country's language and send it back to the management team so that an online version may be developed to facilitate its dissemination, the participation of the selected respondents and the collection of data. For the development of the online version, the researcher must use the survey template enclosed in a Word document version.

The selection of respondents should be based on the results of the preliminary step 2 (above described). The researcher should also consider their field experience, practical knowledge and privileged contacts in the selection of the potential respondents (e.g. professionals from these fields with whom they worked on previous studies). The researcher may also consider the possibility of selecting organisations and entities as a whole, rather than individual practitioners, sending not personalized invitations. However, this option might have the risk of lower response rates.

The online survey should be sent by email to the selected respondents, preferably followed by a telephone contact for explaining and briefly presenting its objective. In case the selected respondent does not respond within a week after the invitation/email being sent, a follow-up phone contact should be conducted encouraging participation.

The online survey should be sent out to as many respondents as possible and the **minimum number of responses received should be 30**, per country. The dissemination process should occur during November.

3) Interviews

Interviews will serve as an addition to desk research. Any questions to which desk research could not respond, or where findings are inconclusive, the researcher should aim to identify a stakeholder/key informant (based on the step 2, above

described) with whom to discuss such specific questions, in addition to the list of questions which will be provided via the research tools/interview template.

You should carry out at **least 4 interviews**. However, with a focus on practical implementation, you may find it more effective to hold more interviews, combine interviews or hold joint meetings/ focus groups of stakeholders. Depending on your work, you may also hold interviews at conferences and other events. Depending on your relationship with stakeholders, you may also find it useful to hold short calls, skype calls or meetings in addition to more formalised interviews, especially where you have a specific question or issue.

The interviews should target victim support workers, law enforcement, justice practitioners and policy officials. Interviews should involve at least one professional from each of these groups, as they have deep knowledge on the topic of the research. If you consider that in your country there are other practitioners who develop relevant work with victims (for example, social authorities, health professionals, etc.), you can also interview and ask them to answer the survey. The list of examples above is not exhaustive, what is important is that professionals with expertise and experience in interacting with victims are consulted. At the end of the *National Research Template* you will find a table that needs to be filled with the contacts and information about the interviewees involved.

The interviews should be carried out in November, considering the convenience of the interviewee.

An interview template will be provided to the researcher for assisting the conduction of the interviews. The interview template was developed in English. **The researchers must translate the template to the country's language** and may adjust the template content in order to fill gaps in existing knowledge and to explore known issues further. This last issue entails that not all interviewees will be asked the same questions, that some questions will not have to be asked (e.g. questions on which the interviewee obviously cannot respond should be avoided), while some new ones may be added, according to the information that is still missing and could not be collected during the desk research or through the surveys' answers.

Interviews will be semi-structured and should ideally be conducted in person. If considered necessary for the participation of the interviewee (e.g. given the agenda of the interviewee and/or the location/place of work), the interview might be conducted by phone or through Skype. Regardless of the means of communication (face-to-face; by phone or using Skype), the setting of the interview should be as private as possible, without external distractors.

The interview may be recorded, if the interviewee consents. In case the interviewee does not authorize the recording, the researcher should take written notes of the interviewee responses. An anonymous record/transcript will remain with the researcher.

You will need to agree a suitable amount of time for each interview. However, in practice it is not ideal to go beyond 2 hours for an interview.

Additional Instructions about the research tools

The research tools – desk research, online survey and interviews – are meant to complement each other, filling the gaps of knowledge found during the research process for the national report. They are also tools to support your work and ensure that across the entire project we have consistent research which will allow comparative analysis of countries.

Moreover, duplication should be avoided. Therefore, if desk research provides for answers to questions which were meant to be asked through the online survey or the interviews, then repetition should be avoided unless you feel that they will support a wider perspective. In addition, attention should be paid to survey questions, as normally, these are looking into value judgments, rather than establishing facts. Therefore, the opinion of stakeholders through the interviews may still be important. However, if the researcher is aware of a recent survey which responds to relatively same questions, following relatively similar methodology, discussion should be had with the project management team to discuss elimination of parts of the online survey which have already been relatively well researched.

Template and formatting

The *National Research Template* outlines the content and formatting of the National Report, providing titles and subtitles to be followed, as well as instructions (written in red and in italics) of what each section should include. To ensure consistence between the 26 national reports, please respect the formatting of the template and do not change it.

In what regards structure and style, the following instructions must also be followed:

- Use Georgia, 12 points, Black, line spacing: 1.5.
- Avoid the use of abbreviations. In case needed, the first time you use it, write it in brackets following the word, concept or expression you want to abbreviate.
- Rename the template document to *VOCIARE_NReport2017_country* (insert the name of your country).

The length of the final national report should not **exceed 100 pages**.

During the implementation of this project, pilot studies were developed to test the templates and guidelines developed for supporting the national research and resulting national report. They might be useful for understanding the formatting we foresee for the report and also the type of information and level of detail we aim for.

Use of language and terminology

The official language of this report is English. For the inclusion of terms in the national language, they should be translated to English and presented, between brackets and in italics, in its original version. Example: Offices for Assistance of Victims of Crime (*Oficinas de Asistencia a las Víctimas de Delitos*).

Short and simple structures and sentences are preferred. Clarity of the information gathered during the different phases of research is the main purpose of this requirement.

For the purposes of comparability of the national reports, terminology should be used as outlined in Article 2 of the Directive (“Definitions”). National researchers are not discouraged from introducing their own terms present in their countries’ realities, if those terms are properly defined and explained in the report.

Referencing

All sources cited in the report must be properly referenced, including quotes from interviews or any information taken from different sources.

Consistency is important. Please use APA style throughout the document.

APA Manual: <https://owl.english.purdue.edu/owl/resource/560/01/>

Examples:

For articles:

Last name of author(s), first name initials (year). Title. *Journal*, volume(number), pages xx-xx. doi:xxxxxxx or Retrieved from <http://xxx>

Example: Goldfried, M. R. (2013). What should we expect from psychotherapy? *Clinical Psychology Review*, 33(5), 654–662. Retrieved from <http://www.ncbi.nlm.nih.gov/pubmed/23628909>

For books:

Last name of author(s), first name initials (year). Title. Location/City: Publisher.

Example: Ashwin, P. (2006). *Changing higher education: The development of learning and teaching*. London, England: Routledge.

Additional information at: <http://www.apastyle.org/index.aspx>

Deadline

The national report must be sent in *Word* and PDF version to the project management, using the address mafaldavalerio@apav.pt no later than **XX/XX/XXXX**.

For additional information or support, please contact mafaldavalerio@apav.pt or 00351 21 358 79 12.

In the following section, you will find the template report. Please complete it without changing the formatting or titling.



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Implementation Analysis
of Rights in Europe



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Executive Summary

Directive 2012/29/EU, commonly known as the Victims' Directive, establishes minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package aiming to guarantee that all victims of crimes have access to information, support and protection.

Member States were required to transpose the Directive into national legislation but need to guarantee its correct implementation in practice as well. This implementation has proved to be complex and challenging. Hence, the present national report aims to assess the practical implementation of the Victims' Directive in the Grand Duchy of Luxembourg.

As for the legal framework, the main reference is the law 7 March 2017 that jointly implemented the Victims' Directive as well as the first three Directives on the rights of the suspect in criminal procedure (the so-called ABC Directives)¹.

As for the practical implementation of the Directive, Luxembourg judicial system seems highly satisfactory as for both the national implementations and the practice. Victims are strongly granted with the rights provided under Luxembourg law when he or she would benefit from the protection of the Directive. A few points in which Luxembourg law is presenting some lacunas are:

- A specific set of rules on how to determine the individual assessment of the victims. Even if the implementation is not entirely satisfactory, the practice offers useful solutions. Whereas little can be found in Luxemburg legislation regarding simple and accessible language or an assessment of personal characteristics as such, in practice, however, the aforementioned shortcoming is more or less remedied, as the authorities take into account victims who are in a vulnerable position.
- Access to the victims support service has no specific legal framework but this right is fully recognized and protected in practice. The support is of

¹ Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings [2010] OJ L142/1; Directive 2010/64/EU on the right to interpretation and translation [2010] OJ L280/1; Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1.

very high quality thanks to the Government budget commitment and to the wealth of the country. Lastly, as for the automatic notification of the dismissal, it could be better to add “upon request of the victim”. In sum, the Luxembourg implementing law largely complies with the Victim’s Directive.

INTRODUCTION

The present national report aims at assessing the practical implementation of the Victims' Directive in the Grand Duchy of Luxembourg in the context of project VOciare - Victims of Crime Implementation Analysis of Rights in Europe.

For this purpose, an adequate methodology was created and adopted. The first two steps taken in order to begin this report were a legislative analysis and a mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented, it is vital to know more about national legislation, to know how the Directive was transposed into national law in order to further analyse if such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the competent authorities and organisations which relate to victims.

To support the work presented in this report, three research tools were developed in order to obtain the desired information: a desk research, an online survey, and interviews.

The desk research was the first stage of national research. It included the analysis of the national laws governing the role and rights of the victims in criminal proceedings and related case law. Special attention has been paid to the Law 7 March 2017 that transposed the Victims' Directive.

The national online survey was a particularly important tool for the research as it enables a much broader evidence base and allows for statistical analysis. It consisted of closed-ended questions directed at organisations and practitioners having contact with victims (police, prosecutors, judges and court staff, policy makers and victim support organisations).

The third instrument, the interviews, served as an addition to desk research. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific questions, in addition to the list of questions which were provided via the research tools.

Regarding its structure, this report first provides a basic overview of the legal framework, an important element to take into account in a first approach in order to understand the transposition status of the Directive into national law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will explain if and how articles and rights provided by the Directive are transposed into Luxembourgish law. Each right will be briefly described and explained, as well as its transposition and practical implementation.

Furthermore, after such thorough analysis, a chapter on good practices will be presented, as well as a chapter identifying gaps, challenges and recommendations. These are very important chapters in this report, since they provide practices which might be good practices to be implemented by other Member States and be maintained in Luxembourg, and they also provide information on what is lacking or failing in the practical implementation and can be improved. This is vital for Luxembourg itself and for other Member States which might present similar less positive aspects. The final chapter will provide a conclusion of this report.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The basic sources of criminal law in Luxembourg are the Criminal Code (*Code pénal*) (CC) of 1879, originally based on the Belgian Code of 1867, and the Code of Criminal Procedure (*Code de procédure pénale*; until 2017, *Code d'instruction criminelle*) (CCP), which is historically rooted in the French inquisitorial tradition. Taking into account the small size of the Grand Duchy of Luxembourg, legislative reforms are traditionally based on thorough comparative analysis, which explains the influence of the neighbouring countries' legal systems on Luxembourg law. In the absence of an extensive doctrine², inputs used in legal practice are principally borrowed either from Belgian or French sources³.

Both codes have been amended on several occasions, in order to adapt Luxembourg law to new factual realities as well as to the international obligations of the country. Luxembourg courts often make reference to international human rights law (especially the European Convention of Human Rights), to EU law, as well as to the Luxembourg Constitution⁴, wherever such sources have a direct or indirect impact on national criminal law.

The Victims' Directive has been transposed into Luxembourg through the Law of 8 March 2017⁵. The Directive has been largely implemented throughout the CCP and the amendments tend to be in line with the European expectations.

² The only relatively recent systematic doctrinal works found are A. Spielmann, D. Spielmann (2004) *Droit pénal luxembourgeois*, 2e édition, Bruxelles, Bruylant; Vogel, G., in collaboration with Mioli, F. (2009). *Lexique de procédure pénale*. Brussels: Larcier.

³ This situation has changed in the recent years, after the creation on 2003 of a Luxembourg University. A research group in criminal law exists in the recently established University of Luxembourg, which has undertaken projects in an important number of topics related to contemporary problems of criminal law and criminal procedure, with a strong comparative and European orientation (https://wwwfr.uni.lu/recherche/fdef/research_unit_in_law/research_areas/criminal_law).

⁴ A. Spielmann, D. Spielmann (n 2); G. Vogel (n 2).

⁵ Loi du 8 mars 2017 renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de

In particular, the Law of 8 March 2017 introduces several articles in the very first part of the CCP where the rights of the victim are listed in a very clear and effective way. The different stakeholders are well trained and fully aware of the victims' needs. The Government is committed to improve the criminal justice system and made it a priority for the State budget. This allows the different services to offer a victims support service according to the highest standards.

In order to better grasp how the Victims' Directive is being implemented in Luxembourg and to what extent victims' rights are being upheld, a few considerations regarding the Luxembourgish criminal proceedings are necessary.

First and foremost, all victims can always be heard as witnesses and they support the prosecutor and the police during the investigations. Regarding the **status of a victim**, Luxembourg criminal proceedings allows for three different situations⁶. First, according to art. 4-1, §1 of the CCP, the status of victim is **automatically** granted to a person from the moment he/she is identified as a victim and has suffered damage resulting from an offence. As soon as these two conditions are fulfilled, the person enjoys the rights related to this status.

Secondly, even if a person is not identified as a victim, he/she can still obtain victim status by lodging a complaint⁷. According to art. 4-1, §2 CCP, the claim has to be made by written statement, either in person or by a counsel, with indication of some specific information.

Lastly, a person that would like to be compensated for the damage resulting from a crime, has the option to obtain the status of **civil party** (*partie*

communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en « Code de procédure pénale » ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne, *Mém. A 346* du 30 mars 2017, 1. Hereinafter Law of 8 March 2017 transposing inter alia Directive 2012/29/EU.

⁶ For more details, see under question 2.

⁷ Vogel (n 2) p. 19.

civile) via criminal indemnification proceedings (*constitution de partie civile*) (art. 145 and art. 182 CCP)⁸. By obtaining this status, the person becomes a party to the proceedings⁹.

Luxembourg law provides for specific provisions on the participation of the victim in criminal proceedings. The most striking example are the procedural guarantees conferred to the *partie civile*. The notion designates the victim of a criminal offence, within the meaning of domestic criminal provisions, who lodges a complaint claiming damages with the investigative judge at the pre-trial stage of proceedings (*constitution de partie civile par voie d'action*)¹⁰ or brings an action for compensation before the Criminal Court at trial (*constitution de partie civile par voie d'intervention*)¹¹. In both cases, the complaint must indicate the harm allegedly suffered by the victim and include a request for compensation. The action for damages thereby instituted by the *partie civile* is referred to the Criminal Court having jurisdiction to establish the guilt or innocence of the accused¹². The victim has also the possibility to claim the status of a civil party during at the trial¹³. In that case, the victim who becomes a party to the proceedings can no longer testify under oath.

At the **pre-trial stage** of proceedings, the complaint lodged with the investigative judge has a twofold procedural consequence. On the one hand, the judge conducting the investigation is under the duty to start judicial inquiries (***instruction***), except if the facts set out in the complaint cannot be prosecuted or do not constitute a criminal offence¹⁴. On the other hand, once the complaint is duly filed, the victim is accorded the status of a full party to the criminal proceedings. Consequently, he/she enjoys procedural guarantees akin to the rights of the defendant¹⁵, such as the right to information and the right to legal

⁸ Vogel, G., in collaboration with Mioli, F. (2009). *Lexique de procédure pénale*. Brussels: Larcier. P. 19 and 28.

⁹ The above is further discussed in this report under art. 16 of the Directive.

¹⁰ Art. 56 CCP.

¹¹ Art. 147, § 2 CCP.

¹² Art. 3 CCP.

¹³ For instance Art. 183-1 CCP.

¹⁴ Art. 57 CCP.

¹⁵ G. Vogel (fn 2) p. 19.

assistance¹⁶. Most importantly, the *partie civile* can access the case file after the first hearing of the accused by the investigative judge¹⁷. In a similar way, the *partie civile* plays an active role in the pre-trial inquiry. Like the defendant, he/she has the possibility to be present during the questioning of the accused¹⁸ and can request the investigative judge to hear a witness¹⁹ or to appoint an expert²⁰. The *partie civile* has notably the possibility to request the investigative judge to ask questions to the witness who is confronted with the accused²¹.

When the investigative judge closes the investigation (*instruction*), the *partie civile* can refer the case to the Pre-Trial Chamber of the competent District Court that has jurisdiction to commit the case to trial if the public prosecutor fails to do so²². At the trial stage of proceedings, the *partie civile* takes part in the court hearings. He/she has the right to call witnesses and make submissions to the Court²³. Being a party to the proceedings, the *partie civile* cannot, however, be heard as a witness on oath²⁴. Finally, the *partie civile* has the right to appeal against the decision on the civil law claims brought before the competent Criminal Court²⁵.

EVALUATION OF PRACTICAL IMPLEMENTATION

¹⁶ Art. 4-1 CCP.

¹⁷ Art. 85 (1) CCP.

¹⁸ Art. 81 (8) CCP.

¹⁹ Art. 69 CCP.

²⁰ Art. 88 CCP.

²¹ Art. 82 CCP.

²² Art. 127 (3) CCP.

²³ Art. 153 CCP.

²⁴ CSJ corr. 28 April 2015, No. 158/15 V.

²⁵ Art. 202 CCP.

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 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.

Luxembourg law provides for three different ways of considering a person a victim. First of all, according to art. 4-1, §1 of the Code of Criminal Procedure (hereafter: CCP), the status of victim is **automatically** granted to a person from the moment he/she is identified as a victim (on the basis of the case file) and has suffered damage resulting from an offence. As soon as these two conditions are fulfilled, the person enjoys the rights related to this status.

Before the implementation of the Directive, a person could not acquire the aforementioned victim status unless he/she explicitly declared to have suffered damage as a result of an offence. However, as the Directive does not link this status to any formal requirements, rather to the simple finding of damage, the Luxembourg legislator therefore adapted its legislation in this regard. Although the above first way of obtaining victim status is already formulated in general terms, it appears from the Government amendments to the Law of 8 March 2017²⁶ that these terms should also be understood in a broad sense. One can infer that the Chamber of Deputies didn't consider it appropriate to limit the scope to natural persons and material damage only. The Chamber therefore highlights that the victim status continues to include legal persons and moral damage²⁷.

²⁶ Law of 8 March 2017 transposing inter alia Directive 2012/29/EU.

²⁷ Amendements gouvernementaux: projet de loi renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en "Code de procédure pénale" ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière

Secondly, even if a person is not identified as a victim, he/she can still obtain victim status by lodging a complaint²⁸. According to art. 4-1, §2 CCP, a claim of this type has to be made by written statement, either in person or by a counsel, with the provision of specific information supporting the complaint.

Lastly, a person who would like to be compensated for the damage they have suffered as a result of a crime compensated, has the option to obtain the status of civil party (*partie civile*) via criminal indemnification proceedings (*constitution de partie civile*). The latter requires an express statement from the victim indicating her intention to claim compensation for the damage suffered, and thus to become a civil party²⁹. This express statement can be made 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)³⁰. By obtaining this status, the person becomes a party to the proceedings. The above is further discussed in this report under art. 16 of the Directive. Nearly all of the rights derived from the Directive discussed below can, under Luxemburg legislation, already be enjoyed by a person that has obtained victim status. Besides the rights related to the aforementioned status, a person that lodges a complaint can also benefit from the right mentioned in art. 5 of the Directive (*cf. infra* art. 5). Only a few rights of the Directive are specifically linked to the status of civil party. In general, as a party to the proceedings, the civil party enjoys the rights which are granted to this position. The foregoing is closely related to the provisions of recital 20 of the Directive, according to which the scope of the rights set out in the Directive can vary, depending on the national law of the different Member States, in the light of the role that can be played by victims under their domestic criminal justice system.

When it comes to **family members** of the direct victim, a reference can be made again to the Government amendments to the Law of 8 March 2017. The Chamber of Deputies did not want to limit the category of family members that

répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne, Chambre des Députés 2015-16, n° 6758/03, p. 20.

²⁸ Vogel (n 2)p. 19.

²⁹ Vogel (n 2) p. 28.

³⁰ Vogel (n 2)p. 19 and 28.

could be considered a victim by allowing it only in case of death of the direct victim, as prescribed by the Directive³¹. This broad view has been confirmed by practice. A family member can, for example, claim moral damages because he/she has to deal with how their relative suffers from the consequences of an offence, especially in cases of injuries or death of the latter. It should be noted, however, that the family member will have to lodge a complaint or obtain the status of civil party. Only in exceptional circumstances, including the case of a child whose parents' death is caused by an offence, will a family member automatically be granted victim status³². In addition, unlike the Directive, the Luxembourg legislation does not foresee any limitations as to whom can be considered a family member. This will be determined on a case-by-case basis³³.

As can be seen from the above, the legal definitions and applied practices currently existing in Luxembourg are very broad, even broader than the Directive. It therefore appears unlikely that a victim would be excluded from rights under Luxembourg law when he/she would be covered by the Directive.

ARTICLE 3 – Right to understand and to 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***

³¹ Amendements gouvernementaux: projet de loi renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en "Code de procédure pénale" ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne, Chambre des Députés 2015-16, n° 6758/03, p. 20.

³² Interview 1.

³³ Interview 1.

***accessible language**, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) **any disability**. Victims should, in principle, be allowed to be **accompanied by a person of their choice** in the first contact.*

As follows from art. 3 of the Directive, Member States should do all in their power to provide clear and easily understandable communication towards the victim in order to make sure that the latter understands the proceedings and its rights. Since every victim is different, particular attention should be paid to the personal characteristics of each victim. According to recital 21, the latter can include, inter alia, the victim's knowledge of the language of the proceedings, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment. In the case of a victim who suffers from difficulties in understanding or communicating due to any kind of disability, the law must allow for appropriate measures.

Although the foregoing makes clear that a language barrier is not the only obstacle that Member States should take into account when assessing difficulties in communication, it is one of the few circumstances tackled by Luxembourg legislation. Art. 3-4, §1 CCP states that in cases where the victim does not speak or understand the language of the proceedings, he/she has the right to the free assistance of an interpreter from the moment of lodging a complaint (*cf. infra* art. 7). In addition, according to art. 3-5, §1 CCP, the victim enjoys a right to free translation of all documents that are essential for guaranteeing the effective exercise of his/her rights and the fairness of the proceedings (*cf. infra* art. 7). In line with recital 21, art. 3-4, §2 CCP provides for assistance by a sign language interpreter or any other qualified person in case the victim suffers from speech or hearing impediments. If necessary, the sign language interpreter is to be present throughout the victim's interview and throughout the court hearing³⁴. In general, Luxembourg does not experience any difficulties in finding interpreters and sign language interpreters³⁵.

³⁴ Interview 1 and 2.

³⁵ Interview 1 and 2.

In practice, police authorities have been made aware of how to listen to victims in concrete situations, including, for example, victims with intellectual disabilities³⁶. Persons whose mental faculties are affected by sickness, infirmity or impairment due to age are often placed under one of the three existing protective regimes: (1) the supervision of justice (*la sauvegarde de justice*)³⁷, (2) the guardianship (*la tutelle*)³⁸ and (3) the trusteeship (*la curatelle*)³⁹. These protection regimes offer the protected victim assistance or representation throughout the criminal proceedings⁴⁰. If, in the course of a criminal investigation, it appears that a victim should be specially protected in view of his/her age or his/her particular circumstances (for example in the case of abuse of his/her vulnerable position), the public prosecutor's office shall transmit a copy of the file for such legal purposes to the guardianship judge (*le juge des tutelles*) for such purpose, as well as respectively to the SAV (*cf. infra* art. 8)⁴¹.

The above analysis makes clear that little could be found in Luxembourg legislation regarding simple and accessible language or the assessment of personal characteristics as such. In practice, however, this shortcoming is more or less remedied, as the authorities take into account victims who are in a vulnerable position.

When it comes to the right of the victims to be accompanied by a person of their choice in their first contact with a competent authority, art. 3-7, §2 CCP uses the same wording as the Directive. The victim is informed of this possibility by means of a brochure handed over by the authority with which the victim first comes into contact first (*cf. infra* art. 4). An explanation is offered to the victims on the content of the brochure, if needed. We should consider that Luxembourg is a small, very safe country and public services are usually of the highest quality. Victims are supported in an excellent manner because the civil servants are not overwhelmed by the number of cases they have to handle.

³⁶ Interview 1 and 2.

³⁷ Art. 491 et seq. of the Civil Code and art. 1098 et seq. of the Code of Civil Procedure.

³⁸ Art. 492 et seq. of the Civil Code and art. 1080 et seq. of the Code of Civil Procedure.

³⁹ Art. 508 et seq. of the Civil Code and art. 1096 et seq. of the Code of Civil Procedure.

⁴⁰ Interview 1 and 2.

⁴¹ Interview 1 and 2.

Art. 3-7, §2 CCP, like the Directive, refers to the situation where, due to the impact of the crime, the victim requires assistance to understand or to be understood. In other words, the situation of a victim overwhelmed by emotions, who has emotional difficulties in making her/himself understood or being understood, the accompaniment by a trusted person being likely to promote and facilitate his/her understanding⁴².

Given that Luxemburg literally transposed the Directive's provision on this aspect, this right is not unlimited. It can be refused if the accompaniment is contrary to the interests of the victim or prejudices the course of the proceedings. This exception refers to cases in which, in particular in the context of domestic violence, the offender would in this way impose his presence when lodging the complaint. The general aim is thus to avoid any risk of manipulation or pressure that might be exerted upon the victim by the offender or persons close to the offender who would attempt to impose their presence by forcing the victim to be accompanied by them⁴³.

In practice, the accompaniment by a third party is generally accepted. The legal text offers a safety valve allowing a refusal in case of necessity (risk of manipulation, concealment of evidence). However, there have been no such applications of this reservation since its entry into force⁴⁴.

ARTICLE 4 – Right to receive information from the first contact with the competent authority

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

⁴² Interview 1 and 2.

⁴³ Interview 1 and 2.

⁴⁴ Interview 1 and 2.

available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

As with the above provisions, when it came to the transposition of art. 4 of the Directive, the Luxemburg legislation did not introduce significant innovations. With a single exception, art. 3-7, §1 CCP takes up exactly the same points as mentioned in the Directive. A twelfth provision has been added to the list provided by the Directive, which stipulates that the victim also has to be informed of his/her right to an individual assessment before the SAV (*cf. infra* art. 8) in order to identify any need for specific protection and to ensure that secondary victimisation is avoided. Regarding the right to interpretation and the right to translation, the fact that the victim has to be informed of these rights is repeated again in the respective articles, in particular art. 3-4, §7 CCP and art. 3-5, §9 CCP.

At the end of art. 3-7, §1 CCP, one can find the partial translation of art. 4, §2 of the Directive, as it mentions the possible provision of additional information at each stage of the proceedings, depending on the victim's needs.

As can be seen, the Luxemburg legislator has set out the information to be provided, but the law is silent on other important issues, such as who is officially responsible for providing the information, when the information should be provided and whether different forms are available to provide the information. Regarding the moment when the provision of information must take place, art. 3-7, §1 CCP only mentions the words "without delay" ("*sans délai*"). Nevertheless, in practice, the information is provided directly to the victim by the authority with which the victim first comes into contact, most notably the police authorities or the Public Prosecutor's Office⁴⁵.

As one can read in the Government amendments, the provision of the information was supposed to be in the form of a distribution of pre-printed brochures, drawn up in different languages⁴⁶. This has eventually become the

⁴⁵ Interview 1 and 2.

⁴⁶ Amendements gouvernementaux: projet de loi renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative au droit

method used in practice. The victim receives a brochure in which the points of art. 3-7, §1 CCP are listed and further explained⁴⁷. If necessary and after having heard the victim, additional information (according to the needs of the specific victim, i.e. on financial issues, school for the children, management of work or housing contracts) is provided by the authorities themselves⁴⁸.

ARTICLE 5 – Right of victims 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.*

The rights that victims draw from art. 5 of the Directive are fully transposed into Luxembourg law. According to art. 3-4, §3 CCP, a victim that does not speak or understand the language of the proceedings has the right to the assistance of an interpreter while lodging the complaint. Art. 4-1, §2 CCP complements the foregoing by stating that when a victim lodges a complaint, either the latter is to be written in a language understood by the victim or an interpreter should be called. The same article then distinguishes between situations where the victim complains to a police authority on the one hand and

à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en "Code de procédure pénale" ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne, Chambre des Députés 2015-16, n° 6758/03, p. 19.

⁴⁷ Interview 1 and 2.

⁴⁸ Interview 1. This practice enables the competent authorities to clarify certain aspects and thus reply to questions asked by the victim. Information about measures supporting the victims of specific crimes might also be provided.

to the Public Prosecutor on the other. In the first case the victim receives a receipt (*un récépissé*), and in the second an acknowledgement of receipt (*un accusé de réception*). In both cases, the acknowledgement has to be written in a language understood by the victim.

According to art. 4-1, §2 CCP, the victim also receives a free copy of his/her complaint. However, this right could already be found in art. 9-2, §2 CCP prior to the implementation of the Directive.

Based solely on the law, it can be said that, in Luxembourg, victims enjoy all the rights foreseen by art. 5 of the Directive. With regard to the latter, Luxembourg legislation itself is clear and complete. Nevertheless, it does not address the way in which the victim is informed in practice of his/her right to receive a written acknowledgement. Nor is the existence of this right mentioned in the brochure discussed above (*cf. supra* art. 4). No practical problems, however, appear to have arisen so far⁴⁹.

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.*

When one takes a look at the transposition of art. 6 of the Directive into the Luxembourg law, it becomes clear that the legislator has neglected several important points.

⁴⁹ Interview 1 and 2.

Prior to the Directive, art. 4-1, §3 CCP already stipulated that the victim is automatically informed of a decision to dismiss prosecution (*un classement sans suite*) and the reasons hereto and, only upon request, of the opening of a judicial investigation, as well as of the scheduling of time and place of trial hearings.

As a consequence of the implementation of the Directive, the Luxembourg legislator has added, first of all, that the victim also receives information on the state of the criminal proceedings, after he/she requested this, unless this notification is likely to affect the smooth running of the case. Secondly, the victim, again upon request, is informed of any final decision regarding the criminal proceedings. Art. 4-1, §3 CCP ends by pointing out that the victim can modify his/her request at any time. The legislator in all cases has used the notion of *victim*, without having made any distinction depending on whether the victim is a party to the proceedings. The Directive, on the other hand, stipulates that victims have to be notified of any final judgment in a trial and any information on the state of the criminal proceedings "*in accordance with their role in the relevant criminal justice system*". Luxembourg legislator could, according to recital 20 of the Directive, have made this right subject to the formal status of civil party, but has chosen a broader approach.

Although the foregoing obviously refers to paragraphs 1, 2 and 4 of art. 6 of the Directive, Luxembourg law still contains some shortcomings in this area⁵⁰. To begin with, paragraphs 1 and 2 of art. 6 of the Directive stipulate that victims have to be notified of their right to receive the aforementioned information and that, only upon their request, they actually receive this information. Regarding the latter, it follows from paragraph 4 of the same article that the wish of the victim is of high importance. To establish such a well-considered wish, knowledge of the existence of a right to receive this specific information is thus essential. Art. 4-1, §3 CCP only mentions the receipt of the information by the victim in this regard, either automatically or upon request. Nevertheless, the information mentioned in art. 6 of the Directive is considered to be part of the information on "*the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures*" (art. 4, §1(b) of the Directive, as

⁵⁰ Scherrer, A. and Kiendl Krišto, I. (December 2017). *The Victims' Rights Directive 2012/29/EU - European Implementation Assessment*. Brussels: European Parliament. P. 54.

transposed into art. 3-7, §1, 2^o CCP)⁵¹. The notification of this right will therefore take place through the abovementioned brochure (*cf. supra* art. 4). When consulting the brochure, however, one will notice that it only reports the notification of the victim by the Public Prosecutor of the follow-up he/she has given to the victim's complaint, as prescribed by art. 23, §4 CCP. This does not appear sufficient to comply with the provisions of art. 6 of the Directive.

This brings us to another disparity between the Directive and Luxembourg law. In the latter, before the Directive was transposed, one could already read that the victim is automatically informed of a decision to dismiss prosecution. To stay in line with the initial approach, there was a proposal to also automatically notify the victim of the other information mentioned in art. 6⁵². The Directive, however, presses for the choice to be available to the victim on whether or not to be given notice of the available information, so as to avoid as much as possible any secondary victimisation. The Luxembourg legislator eventually followed the Directive and made the receipt of all the information mentioned in art. 6 subject to the wish of the victim, except in case of a decision to dismiss prosecution, for which it is still automatically given.

Furthermore, two other small observations can be made. Firstly, as mentioned before, Luxembourg law already contained a provision according to which the victim shall be notified of the acts of scheduling of judicial dates before the courts. Nevertheless, art. 6, §1(b) of the Directive also refers to information regarding the nature of the charges against the offender, an information that is

⁵¹ Interview 1 and 2.

⁵² Amendements gouvernementaux: projet de loi renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en "Code de procédure pénale" ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne, Chambre des Députés 2015-16, n° 6758/03, p. 21.

not expressly referred to in Luxembourg CCP. Secondly, paragraph 3 of art. 6 of the Directive imposes the receipt of the reasons or a brief summary of the latter in case of “any decision not to proceed with or to end an investigation or not to prosecute the offender” and “any final judgment in a trial” as mentioned in paragraphs 1(a) and 2(a) of the same article. In Luxembourg law, this is only explicitly provided for in the case of a decision to dismiss prosecution. However, the information of any final decision, in fact, comes down to a copy of the decision itself, which includes the reasons thereof⁵³. Moreover, the reasons for the decision to dismiss prosecution is usually quite brief⁵⁴. If the victim lodges an appeal against the decision of the Public Prosecutor not to prosecute, the latter may, if needed, give additional detailed information in responding to the appeal⁵⁵. As a result of this administrative action brought before the General Public Prosecutor, the decision on appeal will provide the victim with further explanations and reasoned justifications⁵⁶.

Moreover, Luxembourg failed to transpose paragraphs 5 and 6 of art. 6 of the Directive. Indeed, there is no national legal provision which foresees the alerting of the victim in case of escape or release of the offender. Despite the lack of legal provisions, however, the judicial practice seems to comply with the above mentioned requirements. In the event of an escape or a release of the suspect that represents a danger for the victim, the competent authorities usually inform and protect the victim⁵⁷. In practice, a case-by-case approach is thus applied.

Furthermore, in general, the rule applies that, in case of crimes and misdemeanours (*des délits*) against persons, the investigating judge or the investigating court makes the provisional release of the suspect conditional on not contacting or approaching the victim in any way. In cases of domestic violence, when the suspect is remanded in custody, the Public Prosecutor's Office requests all the authorities concerned (i.e. investigating judge, council chamber), via e-mail, to inform the victim in the event of the suspect's provisional release. The Public Prosecutor's Office, in turn, notifies the *Assistance Service for Victims*

⁵³ Interview 1 and 2.

⁵⁴ Interview 1 and 2.

⁵⁵ Art. 23, §5 CCP

⁵⁶ Interview 1 and 2.

⁵⁷ Interview 1 and 2.

of Domestic Violence (*Service d'Assistance aux Victimes de Violence Domestique*) (cf. *infra* art. 8) and, if necessary, the police authorities. Lastly, the aforementioned assistance service informs the victim. By way of conclusion, it may be said that although, in practice, the obligations arising from art. 6, §5 and §6 of the Directive seem to be implemented in practice, it is regrettable that victims don't have any legal guarantee on which to rely in this regard.

Finally, it may be useful to recall the legal status of civil party vis-à-vis the 'ordinary' victim (cf. *supra* art. 2), as there is a difference in the way they receive information about their case. The provisions discussed above are each already applicable to persons lodging a complaint. In addition to the aforementioned information, the civil party, however, may also obtain other information as a result of its standing as a party to the proceedings⁵⁸. They have access to the file immediately before the first official interrogation of the suspect by the investigating judge and have the possibility to receive copies thereof (art. 85 CCP)⁵⁹. They may attend the transport to the scene of crime (art. 63, §2 CCP). They may attend the questioning of the suspect by the investigating judge (art. 81, §5 CCP) and the confrontation between the suspect and a witness (art. 82, §2 CCP)⁶⁰. These are just a few examples of the procedural rights that the civil party enjoys in the pre-trial stage of criminal proceedings.

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.*

⁵⁸ Interview 1 and 2.

⁵⁹ The possibility to receive copies of the file is, however, also available for the 'ordinary' victim on the occasion of the summons of the case before the trial court (art. 182-1 CCP).

⁶⁰ Interview 1 and 2.

One can find the provisions of art. 7 of the Directive in art. 3-4 CCP in relation to the right to interpretation and art. 3-5 CCP in relation to the right to translation. Overall, the national provisions in question are quite similar to the text of the Directive, with few deviations.

Concerning the **right to interpretation**, art. 3-4 CCP has practically the same scope of application as the Directive. While, according to the Directive, however, victims can only benefit from this right after a request made by them, art. 3-4, §3 CCP allows for the automatic assistance of an interpreter in case of hearings during the inquiry (*l'enquête*), the pre-trial investigation (*l'instruction préparatoire*) or before the trial courts. In other cases, victims can get assistance upon request⁶¹. During the drafting of the Law of 8 March 2017, an extra provision was added to art. 3-4, §3 CCP, which provides for the automatic assistance of an interpreter before a victim support service or a restorative justice service⁶².

⁶¹ Avis du Conseil d'Etat: projet de loi renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en "Code de procédure pénale" ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre États membres de l'Union européenne, Chambre des Députés 2014-15, n° 6758/01, p. 7.

⁶² Amendements gouvernementaux: projet de loi renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en "Code de procédure pénale" ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux

The same distinction can be found in art. 3-5 CCP which deals with the **right to translation**. Paragraph 3 of this article contains a list of documents, which have to be translated automatically if the victim does not understand the language of the proceedings. This list includes (1) the copy of the complaint, (2) the convocations, summonses and letters sent to the victim by the police and judicial authorities, (3) the warrant issued against the victim as a witness under art. 92 CCP, (4) where the victim is a civil party, the requisitions of the Public Prosecutor referred to in art. 127, §2 CCP, together with the order of the Pre-Trial Chamber of the competent court referred to in art. 127, §9 CCP and the judgment on appeal against that order, (5) any final decision on the criminal proceedings and (6) the decision regarding the discontinuance of the proceedings and the reasons hereto.

Upon reasoned request of the victim, a translation of all other documents that he /she is entitled to access is provided, under the condition that the translation thereof is essential for the exercise of his/her rights during the criminal proceedings and in order to ensure the fairness of the proceedings (art. 3-5, §4 CCP). It is, however, foreseen a possibility for the authorities to allow for an automatic translation of documents other than the ones mentioned in the list and thus to not make them subject to a request. A victim or a civil party can make use of the option discussed above to get the translation of certain documents of the file when exercising his/her right to receive a copy of the file under, respectively, art. 182-1 and art. 85 CCP (*cf. supra* art. 6). In practice, very few applications have been made⁶³.

This limited use may have several explanations. First of all, the law that introduced this option is still new, as a result of which its scope is not yet very well known. The victim is nevertheless informed thereof via the brochure, as the right to translation is one of the points mentioned in art. 4 of the Directive and art. 3-7, §1 CCP⁶⁴. When one takes a look at the brochure, however, it is

procédures de remise entre Etats membres de l'Union européenne, Chambre des Députés 2015-16, n° 6758/03, p. 17.

⁶³ Interview 1 and 2.

⁶⁴ Interview 1 and 2.

noteworthy that the explanation under this point is very limited and does not refer at all to the right to request for other translations.

Another explanation for the limited use may be the assistance of a lawyer. The latter sometimes does not encourage the victim to make such requests as the relevance thereof is not always significant to safeguard victims' rights. In addition, the victim is usually assisted by a lawyer who is proficient in the language of the case, which again makes translation less essential. Since the main aim of the victim (that has obtained the status of civil party) is to be awarded compensation for damages, there might be no urgent need to know all the details of the file. Despite the above, according to art. 3-5, §6 CCP, the criterion of relevance is, in fact, the aim of enabling the victim to participate actively in the criminal proceedings⁶⁵.

A final explanation can be found in the wish of the victim to see his/her case concluded as soon as possible. With this in mind, in practice the victim can be quite reluctant to slow down the proceedings by requesting translations⁶⁶.

Besides the foregoing, art. 3-5, §10 CCP, unlike the Directive, foresees the possibility for the victim to waive his/her right to the automatic translation of the essential documents. As can be read in the Explanatory Memorandum, the Luxemburg legislator was of the opinion that, as the Directive makes the exercise of the right to translation conditional on the request of the victim, *a fortiori*, a waiver must be possible⁶⁷.

⁶⁵ Interview 1 and 2.

⁶⁶ Interview 1 and 2.

⁶⁷ Projet de loi renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en "Code de procédure pénale" ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne, Chambre des Députés 2014-15, n° 6758/00, p. 38.

Both art. 3-4, §5 and art. 3-5, §5 CCP precisely set out which authority is responsible for deciding if a victim does not understand or speak the language and thus needs, respectively, the assistance of an interpreter or a translation. Regarding the right to interpretation, this will be the authority conducting the interview of the victim or before which the investigative action, examination or hearing in which the victim is entitled to participate or has been convened takes place. As regards the right to translation, the legislator has made a distinction between the documents automatically translated and the ones translated after request. The translation of the first category is always decided by the authority which is the author thereof, while for the second category it depends on the stage of the proceedings. In order of occurrence, this can be the Public Prosecutor, the investigating judge, the court of first instance, the Court of Appeal or the Court of Cassation.

Nothing, on the contrary, is arranged by law when it comes to the decision-making process. The legislator has not set out any guidelines to the authorities which the latter have to take into account while making their assessment. There are, however, few practical problems. This can be attributed to two main factors⁶⁸. Firstly, the Luxembourg authorities already have three languages of the case at their disposal: French, German and Luxembourgish. These three languages already cover a wide range of issues⁶⁹. Secondly, about half of Luxembourg's total population consists of people of foreign nationality, which ensures that the Luxembourg authorities are used to insufficient language proficiency and the need to appeal to an interpreter or translator. Because of the fact that Luxembourg is a multilingual country, the authorities have necessarily been made aware of these specific situations, which frequently occur. In practice, they know how to address them⁷⁰.

Finally, art. 7 of the Directive contains two additional provisions in its paragraphs 6 and 8, which are transposed into, respectively, art. 3-5, §7 and art. 3-4, §1 CCP. Regarding the possibility of an oral translation or oral summary, the Luxembourg legislator has made this conditional on the assistance by a lawyer. As

⁶⁸ Interview 1 and 2.

⁶⁹ Interview 1 and 2.

⁷⁰ Interview 1 and 2.

regards the condition that the use of interpretation and translation shall not unreasonably prolong the criminal proceedings, this is only foreseen in the Luxemburg article that deals with interpretation. Both provisions have never been invoked to date⁷¹.

In practice, interpretation and translation in favour of victims is not used as often when compared to the application thereof in favour of defendants⁷². As briefly mentioned when discussing art. 3 of the Directive, the provision of interpreters and translators is sufficient to meet the current needs of both victims and defendants⁷³. Concerning the quality of both services, it appears to have not been disputes to date. When it comes to translations, the victim can contest their quality under art. 3-5, §8 CCP. By using this option, the translation will be verified by, depending on the stage of the proceedings, the Public Prosecutor's Office, the investigating judge (under the supervision of the investigating courts) or the trial courts⁷⁴.

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.*

The right to access victim support services is not transposed into Luxemburg law as such, but can be derived from the transposition of art. 4 of the

⁷¹ Interview 1 and 2.

⁷² Interview 1 and 2.

⁷³ Interview 1 and 2.

⁷⁴ Interview 1 and 2.

Directive⁷⁵. Art. 3-7, §1, 1° CCP foresees that victims shall be informed of the type of support they can obtain and from whom.

The **SAV** is the national universal victim support service of Luxembourg. It forms part of the general *Central Social Assistance Service (Service Central d'Assistance Sociale: SCAS)*, which falls under the General Prosecutor's Office (*Parquet Général*) and thus under the judiciary⁷⁶. This means that, in Luxembourg, victim support is fully delivered by the State in the first instance.

The SAV generally offers a free and confidential service to all victims of a criminal offence, children as well as juveniles, and adults, but also to their relatives sharing their trauma, and to witnesses of a criminal offence⁷⁷. The lodging of a formal complaint is not necessary in order to obtain assistance, although the *Victim Support Service* may sometimes recommend victims do so⁷⁸.

The abovementioned service includes psychological and psychotherapeutic support, the provision of information on victim's rights (more particularly information on the law of victims of criminal offences, on the criminal proceedings and on the law of compensation for victims of violent crimes) and accompaniment during the criminal proceedings. The SAV also offers a therapy group for victims of domestic violence⁷⁹.

The consultations of the SAV are face-to-face and by appointment only⁸⁰. The latter requires that the victim (or relative or witness) has to contact the SAV in advance instead of going there spontaneously. Another disadvantage of the face-to-face support is that the person has to travel there, as the SAV is only located in the capital city of Luxembourg⁸¹. Although Luxembourg is a small country, it can take some persons who live in the north more than one hour to get there. In addition, the SAV is only available from Monday to Friday, between the

⁷⁵ Scherrer, A. and Kiendl Krišto, I. (n 50) p. 54.

⁷⁶ <http://www.justice.public.lu/fr/aides-informations/assistance-sociale/index.html>

⁷⁷ <http://www.justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-aide-victimes/index.html>

⁷⁸ Interview 3.

⁷⁹ <http://www.justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-aide-victimes/index.html>

⁸⁰ <http://www.justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-aide-victimes/index.html>

⁸¹ <http://www.justice.public.lu/fr/aides-informations/aide-victime/flyer-service-aide-aux-victimes-scas.pdf>

hours of 8h00 and 18h00⁸². In practice, when a victim just wants to receive some information on his/her rights or has some practical questions, the response can also be given by e-mail or phone⁸³.

The service of the SAV is carried out by trained and experienced psychologists. It is available as soon as the victim contacts the service and can continue for an appropriate time after the criminal proceedings, whenever required by the victim. Particularly in view of the introduction of new group sessions, the service generally would benefit from more space and staff⁸⁴.

Victims not yet assisted by a lawyer that would like to receive legal information and support from the competent services, can also turn to the **Reception and Legal Information Service** (*Service d'Accueil et d'Information Juridique*), a national general information service which helps individuals with various legal difficulties in different fields of law⁸⁵. The service might refer the victims to other services (the hospital or the legal service of the *barreau*). The Service has two offices in two locations, namely Luxembourg City and Diekirch, where victims can go for a free and confidential interview with a professional of the Public Prosecutor's Office. At the premises in Luxembourg, the service is available from Monday to Friday, from 8h30 to 12h00 and from 13h00 to 16h30, without any appointment, except for Monday morning. The premises in Diekirch are only open on Wednesday, from 9h00 to 11h30 and from 14h30 to 17h00, again without any appointment. The same remark as above can be made here as well: these are working hours for most people, which does not enhance the availability and accessibility of this service, despite the fact that it operates from two locations where victims can attend without an appointment. It is to be noted that the brochure which is given to victims (*cf. supra* art. 4) also mentions a third location of this service, namely in Esch-sur-Alzette with the same opening hours.

Victims who want to receive specific information on their rights have an additional possibility: they can contact the legal information service provided by

⁸² <http://www.justice.public.lu/fr/aides-informations/aide-victime/flyer-service-aide-aux-victimes-scas.pdf>

⁸³ Interview 3.

⁸⁴ Interview 3.

⁸⁵ <http://www.justice.public.lu/fr/aides-informations/accueil-info-juridique/index.html>

lawyers of the local Bar Association every Saturday morning, from 8h30 to 11h30, in Luxembourg City⁸⁶.

In addition, women can contact the legal information service **Women's rights** (*Droits de la femme*) for general legal information on women-specific issues, including, inter alia, domestic violence and sexual assault⁸⁷. The latter is again located in Luxembourg City and is available every Wednesday morning, from 8h30 to 12h00, for free and confidential interviews with (mostly female) magistrates, without any appointment having to be made.

Besides the above services provided by the State, a significant number of other support services exist in Luxembourg. In this case, these are organisations supporting only certain victims. One of them, for example, is **Women in distress** (*Femmes en détresse*), a non-profit organization funded via agreements with the Ministry of Equal Opportunities; the Ministry of Labour, Employment and Social & Solidarity-Based Economy and the Ministry of National Education, Childhood and Youth⁸⁸. This support service is committed to protecting women, their children and young girls against violence by providing them information and psychological advice, but also homes where they can temporarily reside. In general, this support service helps them to maintain their independence.

Women in distress offers a wide range of services, depending on what the victim needs and is looking for. If a woman became the victim of any kind of violence committed by her partner, she can also contact **Live Without Violence** (*Vivre Sans Violence: ViSaVi*) to receive information or advice on various matters (psychosocial support, information on legal or administrative issues, etc.)⁸⁹. A consultation can take place by telephone or face-to-face after an appointment has been made. The latter always takes place at the premises of *Live Without Violence*, which are located in Luxembourg City. The service is only available during its opening hours, namely from Monday to Friday, between the hours of 9h00 and 17h00. More or less the same service is offered by **Oxygen** (*Oxygène*) for young girls in a crisis situation or victim of family violence⁹⁰. A

⁸⁶ <http://www.justice.public.lu/fr/aides-informations/accueil-info-juridique/index.html>

⁸⁷ <http://www.justice.public.lu/fr/aides-informations/droits-femme/index.html>

⁸⁸ <https://fed.lu/wp/>

⁸⁹ <https://fed.lu/wp/services/visavi/>

⁹⁰ <https://fed.lu/wp/services/oxygene/>

consultation can only take place face-to-face after an appointment has been made, again in Luxembourg City.

Besides the abovementioned support available, *Women in distress* provides some other services too. There is, for example, the *Assistance Service for Victims of Domestic Violence (Service d'Assistance aux Victimes de Violence Domestique: SAVVD)*, which informs, assists and supports victims of domestic violence from start to finish⁹¹. By targeting the specific protection measures needed, this assistance service, together with the victim, prepares an individual protection plan. The protection measures referred to are set out by the law of 8 September 2003 on domestic violence and include, inter alia, an expulsion order and a ban on re-entry which apply to the offender (*cf. infra* art. 18)⁹². A similar service is available appropriate to **children and teenagers between the age of 3 and 21**, called the *Psychological Service for Children and Adolescents Victims of Domestic Violence (Service Psychologique pour Enfants et Adolescent(e)s Victimes de Violence Domestique: S-PSYEA)*⁹³. Women who would like to get in touch with their companions to share some thoughts, can turn to *Coupling (Kopplabunz)*, a special meeting centre⁹⁴. Finally, *Women in distress* has a very specific service for **all victims** (men, women and minors) **of human trafficking**. The *Assistance Service for Victims of Human Trafficking (Service d'Assistance aux Victimes de la Traite des Êtres Humains: SAVTEH)* offers not only information on their rights, the judicial procedure and legal action, but also on benefits available to them (shelters, linguistic, medical and financial assistance, etc.)⁹⁵. It accompanies victims throughout criminal proceedings and gives them psychological support. Where requested by the victim, this assistance service contacts NGOs located in the country of origin to establish a return⁹⁶.

⁹¹ <https://fed.lu/wp/services/savvd/>

⁹² Loi du 8 septembre 2003 sur la violence domestique portant modification 1) de la loi du 31 mai 1999 sur la police et l'inspection générale de la police; 2) du code pénal; 3) du code d'instruction criminelle; 4) du nouveau code de procédure civile, *JO* 3 octobre 2003, 2.982, modifiée par la loi du 30 juillet 2013 portant modification 1. de la loi du 8 septembre 2003 sur la violence domestique; 2. de la loi modifiée du 31 mai 1999 sur la Police et l'Inspection générale de la Police; 3. du Code pénal; 4. du Nouveau Code de procédure civile, *Mém. A* 148 7 août 2013, 2.900.

⁹³ <https://fed.lu/wp/services/s-psyca/>

⁹⁴ <https://fed.lu/wp/services/kopplabunz/>

⁹⁵ <https://fed.lu/wp/services/savteh/>

⁹⁶ The aforementioned services of the assistance service are based on the law of 8 May 2009 on the assistance, protection and security of victims of human trafficking, which furthermore includes specific protection measures (*cf. infra* art. 18). Loi du 8 mai 2009 sur l'assistance, la

Regarding the visibility of and the **referral** to the aforementioned victim support services, the legislator, entirely consistent with art. 8 of the Directive, added paragraph 2 to art. 9-2 CCP, which states that the police has to inform each victim of the possibility to receive free help and assistance by victim support services⁹⁷. In practice, the victim is informed of this possibility by means of the brochure given to them by the judicial police (*cf. supra* art. 4). Besides the indication of the victim's right to contact a victim support service, the brochure also lists the most important services in this regard, both general support services offered by the state and specialist support services.

When it comes to victims of human trafficking, art. 6 of the abovementioned law of 8 May 2009 stipulates that the police authorities have to inform a support service as mentioned in the law (for example: the *Assistance Service for Victims of Human Trafficking*) as soon as there are indications that a person is a victim of this crime. In this way, the support service can contact the victim⁹⁸. A similar provision is integrated in the law of 8 September 2003. According to art. 2 of this law, the day an expulsion order enters into force, the police authorities must notify a support service as mentioned in the law thereof (for example: the *Assistance Service for Victims of Domestic Violence*). Moreover, in cases of domestic violence, when the suspect is remanded in custody, the Public Prosecutor's Office will notify the latter support service as soon as the suspect is provisionally released. This support service will, in turn, inform the victim (*cf. supra* art. 6).

In addition, the website of the Luxembourg police authorities lists various organizations that offer help and assistance by linking them to their target group⁹⁹. The latter website also refers to [resolux.lu](http://www.resolux.lu), a website where one can find a collection of all the existing support services in Luxembourg¹⁰⁰. The website makes it easy to search through the services by providing search criteria such as the area or the category of help one is looking for. Lastly, the different services

protection et la sécurité des victimes de la traite des êtres humains et modifiant le Nouveau Code de procédure civile, *JO* 9 juin 2009, 1.778.

⁹⁷ As already mentioned above, a similar provision can be found in the Luxembourg transposition of art. 4 of the Directive, namely art. 3-7, §1, 1^o CCP.

⁹⁸ Interview 1.

⁹⁹ <https://police.public.lu/fr/aide-victimes/liste-organisation.html>

¹⁰⁰ <http://www.resolux.lu/accueil/>

provided by the state can all be found on the website of the Luxembourg judiciary¹⁰¹. Finally, in practice, there is smooth cooperation and coordination between the police authorities and the *Victim Support Service*¹⁰².

In general, there is a very strong focus on **awareness raising**, not only among the victims themselves, but also among the actors with whom the victims come into contact during criminal proceedings¹⁰³. For example, the SAV visits schools to provide more information about its functioning. Lawyers must furthermore complete an obligatory internship with the various services of the *Central Social Assistance Service* before joining the Bar.

All of the above shows that there is little chance that a victim will remain unaware of the existence of the different Luxembourg support services. After all, there are several channels through which the victim can be informed. Despite this positive aspect, it is regrettable that the police authorities, usually the victim's first point of contact, only notify the latter of the various support services by means of a standardized brochure. It will depend on the goodwill of the police officer in question to provide the victim with more information than just what is written on paper and actually put the victim in touch with the adequate support service. Of course, the request for assistance always depends on the will of the victim, but in some cases the need to contact the support service themselves can be a barrier. For victims who did not contact the SAV, but who, according to the assessment of a magistrate of the Public Prosecutor's Office, need assistance of this support service, the magistrate has the possibility of applying directly to the latter so that it proposes its services to the victim¹⁰⁴. Lastly, the foregoing points out that the SAV does not have to operate as an intermediate body. The victim may also seek immediate assistance from a specialist support service without the intervention of the police or prosecutors¹⁰⁵. On the other hand, the SAV might refer the victim to one of the existing support services providing support only to victims of certain crimes if it considers that its assistance is more suitable¹⁰⁶.

¹⁰¹ <http://www.justice.public.lu/fr/aides-informations/index.html>

¹⁰² Interview 3.

¹⁰³ Interview 3.

¹⁰⁴ Interview 1.

¹⁰⁵ Interview 3 and 4.

¹⁰⁶ Interview 3 and 4.

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**.*

Regarding the specific services listed in art. 9 of the Directive, once again, one must conclude that there is no specific provision under the CCP providing an exhaustive transposition in Luxembourg law¹⁰⁷. As already mentioned in the description accompanying art. 4 of the Directive, the Luxembourg legislator has added an extra point to the list of the latter article. Art. 3-7, §1, 12° CCP states that the victim has to be informed of the right to an individual assessment before the SAV in order to identify his/her specific protection needs to ensure that a secondary victimisation is avoided.

However, the aforementioned service is not indicated on the general website of the judiciary of Luxembourg¹⁰⁸. According to this website, a victim can turn to the SAV for information and advice on her rights, more particularly on the law of victims of criminal offences, on the judicial procedure, but also on the rules to claim damages for victims of violent crimes. Based on the judiciary's website, the Victim SAV fulfils two out of five services mentioned in art. 9, §1 of the Directive, namely assistance relating to victim's rights, psychological and psychotherapeutic support and a specific therapy group for victims of domestic violence.

¹⁰⁷ Scherrer, A. and Kiendl Krišto, I. (n 50) P. 54. One small exception can be found for the service mentioned in point e of paragraph 1 of article 9 of the Directive, which covers the advice relating to the risk and prevention of secondary and repeat victimisation.

¹⁰⁸ <http://www.justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-aide-victimes/index.html>

In practice, however, all five services are provided by the latter support service. Concerning point b) of this article, it has already been stated above that the *Victim Support Service* can refer the victim to a specialist support service (*cf. supra* art. 8). Although not mentioned on the above website, it may happen in practice that the support service also gives advice relating to financial and practical issues (point d)¹⁰⁹. Lastly, in line with art. 9, §1, point e of the Directive and art. 3-7, §1, 12° CCP, the *Victim Support Service* may advise the victim on the risk and prevention of secondary and repeat victimisation (*cf. infra* art. 22). All of the above services are always available to any victim who needs them, regardless of the severity of the crime. The focus of the *Victim Support Service* is therefore not on the crime committed, but on the victim¹¹⁰.

When it comes to the advice relating to the risk and prevention of secondary and repeated victimisation, one has already seen above the *Assistance Service for Victims of Domestic Violence* and the *Psychological Service for Children and Adolescents Victims of Domestic Violence* (*cf. supra* art. 8) has been already described above. These two services help victims of domestic violence by identifying the protection measures necessary to put an end to the violence they have to endure (*cf. infra* art. 18). Moreover, the *Assistance Service for Victims of Human Trafficking* (*cf. supra* art. 8) accompanies victims of human trafficking in their efforts towards physical, psychological and social recovery. This includes a collaboration with the police in order to ensure an effective and appropriate protection of the victim. This assistance service should therefore advise the victim on the available protection measures (*cf. infra* art. 18).

As already mentioned above, other specialist victim support services exist in Luxembourg. *Women in distress* offers a lot of different services, addressed in general to women, their children and young girls who became a victim of any kind of violence. Each individually, the different services are targeting a more specific group to be able to adapt, as much as possible, the support to the needs of the victim. Within *Women in distress*, one has the *Women's shelter (Fraenhaus)*¹¹¹ and the *Girls' shelter (Meederchershaus)*¹¹², two shelters especially for female

¹⁰⁹ Interview 3 and 4.

¹¹⁰ Interview 3 and 4.

¹¹¹ <https://fed.lu/wp/services/fraenhaus/>

¹¹² <https://fed.lu/wp/services/meederchershaus/>

victims of domestic violence (cf. *supra* art. 8). *Live Without Violence* and *Oxygen* also arrange the admission to these shelters. The safety of both accommodations is guaranteed by the covert address. Moreover, there is a special house, the *Children's shelter (Kannerhaus)*, where children of victims between 0 and 12 years old can stay during the day¹¹³.

When it comes to the targeted and integrated support for victims with specific needs, various services of *Women in distress* make this possible for one of the categories specifically mentioned in art. 9 of the Directive itself. *Live Without Violence*, *Oxygen*, the *Assistance Service for Victims of Domestic Violence* and the *Psychological Service for Children and Adolescents Victims of Domestic Violence* are specifically focusing their work on women and young girls who became a victim of violence occurred within close relationship. The *Assistance Service for Victims of Human Trafficking*, furthermore, offers targeted and integrated support to victims of human trafficking.

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**.*

As for the Constitutional background of victims' rights, no specific provision of the Luxembourg Constitution confers to the victim a fully-fledged "right to be heard" but the case law recognized it as part of the European Convention of Human Rights (ECHR) protection: the right to be heard also encompasses evidence and arguments put forward by the victim¹¹⁴. In order to better understand the victim's right to be heard in the Luxembourg justice system, it is worth presenting a brief description of the main actors, phases and powers related to evidence gathering.

¹¹³ <https://fed.lu/wp/services/kannerhaus/>

¹¹⁴ CSJ corr. 23 January 2007, No. 51/07 V.

The Luxembourg criminal justice system is rooted in the inquisitorial tradition. As a general principle, the public prosecutor has exclusive competence to start and handle prosecution. He enjoys discretion over the decision to prosecute a criminal offence (*opportunité des poursuites*). Criminal investigations are conducted, however, by police under the lead of either the public prosecutor (*enquête*) or the investigative judge (*instruction*). In the first case, the public prosecutor leads preliminary enquiries (*enquête*). In the second case, the investigative judge (*juge d'instruction*) is an independent judicial authority in charge of conducting judicial investigations which are compulsory in case of felonies (*crimes*) and optional in the case of misdemeanours (*délits*). As a general rule, the investigative judge can only be referred to by a request (*réquisitoire*) of the public prosecutor. The opening of a judicial investigation can however be forced under certain conditions by the civil party (*partie civile par voie d'action*).

With regard to the choice of the appropriate investigative measures (among those provided by law in each case) the investigative judge is fully autonomous (*appréciation souveraine*): he/she has the power to order any investigative measure necessary for establish the truth. He/she is under the legal duty to investigate even-handedly (*à charge et à décharge*) in regard to the prosecution and the defense.

Within this framework, the victim that intervenes as a civil party has the right to ask for evidence to be admitted before the investigative judge. His/Her request should list the witnesses the victim wants to be heard and the reasons why they should be admitted (art. 69 CCP). Their relevance is appreciated by the investigative judge¹¹⁵. As a consequence, the victim might request to be heard only when he/she participates as a *partie civile*, otherwise his/her deposition is limited to the cases in which it is requested by the investigative judge or by the other private parties.

The victim can be heard as a witness in different phases of Luxembourg criminal proceedings. First, the victim can be heard during the investigation by the prosecutor or by the police officers in charge of the case. If the questioning

¹¹⁵ Article 69, § 4, CCP.

occurs before the opening of the case, the police officers can *ex officio* ask for the victim's contribution (art. 46 CCP). When an investigation is formally opened, the prosecutor is in charge but he/she might delegate the collection of evidence to the police. When the victim has been questioned, the police officers draft a report including all the victims' statements.

When the victim is a **minor** or, exceptionally, an adult, the deposition can be audio or video recorded upon authorization of the prosecutor and only if the adult or the legal representative of the minor consents (art. 48-1, § 1 and 2 CCP).

Furthermore, the deposition of the victim can intervene before the investigative judge (*juge d'instruction*). In this case, the victim receives a *sub poena* from the judge and his/her presence is mandatory, under threat of a penalty (art. 77 CCP). Ordinary rules on testimony apply: the victim shall tell the truth under oath in front of the investigative judge without the presence of the defence lawyer (art. 70 and 71 CCP). If the witness has been requested via a formal complaint of another victim, he/she can refuse to talk but he/she can be questioned as a defendant if there are sufficient elements to deduce his potential guilt.

Luxembourg CCP grants the victim the right to be heard also in **negotiated justice proceedings** (*"jugement sur accord"*), not to be confused with the restorative justice models (discussed under section 12). Pursuant to articles 563 to 578 CCP, for offences punished by a maximum penalty of less than 5 years of imprisonment, the Prosecutor and the defendant have the possibility to negotiate and agree on a penalty at any stage of the criminal proceedings before the trial court rules on the merits of the case¹¹⁶. At this stage of the proceedings, the victims, irrespective of whether he/she holds the status of civil party, is informed about the date and place of the hearing and summoned to appear¹¹⁷, in order to enable him/her to exercise the right to be heard. Indeed, art. 373 §3 CCP requires the trial court to hear the observations and statements of all the parties summoned to appear. In any event, with respect to the claims for damages that

¹¹⁶ Such an agreement also contain a decision on damage claims consisting in the payment of amounts on which the accused agrees.¹¹⁶ However, such a decision, as well as the grounds for conviction and penalties still have to be validated the competent trial court (*chambre correctionnelle di Tribunal d'arrondissement*).

¹¹⁷ Art. 570 CCP

the agreement validated by the judge does not satisfy, the victim still has the possibility to pursue a civil action before the competent civil courts¹¹⁸.

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.*

Within 18 months from the formal *receipt of the complaint*, the prosecutor in charge of the case informs the victim about the action he/she intends to undertake. In case the prosecutor decides not to prosecute, the decision is communicated *ex officio* to the victim via formal notification (art. 23, § 4 CCP). The communication includes the decision and the reasoning sustaining it (art. 4, § 3, al. 2 and art. 23, § 4 CCP). If the case is dropped, the notification includes information on the modalities and formalities that would allow the victim to force prosecution.

First, the victim has the possibility to challenge the decision whereby the public prosecutor decides not to prosecute (CCP, Article 23(5)). The appeal is filed with the General Public Prosecutor. As a result on this non-judicial proceedings, the latter may order the public prosecutor to prosecute the case.

Second, the victim of minor offences that are punished by an imprisonment term not exceeding 5 years may directly summon the suspect to appear before the competent trial court (*citation directe*)¹¹⁹ and, as a consequence thereof, initiate criminal proceedings even before any enquiry or judicial investigation have been carried out. This has a twofold procedural consequence.

¹¹⁸ Art. 574 CCC

¹¹⁹ Art. 145 and 182 CCP

On the one hand, it is for the civil party who summoned the suspect (*citant direct*) to adduce evidence that the alleged offence has been committed. On the other hand, the “*citation directe*” proceeding constitutes a limitation to the opportunity principle¹²⁰, since it automatically starts prosecution. Nevertheless, the public prosecutor decides freely on whether to support the claims of the civil party or, on the contrary, request the trial court acquit or apply a lower sentence.

Third, in case of crimes and misdemeanours, the victim may address the investigative judge requesting him/her to open a judicial investigation (*plainte avec constitution de partie civile*)¹²¹. The investigative judge shall immediately ask the public prosecutor to issue a decision requesting the investigative judge to open an investigation (*réquisitoire*).

The public prosecutor may refuse to issue it only if the facts invoked by the alleged victim do not constitute an offence or if legal prosecution is not possible, e.g. time-barred. (CCP, Article 57).

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

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

Through law of 7 March 2017, Luxembourg added a new provision to the CCP stating the rights of the victim in the context of restorative justice. According to Article 8-1 CCP, if the offender admits to have committed the offence, restorative justice measures might be proposed to the victim and to the offender

¹²⁰ As oppose to the legality principle imposing a legal obligation to prosecute.

¹²¹ Art. 28 CCP

throughout the entire criminal proceedings, including during the execution of the penalty.

The definition of “restorative justice measure” is very broad: it includes every mechanism of conflict resolution other than the traditional criminal proceedings. In that case, both the victim and the offender have the right to full information about the measure if they accept to participate. Confidentiality is usually the rule, exception made when disclosure to the prosecutor might help the prevention or repression of crimes. The person in charge should be independent and qualified for this role.

The main mechanism of restorative justice in Luxembourg is **mediation in criminal matters**.

The legal basis of mediation (art. 24, § 5 CCP) establishes the possibility for the Prosecutor to opt for a mediation procedure before deciding whether to prosecute. This decision should be based on the following criteria: i) the concrete possibility of reparation of damages for the victim; ii) the concrete possibility to stop the negative effects of the offence; iii) the concrete possibility to support the resocialization of the author. The Prosecutor can appoint a mediator that should be listed among the professionals authorized to exercise this function as established by a specific Regulation of 1999¹²². In particular, the mediator should be impartial from the parties, independent from the judicial authorities and with a specific education in the field.

In order to protect both the victim and the defendant, the mediator is bound by professional secrecy. He/she should start the mediation within three months from the official appointment and receives the case file transmitted by the Prosecutor. Both parties are summoned and informed of their right to a lawyer. They can present their arguments during the hearing and they might accept or refuse the solution proposed by the mediator. If they accept and respect the terms of the agreement, the prosecutor will drop the case. If successful, this procedure will lead to the reparation of damages suffered by the victim or to the

¹²² Règlement grand-ducal du 31 mai 1999 fixant les critères et la procédure d'agrément aux fonctions de médiateur, la procédure de médiation pénale et le mode de rémunération des médiateurs, Mém. A 67 du 11 juin 1999.

end of the persisting problems that the victim is suffering from and that have been caused by the offence (or to a measure that will contribute to the social rehabilitation of the author of the offence).

However, mediation is not possible in cases of domestic violence and access to mediation does not prevent prosecution to take place when the requirements of the mediation are not respected.

Mediation services are provided by the *Centre de Médiation*¹²³. According to the statistics, the mediation intervenes in 70-80 cases per year¹²⁴.

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.*

Luxemburg law confers victims the right to access legal aid¹²⁵ according to the same conditions as the defendant¹²⁶. Legal aid may be granted to either the plaintiff or the defendant in contentious or non-contentious cases, whether handled in or out of court. Persons with insufficient means are eligible for legal aid to defend their interests, provided they are: Luxembourg nationals, or aliens authorised to take up residence in Luxembourg, or nationals of a Member State of the European Union, or aliens placed on the same footing as Luxembourg nationals for legal aid purposes by virtue of an international agreement.

¹²³ <http://www.mediation.lu/>

¹²⁴ As stated by the last available “Rapport d’activités” of the Mediation center of 2015, http://www.mediation.lu/wp-content/uploads/2016/08/activitesCM2014_et_2015_final.pdf.

¹²⁵ In Luxembourg, the national application form for legal aid can be obtained from the Central Social Assistance Service at the following website <https://www.barreau.lu/le-barreau/assistance-judiciaire/formulaire-d-assistance-judiciaire>.

¹²⁶ The complex discipline is provided by several laws : 1. Loi du 10 août 1991 sur la profession d’avocat, articles 37 et 37-1 2. Règlement grand-ducal du 18 septembre 1995 concernant l’assistance judiciaire Mém. A81 du 3 octobre 1995, tel que modifié par le règlement grand-ducal du 29 octobre 2004 portant modification du règlement grand-ducal du 18 septembre 1995 concernant l’assistance judiciaire Mém. A 188 de 2004

In order to be eligible for legal aid, the victim's revenues should not exceed a certain amount that is set up according to the national minimum wage¹²⁷. The assessment is based on the total gross income and capital of the applicant and any other members of the household (roughly 1890 euros per month per adult¹²⁸). If the victim is eligible for legal aid, the following costs of a trial can be paid through legal aid: stamp and registration duty; costs incurred by the clerk's office; fees and costs charged by bailiffs experts' costs and fees; translators' and interpreters' fees; allowances to witnesses; travel expenses; publication costs and, of course, lawyers' fees and emoluments.

The decision whether or not to grant legal aid rests with the President of the Bar in the applicant's district of residence. In the case of non-residents, it is the President of the Luxembourg Bar Council who decides. The President of the Bar in the applicant's district of residence appoints the lawyer freely chosen by the applicant. Where no lawyer has been chosen by the applicant or if the chairman considers the choice inappropriate, the counsel is designated by the latter. Except for reasons of impediment or conflicting interests, the counsel may not refuse the appointment. In emergencies, the President of the Bar Council or his/her deputy, can grant legal aid on a temporary basis without further formalities.

Applicants may appeal against the President's decision to reject or withdraw legal aid to the Disciplinary and Administrative Council, whose decision is final. Appeals must be lodged with the Chairman of the Disciplinary and Administrative Council by registered mail within ten days of receiving notice of rejection or withdrawal. The Council may invite applicants to attend a hearing to explain the reasons for their appeal.

ARTICLE 14 – Right to reimbursement of expenses

¹²⁷ I.e. 2.048,54 Euros.

¹²⁸ See the barometers at:
https://www.fns.lu/fileadmin/file/fns/baremes_et_repartition/2018.08.01_bareme.pdf#pageMode=bookmarks

*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.*

As one can read in the Guidance document that comes with the Directive¹²⁹, the right to reimbursement of expenses shall be open to victims who actively participate in the proceedings, depending on their role in the criminal justice system¹³⁰. By using this expression, the European legislator wanted to expand the scope of this right to victims other than parties to the proceedings and witnesses. However, due to the Luxemburg national system, a victim can only actively participate in the proceedings when he/she obtained the status of civil party, and thus becomes a real party to the proceedings (*cf. supra* art. 2).

The above civil party can basically be held to bear three types of expenses related to the proceedings: the legal or court costs (*les frais, les dépens*), the legal fees (*les honoraires d'avocat*) and other, more practical, expenses.

When it comes to the **court costs**, the principle 'the loser pays it all' applies (art. 62, art. 162 and art. 194 CCP). In cases where no conviction is recorded and the civil party took the initiative towards the opening of the proceedings, he/she will be held liable to pay all the court costs (art. 62, §1 CCP). If the civil party joined the criminal proceedings of the Public Prosecutor's Office, he/she will only be held to bear the costs necessary for their intervention (art. 62, §1 CCP). The court may, however, take into account the circumstances and the financial situation of the civil party, so as to reduce or cancel the court costs (art. 62, §2 CCP). The court costs shall not include the costs incurred for interpretation and translation, as these are met by the State. However, these costs shall nevertheless be borne by the civil party if the latter has lied about the fact that

¹²⁹ European Commission (December 2013), *DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, p. 35, http://victimsupport.eu/activeapp/wp-content/uploads/2014/04/EC-Guidance-Documents_Feb201411.pdf

¹³⁰ *Ibid.*

he/she is not in a position to understand or speak the language of the case (art. 194 CCP).

Contrary to the court costs, each party is in principle held to bear their own **legal fees**, since these depend on several subjective factors¹³¹. An exception to this rule has, however, been made by the system of the procedural indemnity (*l'indemnité de procédure*), set out in art. 162-1 and art. 194 CCP. Under this system, based on reasonableness, the successful civil party can obtain reimbursement from the defendant of his/her legal fees up to the amount determined by the court. This amount generally has a ceiling of 1.000 to 2.000 euros¹³². The abovementioned procedural indemnity was acquired from the Code of Civil Procedure, in which it can be found in art. 240¹³³. Victims are informed of this possibility via the brochure delivered by police officers, which considers legal fees to be expenses incurred in connection with their participation in the criminal proceedings under art. 4, §1(k) of the Directive and art. 3-7, §1, 11° CCP (*cf. supra* art. 4). Finally, in the context of legal fees, reference can be made to the legal aid system discussed above, under which it will be the State and not the civil party bearing the legal fees (*cf. supra* art. 13).

Art. 14 of the Directive only relates instead to the **third group of expenses**, namely the additional, more **practical** ones. As follows from the Guidance document and recital 47 of the Directive, these expenses concern in particular travel costs and loss of earnings and should be reimbursed by the State only where the victim is obliged or requested by the authorities to be present and actively participate in the criminal proceedings. This article is not transposed in the Luxembourg legislation as such. It is true, however, that the travel costs of the civil party are considered as court costs in the case his/her presence before the court has been ordered and it is thus mandatory¹³⁴. In addition, the above-mentioned brochure mentions the possibility for victims to have their travel and accommodation costs considered as court costs in the form of witness fees¹³⁵. Two remarks should, however, be made to the above. Firstly, the aforementioned

¹³¹ Menétrey, S., preface by Hoscheit, T. (2016). *Procédure civile luxembourgeoise: Approche comparative*. Brussels: Larcier. P. 458-459.

¹³² Interview 1.

¹³³ Interview 1.

¹³⁴ Vogel, G. (2010). *Encyclopédie judiciaire de droit Luxembourgeois*. Brussels: Larcier. P. 172.

¹³⁵ Menétrey (n 132) p. 458 and Vogel (n 135) 172.

options are limited to travel and accommodation costs and do not allow for the payment of other costs like loss of earnings, as mentioned in the Directive. Second and more importantly, these costs are considered as court costs, which means that the losing party has to pay for it. In other words, it is not the State, as prescribed by the Directive, which shall bear the expenses. Even more, the victim will eventually be responsible for his/her expenses in case he/she loses the proceedings, which would appear to be wholly contrary to the intention expressed in the Directive. Nonetheless, the system of reimbursement is not considered prohibitive or discouraging regarding the victim's participation in the proceedings.

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.*

The restitution of property was already regulated by Luxemburg law before the Directive came into force, more specifically by art. 68 CCP. In addition, it is also mentioned in art. 66-1, art. 128 and art. 194-1 to 194-7 CCP for the different stages of the proceedings. According to paragraph 1 of the general art. 68 CCP, the suspect, the defendant, the civil party or any other person who claims to be entitled to a seized object may demand restitution. It follows that a victim who did not become a civil party is considered to be 'any other person' when demanding restitution. The article further lists the competent court having jurisdiction to review the restitution claim¹³⁶. Finally, it stipulates the situations where restitution will not be provided (paragraph 6). More specifically, there is no need for restitution where this is likely to hinder the uncovering of the truth or the safeguarding of the rights of the parties or when it presents a danger to persons or property. It can be refused when confiscation of the object is provided by law.

¹³⁶ Art. 68 (2) CCP.

Regarding the average time needed for the return of property, it is difficult to assess this, as it depends on multiple factors. In the situation where it is clear who the owner of the goods is, the return will, where appropriate, already take place during the inquiry. For example, in the event of theft followed by the immediate arrest of the offender in possession of the stolen property. It can take, however, a little longer when it is not clear to which victim the goods belong. For example, in the event of the seizure of funds belonging to the offender of fraud committed to the detriment of numerous victims. Return will also be quicker in the case of identifiable tangible goods belonging to the victim than in the case of substitute goods which have replaced the victim's original goods (confiscation of the equivalent)¹³⁷.

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.*

Under Luxemburg law, victims have various options at their disposal to seek compensation.

First of all, the victim is able opt to bring **parallel civil proceedings** before the competent civil court. This option has however a procedural disadvantage for the victim. Indeed, where the civil action concerns the same facts that are subject to criminal proceedings, the civil judge must stay proceedings until the criminal court has rendered the judgement on the case (*le penal tient le civil en l'état*).

Consequently, the victim may prefer to become a party to the **criminal proceedings** in order to seek simultaneous examination of the civil claim and criminal prosecution before the criminal courts (art. 3, §1 CCP). This option gives

¹³⁷ Interview 1.

also the victim the advantage of being able to rely on the evidence of the Public Prosecutor's Office and/or the investigating judge. In addition, criminal proceedings are usually concluded more quickly than civil proceedings, in particular because the civil judge has to wait for the judgment of the criminal judge (*cf. infra* art. 16). The choice of the criminal courts goes hand in hand with criminal indemnification proceedings (*constitution de partie civile*). This means that the victim receives the formal status of civil party, which is one important requirement linked to this option (*cf. supra* art. 2). The decision in the civil proceedings is, in principle, taken at the same time as the decision in the criminal proceedings. Exceptionally, the decision in the civil proceedings will follow the one in the criminal proceedings. This is the case where the first-mentioned decision requires investigative measures, including medical exams for the purpose of assessing the civil wrong¹³⁸.

If, within the aforementioned option, the initiative to start the proceedings comes from the victim, which is possible under art. 1, §2 CCP, there are again two options¹³⁹, which have been already discussed above. On the one hand, the victim can lodge a complaint together with criminal indemnification proceedings before the investigating judge (art. 28, §1 CCP and art. 56 et seq. CCP). On the other hand, the victim can initiate the criminal proceedings through private prosecution (*par voie de citation directe*), thus avoiding any inquiry or judicial investigation (art. 145 and art. 182 CCP).

In cases where the Public Prosecutor's Office has already taken the initiative to start criminal proceedings, the victim can intervene and join the proceedings as *partie civile*¹⁴⁰. This can happen at any stage of the proceedings (art. 58, §1 CCP)¹⁴¹.

As for the substance of the decision on compensation, it is worth noting that the judgement of the criminal court establishing whether the accused is guilty or innocent has an impact on the decision concerning civil claims (*autorité de la chose jugée du penal sur le civil*). Indeed, if the accused is acquitted as a

¹³⁸ Interview 1 and 2.

¹³⁹ Vogel (n 2)19 and 28.

¹⁴⁰ Vogel (n 2)19-20.

¹⁴¹ Vogel (n 2) p. 28.

result of the criminal proceedings, the competent court cannot hold his/her civil liability for the same facts. An exception to this rule was introduced in July 2017: according to art. 3-6 CCP, the Luxembourg courts can grant civil damages even if the person accused of manslaughter or unintentional bodily harm is acquitted.

If the victim suffered personal injury of a certain severity caused by an intentional offence, he/she can submit an application to receive compensation from the Ministry of Justice¹⁴². This **compensation of the State** replaces or complements the offender's compensation and therefore cannot be claimed by victims that already obtained full and adequate compensation. The victim can nevertheless go to court and try to obtain additional compensation from the offender if his/her damage is not entirely covered by the State's compensation. This can be the case, for example, if the actual damage exceeds the ceiling of 63.000 euros (amount set for the year 2018¹⁴³). Furthermore, the State has the possibility to subrogate in the victim's rights to seek recovery by the offender of the paid compensation.

In general, it is difficult to assess the average time needed for a decision on compensation, as it also depends on the complexity of the case at stake¹⁴⁴.

ARTICLE 17 – Rights of victims resident in another Member State

*Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the **victim is a resident of a Member State other than that where the criminal offence was committed**. The authorities of the Member State where the criminal offence was committed shall be in a position:*
*a) to take a **statement immediately after the complaint is made** to the competent authority; b) to have **recourse to video conferencing and telephone conference calls** for the purpose of hearing victims who are resident abroad.*

¹⁴² Loi modifiée du 12 mars 1984 relative à l'indemnisation de certaines victimes de dommages corporels résultant d'une infraction et à la répression de l'insolvabilité frauduleuse, *Mém.* A 25 du 22 mars 1984, 336.

¹⁴³ Règlement grand-ducal du 15 janvier 2018 fixant pour l'année 2018 le montant maximum des indemnités qui peuvent être allouées à certaines victimes de dommages corporels résultant d'une infraction, *Mém.* A 65 du 18 janvier 2018, 1.

¹⁴⁴ Interview 1.

*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*

The Luxembourg system recognizes the full set of rights to victims of crime, regardless of their nationality. Foreign victims (citizen of a Member State or of a third country) might enjoy all the rights conferred to the victim that is a Luxembourg citizen. According to Article 3-7 n.7 CCP, victims that are resident abroad (in another member State or in a third country), are informed at the moment of the complaint or orally by the police about the modalities to exercise their rights in the Luxembourg criminal proceedings. Unfortunately, it is not always clear what are those modalities.

When the victim is a Grand Duchy resident and he/she suffered a crime within the European Union, it is very clear that he/she can report the crime in whatever Luxembourg law enforcement agency if it was not possible to report it directly where the crime occurred (art. 4-2 CCP). Conversely, no provision explicitly allows the victims of a crime occurred in Luxembourg to report in another country but it is allowed by the practice.

As mentioned above, citizens from other countries who become victims in Luxembourg enjoy the right to information, to participation and to interpretation and translation. They can have access to the legal aid service and enjoy the same protection throughout the criminal proceedings or the mediation.

Nevertheless, when the victim wants to participate in the criminal trial as a witness, no specific legal basis for the questioning via videoconference is provided by Luxembourg law. A draft was presented in 2011 providing for a detailed legal framework of this measure but the law has never been approved¹⁴⁵. As a consequence, Luxembourg criminal justice authorities rely on the rules set up by the Code of Civil Procedure in order to proceed with the videoconference. As it is stated in the Luxembourg page of the E-justice portal “There are no specific provisions on videoconferencing. Therefore, the rules governing the examination of witnesses, personal verification by the judge and appearance in person of the parties are the ordinary rules of the New Code of Civil Procedure. At present there is no case law on videoconferencing. Videoconferences can be used to hear witnesses, and in some cases the parties and the court experts. However, to date, the only requests received have been to hear witnesses. The only restriction is that the hearing of witnesses is carried out on a voluntary basis. If a witness refuses to attend a hearing, the Luxembourg authorities have no means of obliging him/her to do so. If the requesting State wishes to record the videoconference, it must obtain the express consent of the witness heard in Luxembourg. Luxembourg, as the requested State, does not record the videoconference because recording is prohibited by Luxembourg law. The Luxembourg court, as the court of the requested state, arranges for an interpreter whenever necessary, either to communicate with the authorities of the requesting state or with the person to be examined. The Luxembourg authorities, and more specifically the court responsible for taking the evidence, will contact the authorities of the requesting state to agree on the date and time of the videoconference. The summons is served at least 15 days before a hearing. The Luxembourg authorities are responsible for summoning the participants”.

¹⁴⁵ The draft can be found at <https://gouvernement.lu/dam-assets/fr/actualites/articles/2011/12-decembre/22-biltgen/dossier-peine.pdf>

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.*

Under Luxembourg law, the right to protection is guaranteed by a plethora of measures that may vary depending on the criminal offence at stake. Such an approach is aimed to provide the competent authorities with the measure that is most adapted to prevent the risks faced by the victim of a specific crime. As a consequence thereof, art. 18 of the Directive is actually implemented by a complex set of sectorial regulations concerning, for instance, stalking, domestic violence, and trafficking in human beings.

Reference has already been made to the law of 8 September 2003 on **domestic violence**, modified by the law of 30 July 2013 (*cf. supra* art. 8)¹⁴⁶. The aforementioned law is marked by the protection of persons who have already become or could become a victim of domestic violence. It therefore provides, *inter alia*, certain protection measures to avoid confrontation between the (potential) victim and the (potential) offender.

First of all, according to art. 1, §1 of the law of 2003, persons, against whom there are indications that they are planning to commit (again) an offence against life or physical integrity in respect of persons with whom they are living together in family settings, can be expelled from their home and outbuildings. This expulsion order includes not only a prohibition on entering the home and

¹⁴⁶ Loi du 8 septembre 2003 sur la violence domestique portant modification 1) de la loi du 31 mai 1999 sur la police et l'inspection générale de la police; 2) du code pénal; 3) du code d'instruction criminelle; 4) du nouveau code de procédure civile, *JO* 3 octobre 2003, 2.982, modifiée par la loi du 30 juillet 2013 portant modification 1. de la loi du 8 septembre 2003 sur la violence domestique; 2. de la loi modifiée du 31 mai 1999 sur la Police et l'Inspection générale de la Police; 3. du Code pénal; 4. du Nouveau Code de procédure civile, *JO* 7 août 2013, 2.900.

dependencies, but also on contacting the (potential) victim, orally or through any other means, and on approaching the latter¹⁴⁷. Under paragraph 6 of the same article, it lasts until the fourteenth day following its entry into force. At request of the (potential) victim, the expulsion order can pass into a ban on re-entry, which can last up to three months¹⁴⁸.

The same ban on re-entry also exists as a separate measure from an expulsion order, where it is no longer bearable for a person to continue living together in family settings with another person because of the risk to be attacked or assaulted. Potential threats that might cause serious damage to the victim's mental health may justify the ban¹⁴⁹.

When it is no longer bearable for a victim to even meet with the other person, the former has the possibility to request one or more of the following injunctions and prohibitions¹⁵⁰:

- the prohibition on contacting the complainant;
- the prohibition on sending messages to the complainant;
- the prohibition on approaching the complainant;
- the prohibition on approaching the shelter service and annexes, the childcare facility and the school;
- the prohibition on establishing one's domicile in the same neighbourhood as the complainant;
- the prohibition on attending certain places;
- the prohibition on using certain routes;
- the order to let the complainant enter the common home to remove his/her personal belongings.

¹⁴⁷ Art. 1, §2 of the law of 2003.

¹⁴⁸ The latter measure was introduced by the law of 2003 and set out in art. 1017-1, §1 of the Code of Civil Procedure.

¹⁴⁹ This measure is regulated by art. 1017-7, §1 of the Code of Civil Procedure (introduced by the law of 2003).

¹⁵⁰ Under art. 1017-8 of the Code of Civil Procedure (introduced by the law of 2003).

A rather similar law is in force to enable the protection of persons who have become **victims of trafficking in human beings** (*cf. supra* art. 8)¹⁵¹. The law provides certain protection measures for victims of the above offence, witnesses thereof and collaborators of a help desk or association referred to in art. 1 of this law, as well as for their family members and acquaintances. According to art. 1017-13 of the Code of Civil Procedure (introduced by the aforementioned law), where a person tries to intimidate one of the aforementioned persons or prepares to commit an act of retaliation against them, one or more of the following injunctions and prohibitions can be issued at their request:

- the prohibition on attending certain places;
- the prohibition on making contact, in any way, with the complainant;
- the prohibition on possessing or carrying a weapon and the order to hand over, against receipt, any weapons to a designated police service.

In the context of protection of the victim, reference can also be made to the generally applied rule that, in case of crimes and misdemeanours against persons, the investigating judge or the investigating court makes the provisional release of the suspect conditional on not contacting the victim in any way (*cf. supra* art. 6).

In practice, the authorities apply a case-by-case approach to determine if and which protection measures are necessary, such as for instance prohibition on contacting or approaching the victim or specific places, deprivation of liberty or denial to access information that would enable the accused to locate the victim where such access may lead to a serious threat to the victim's life or fundamental rights.¹⁵² These protection measures have so far proved to be sufficient and the interviews highlighted no problematic issue on this concern¹⁵³.

¹⁵¹ Loi du 8 mai 2009 sur l'assistance, la protection et la sécurité des victimes de la traite des êtres humains et modifiant le Nouveau Code de procédure civile, *Mém. A 129* du 9 juin 2009, 1.778.

¹⁵² Art. 85 (2) para 2 CCP.

¹⁵³ Interview 1.

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.*

Art. 19 of the Directive has not been transposed as such into Luxembourg legislation. Nevertheless, the right to avoid contact between victim and offender seems to be fully respected¹⁵⁴.

Two scenarios can be identified. First, when the offender is in custody, an avoidance of contact between the latter and the victim will not cause major problems. The offender shall be brought to the courtroom by ways that are not accessible to the public and shall be placed in such a way that he/she cannot contact the victim¹⁵⁵.

The situation is more problematic when the offender is not detained. Nevertheless, contact between victim and offender can easily be avoided during the trial hearing, since they are allocated separate places in the courtroom. As for the offender, this will be the dock or in front of the court next to the lawyer. As for the victim, this can be a place in the audience or the waiting hall for witnesses, depending on their status in the proceedings. Moreover, a police officer will be present, at least during the hearings of the correctional and criminal courts of first instance¹⁵⁶.

On the other hand, where the offender is not remanded during trial, it can occur that the latter and the victim cross each other before or after the trial hearing. The current layout of the courtroom has not been adapted to avoid this sort of contact. In this regard, there are also no separate waiting rooms for victims and offenders in the court buildings. In case of foreseeable difficulties, specific

¹⁵⁴ Interview 1.

¹⁵⁵ Interview 1 and 2.

¹⁵⁶ Interview 1 and 2.

arrangements can be made to address this problem: police presence, placement of the victim in a secure location, etc.¹⁵⁷.

The Public Prosecutor's Office together with the Registrar try to prevent witnesses and victims in sensitive cases of major crimes like trafficking in human beings and sexual harassment from being confronted with the offender(s) or their families when coming to court. These persons may be accommodated in a special room and will only be brought into the courtroom during the hearings. The public does not have access to the investigation offices and any contact can only take place in the presence of the investigating judge, which limits the risk of intimidation¹⁵⁸.

Regarding the situations where contact is deemed necessary, this may take place in criminal proceedings during the deposition of the victim as a witness or when he/she appears as a civil party. Such contacts, whether they take place during the pre-trial investigation or before the trial court, necessarily take place in the presence of third parties (magistrates, registrars, police officers or lawyers) and in circumstances which ensure the safety of the victim¹⁵⁹.

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.*

¹⁵⁷ Interview 1 and 2.

¹⁵⁸ Interview 1 and 2.

¹⁵⁹ Interview 1 and 2.

As with art. 19 of the Directive, Luxemburg legislation does not provide for any literal transposition of art. 20 of the Directive either.

Concerning its point c), namely the accompaniment by a lawyer (legal representative) and a person of the victim's choice during criminal investigations, several articles can be found in Luxemburg law.

In accordance with art. 4-1, §3 CCP, victims have a general right to be assisted or represented by a lawyer. The latter not only can assist the victim, but can also actively intervene during the proceeding, as well as during the interview¹⁶⁰.

When it comes to children victims in particular, art. 3-7, §3 CCP provides the right to be accompanied by their lawyer (legal representative) or by a person of their choice during interviews. In addition, art. 48-1, §5 and art. 79-1 CCP specifically provide for the right to be accompanied by a person of their choice when the child victim is being questioned as a witness during, respectively, the inquiry and the pre-trial investigation. These two articles both contain almost the same reservation as under art. 3-7, §2 CCP (*cf. supra* art. 3) by stating that the above accompaniment is possible, unless the Public Prosecutor, respectively the investigating judge decide otherwise in the interest of the child victim or for the establishment of the truth. As a result of the silence of paragraph 3 of art. 3-7 CCP, this reservation must also be regarded as applicable to the latter¹⁶¹.

Furthermore, in the context of a ban on re-entry following an expulsion order introduced by the law of 2003 (*cf. supra* art. 18), a (potential) **victim of domestic violence** can, under art. 1017-5, §2 of the Code of Civil Procedure, be assisted or represented by:

- a lawyer;
- his/her spouse or the person with whom they usually live;

¹⁶⁰ Interview 1 and 2.

¹⁶¹ Interview 1 and 2.

- his/her parents or direct relatives;
- his/her parents or collateral relatives up to and including the third degree;
- persons exclusively attached to his/her business service;
- an employee of a support service for victims of domestic violence.

If the representative is not a lawyer, he/she must justify belong to one of these categories. The same provision can be found in art. 1017-10, §2 of the Code of Civil Procedure for the autonomous ban on re-entry and the other injunctions and prohibitions.

In the context of the measures introduced by the law of 2009, a **victim of trafficking in human beings** can, under art. 1017-14 of the Code of Civil Procedure, be assisted or represented by an employee of a support service for victims of trafficking in human beings or by an employee of an association approved under art. 1 of the law of 2009.

Regarding victims' right to be accompanied by a person of his/her choice, in practice, art. 3-7, §2 CCP is considered to be the latter's transposition¹⁶². Each remark set out above concerning this provision is thus also applicable to this right under art. 20, point c) of the Directive. However, this could be criticized, as art. 3-7, §2 CCP clearly refers solely and exclusively to the accompaniment by a person of the victim's choice in the first contact with a competent authority. Extending this right to the accompaniment during the criminal investigations in general, leads to legal uncertainty.

Concerning the issue of the period between the reporting of the crime and the first interview, there is no legal text available that imposes a time-limit, nor statistics that measure the average of the latter¹⁶³.

¹⁶² Interview 1 and 2.

¹⁶³ Interview 1 and 2.

There are two situations that can be distinguished: the lodging of a complaint with a police authority on the one hand and with the Public Prosecutor on the other (*cf. supra* art. 5). The first situation is by far the most frequent. If the victim lodges a complaint with a police authority, /she is immediately interviewed on the facts of the case. The lodging of the complaint and the interview take place at the same time¹⁶⁴. If the victim lodges a complaint with the Public Prosecutor, the latter assesses the complaint and, if he/she does not decide to discontinue the proceedings or to open a pre-trial investigation, entrusts it to a police authority for inquiry and report. After this, the police authority interviews the victim. In this case, some time may elapse between the lodging of the complaint and the interview. The length of this period depends, of course, on the nature of the offence: if the facts complained of are serious, the interview will take place as soon as possible, unlike less serious and less urgent offences¹⁶⁵.

Finally, regarding the number of interviews, Luxemburg legislation provides for the possibility to question the witnesses, victims included, and any minor resorting to a sound or audio-visual recording that can be used during the court hearing (*cf. infra* art. 23). In that way, unnecessary interviewing of the victim is avoided.

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**.*

¹⁶⁴ Interview 1 and 2.

¹⁶⁵ Interview 1 and 2.

The right to privacy is first protected by the Constitution (Art. 11, § 3). As regards to the victims of criminal offences, the protection of privacy is ensured, more specifically, by means of the secrecy of investigations¹⁶⁶. In practice, the rules intend to prevent that information related to ongoing criminal proceedings, including data related to the victim are reported to the public.

Also, as an exception to public hearing, trial courts may decide to hold a hearing in camera, i.e. without the presence of the public where the interests of minors or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice¹⁶⁷.

As for the data collected during a criminal trial and related to the victim, a new draft law is currently under scrutiny in order to adapt Luxemburg law to the new EU data protection package.

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.*

Regarding the individual assessment, art. 3-7, §1, 12° CCP only mentions the fact that the victim must be informed of the right to an individual assessment by the *Victim Support Service* in order to verify the need for any specific protection measure, so as to prevent secondary victimisation. This provision was added to the list of art. 4 of the Victims' Directive at the initiative of the Luxemburg legislator (*cf. supra* art. 4) and, as it is reflected in the Government amendments, is the Luxemburg transposition of art. 22 of the Directive¹⁶⁸. It is

¹⁶⁶ Art. 8(1) CCP

¹⁶⁷ See below Section relative do Art. 23.

¹⁶⁸ Amendements gouvernementaux: projet de loi renforçant les garanties procédurales en matière pénale portant : - transposition de la directive 2010/64/UE du 20 octobre 2010 relative

thus not up to the police officers to undertake an individual assessment, but to the psychologists of the *Victim Support Service*.

The law does not define the individual assessment undertaken by the *Victim Support Service*, as the provisions of art. 22 of the Directive are rather difficult to implement in practice¹⁶⁹. The psychologists of the support service do, however, make their own assessment of the symptoms of each victim in order to ensure appropriate treatment tailored to his/her needs¹⁷⁰. Nevertheless, the latter is related to psychological support rather than to the identification of specific protection needs.

For victims of domestic violence and human trafficking, the full support of, respectively, the *Assistance Service for Victims of Domestic Violence* and the *Psychological Service for Children and Adolescents Victims of Domestic Violence* on the one hand and the *Assistance Service for Victims of Human Trafficking* on the other naturally includes an individual assessment. After all, the right way to tackle the violence or to reach a physical, psychological and social recovery will not be the same for all victims (*cf. supra* art. 9).

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

A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there

au droit à l'interprétation et à la traduction dans le cadre des procédures pénales ; - transposition de la directive 2012/13/UE du 22 mai 2012 relative au droit à l'information dans le cadre des procédures pénales ; - transposition de la directive 2013/48/UE du 22 octobre 2013 relative au droit d'accès à un avocat dans le cadre des procédures pénales et des procédures relatives au mandat d'arrêt européen, au droit d'informer un tiers dès la privation de liberté et au droit des personnes privées de liberté de communiquer avec des tiers et avec les autorités consulaires ; - transposition de la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité ; - changement de l'intitulé du Code d'instruction criminelle en "Code de procédure pénale" ; - modification : - du Code de procédure pénale ; - du Code pénal ; - de la loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés ; - de la loi modifiée du 10 août 1991 sur la profession d'avocat ; - de la loi modifiée du 20 juin 2001 sur l'extradition ; - de la loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne, Chambre des Députés 2015-16, n° 6758/03, p. 19.

¹⁶⁹ Interview 4.

¹⁷⁰ Interview 4.

is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

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

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

As already mentioned above, an individual assessment as foreseen by art. 22 of the Directive does not exactly exist in Luxembourg, although it is provided for in its legislation. Art. 23 of the Directive, on the other hand, cannot, in itself, be found in the Luxembourg law.

The latter does cover, however, certain provisions which meet the requirements of points a) and b) of paragraph 3 of this article. Indeed, art. 48-1 CCP with regards to the inquiry and art. 79-1 CCP to the pre-trial investigation stipulate that, respectively, the Public Prosecutor or the investigating judge can interview witnesses, victims included, and any minor resorting to a sound or audiovisual recording. The penultimate paragraph of both articles states that this recording shall be used as evidence in court trial¹⁷¹. Art. 158-1, §4 CCP foresees the use of the recording at the court hearing. A new interview of the witness or minor is only possible upon an explicit decision of the trial court. Again under art. 48-1 and art. 79-1 CCP, for some offences the aforementioned recording is even

¹⁷¹ Interview 1.

compulsory in case a minor is a victim or witness thereof. Because of this measure, not only is visual contact between victim and offender avoided, but the victim can also be heard without being present in the courtroom.

Regarding point d) of art. 23, §3 of the Directive, the Luxemburg law, under its art. 88 of the Constitution and its art. 190 CCP, stipulates that every court hearing is public, unless such publicity is dangerous to public order or morals, in which case the trial court shall declare it by judgment. These exceptions to publicity are in line with art. 6.1 of the ECHR. The latter article further adds that a court hearing can also take place without the presence of the public where the interests of minors or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. A victim therefore has some measures at his/her disposal to avoid a public court hearing.

Minors are, under Luxemburg law, considered to be particularly vulnerable and thus in need of specific protection. However, all other victims, on a case-by-case basis, can benefit from the same measures¹⁷².

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.*

¹⁷² Interview 1.

As already mentioned above, Luxemburg law considers minors to be particularly vulnerable and thus in need of specific protection. As a result, different measures are aimed to protect minors throughout the criminal proceedings.

In particular, the audio or video recording of interviews is mandatory when the witness is a minor and the crime is related to minors involved in sexual exploitation, rape, trafficking of human beings, murder and other serious crimes, exception made when the minor or his/her legal representative oppose to the recording (art. 48-1, § 3 CCP)¹⁷³. The audio or video record is sealed and can be used as evidence in trial, being examined by the different parties including the defence, and by the experts.

Special protection is also afforded at the trial stage. For instance, hearings in camera take place where the interests of minors so require¹⁷⁴. Likewise when the victim is a minor, no oath is due (art. 76 CCP) and the same guarantees as provided for the deposition before the police or the prosecutor (audio and video recording) apply (art. 79-1 CCP).

See answer under question 10.

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*

¹⁷³ In any case, whenever a minor is questioned by the police or by the prosecutor, he/she has the right to be accompanied by an adult of his/her choice. This choice can be rejected only by the prosecutor in case of conflicts of interests or when the presence of that person might compromise the discovery of the truth (art. 48-1, § 5 CCP).

¹⁷⁴ See above Section relate do Art. 23.

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**.*

All the professionals involved are well trained and educated. Specific training programmes are provided for the police, for the judicial authorities and for the victims service professionals. These training programmes are usually mandatory and should be renewed during the carrier. Nevertheless, no official list of the different training programmes is available.

All the interviews have confirmed the quality and the variety of experts involved in the training programs, but no information on specific courses are currently available.

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**.*

As for the international cooperation, Luxembourg did not adopt specific measures implementing Article 26 of the Victim's Directive. Nonetheless, Luxembourg ratified several conventions and international instruments of mutual assistance and judicial cooperation that relate to the rights of victims, in particular:

- Council of Europe:
 - European Convention on Mutual Assistance in Criminal Matters, April 1959 (ratified by Luxembourg in 1976);
 - European Convention on the Compensation of Victims of Violent Crimes, November 1983 (in force in Luxembourg since 1988);
 - Convention on Cybercrime, November 2001 (in force in Luxembourg since 2015);
 - Council of Europe Convention on Action against Trafficking in Human Beings, May 2005 (in force in Luxembourg since 2009);
 - Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, October 2007 (in force in Luxembourg since 2012);
 - Convention on preventing and combating violence against women and domestic violence, May 2011 (in force in Luxembourg since 2018);
 - Convention against Trafficking in Human Organs, 2015 (signed by Luxembourg in 2015);
- United Nations:
 - Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, December 1949 (into force in Luxembourg since 1983);
 - United Nations Convention against Transnational Organised Crime, September 2003 (in force in Luxembourg since 2008);
- European Union

- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, May 2000 (into force in Luxembourg since August 2010);
- Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (implemented in Luxembourg in August 2018).

Besides multilateral conventions, Luxembourg takes part in regional initiatives and agreements. An illustration thereof are the declaration signed in 2016 by the Benelux countries with the aim to enhance cooperation in the fight against human trafficking or the participation of Luxembourg in the International Ministerial Conferences on the Victims of Ethnic and Religious Violence in the Middle East.

Lastly, the State of Luxembourg supports on a regular basis raising programs and initiatives coordinated or launched by international actors. Some international initiatives linked to the protection of fundamental rights are supported by the Luxembourg branch of Amnesty international (<https://www.amnesty.lu/home/>) and some charity ONGs such as Caritas. Furthermore, in November every year a specific programme called 'The Orange Week' is organized by the University of Luxembourg in order to raise awareness on victims rights, covering social, psychological and legal assistance provided by public agencies of the country.

GOOD PRACTICES

The report shows that many rights in Luxembourg are not guaranteed in the law itself, but exist and run smoothly in practice. Such a system works well in a small country like Luxembourg in that it builds on good communication between the authorities and services. This case-by-case approach makes it usually easier to respond to specific cases.

In fact, the report shows that, while some rights are only partially worked out in the legislation, they find satisfying protection in practice. This is the case of the **right to understand and to be understood** set out in art. 3 of the Directive. Despite the absence of any indication of simple and accessible language or an assessment of personal characteristics, in practice, police authorities have been made aware of how to listen to victims in concrete situations and different protection regimes are available for victims in a vulnerable position.

The same applies to the assessment of whether or not someone is proficient in the language in the context of **art. 5 and art. 7 of the Directive**. Although there are no guidelines for this assessment, practical problems are generally avoided as Luxembourg already has three languages of the case and, in addition, a multinational character resulting in a great awareness amongst the authorities. Interviews have shown that a legal definition of assessment parameters is perceived as too complicated and that responding to the requirements of the Directive in practice, based on a case-by-case approach, is the preferable solution.

Likewise, there is only a scarce legal framework with regard to a victim's right in relation to victim support services and their different tasks set out in **art. 8 and 9 of the Directive**. This right is however fully recognized and protected in practice. The support is of very high quality thanks to the Government budget commitment and to the wealth of the country.

GAPS, CHALLENGES, AND RECOMMENDATIONS

Research has shown that the balance between legal provisions and good practices in the Luxembourg system provide a mostly satisfying protection of victims' rights. However, the broad deferral to practice may give rise to a risk of legal uncertainty and subjectivity.

The example of the Luxembourgish implementation of a victim's right to access victim support services shows, in fact, that a purely practical approach without any systematization can jeopardize effective protection of certain victims' rights. Gaps must be recorded with regard to the requirements of art. 8 of the Directive: one can see that there is no general system whereby police authorities refer the victim to the victim support services. The law provides for the information of the victim, whereby the latter must contact the support service himself/herself. This may lead to reticence. A referral system is in place only for two groups of victims, victims of domestic violence and victims of human trafficking.

Problematic aspects can be found also in the area of protection of the victim. The first example regards a **victim's right to be alerted in case of escape or release of the offender** under art. 6, paragraphs 5 and 6 of the Directive. While the rest of art. 6, dealing with the right to receive information about the case, is well reflected in Luxembourg legislation, the implementation of this specific aspect is left to practice, where authorities generally follow a case-by-case approach. It is worth noticing that in cases of domestic violence, however, the victim is informed by default.

Furthermore, in the context of the **right to protection** set out in art. 18 of the Directive, only a legal framework on protection measures for victims of domestic violence and human trafficking has been devised. For other groups of victims there is again a case-by-case approach. Building on this, no real individual assessment as elaborated in art. 22 of the Directive is applied by the services either, with a minor exception for victims of domestic violence and human trafficking.

While it is to be welcomed that the abovementioned two groups of victims are thoroughly protected by the Luxembourg system, it is to be regretted that they are the almost exclusive focus of victims' right legislation. The absence of a general legal basis referring to all victims, at least in the area of those rights that do not seem adequately protected in practice, represents another shortcoming of the implementation of the Victims' Directive in Luxembourg.

Finally, there are **some rights of the Directive which are overall absent from Luxembourg law**. In order to complete the list of flaws in the area of victim protection referred to above, reference should also be made to art. 23 of the Directive, on the right to protection of victims with specific protection needs during criminal proceedings. Apart from measures to avoid visual contact between victim and offender and measures to ensure that the victim may be heard in the courtroom without being present, the special measures provided for in art. 23 of the Directive have not been transposed into Luxembourg law. The same applies to art. 14 of the Directive, which contains the right to reimbursement of expenses. As these expenses are considered as court costs under Luxembourg law, it is never the responsibility of the State to reimburse them, but it is the responsibility of the losing party. This may therefore also be the victim.

CONCLUSION

This national report investigated the transposition of the Victims' Directive in Luxembourg national law and its practical implementation. To this end, desk research on the applicable national law and related case law, an online survey and interviews with practitioners were conducted. The present report highlights compliance of national legislation and practice in Luxembourg with the Directive as well as shortcomings in this respect.

As far as positive aspects of the Luxembourg implementation of the Victims' Directive are concerned, the report showed how Luxembourg legislation fully complies with the goal set by the Directive as to the scope of application set out in its article 2. In fact, as a result of the transposition of the Directive into national law, a person is now automatically considered a victim from the moment he/she is identified as one and has suffered damage resulting from an offence. Luxembourg legislation appears to grant protection to an even broader spectrum of persons than the Directive.

First of all, unlike the Directive, the Luxembourg law also includes legal persons. In addition, if a person has not automatically received the above victim status, he/she has two further options available to be recognized as a victim, namely the lodging of a complaint and the obtaining of the status of civil party (*partie civile*) via criminal indemnification proceedings. The biggest difference can be found in the area of family members. Where, under the Directive, the latter are exhaustively listed and can only be considered as victims in the event of the death of the direct victim, the Luxembourg practice applies a case-by-case approach without strict limitations. In light of the comprehensive definitions and applied practices currently existing in Luxembourg, it is rather unlikely that a victim would be excluded from rights under Luxembourg law when he or she would be covered by the Directive.

The research has shown that also the rights enshrined in the Victims' Directive are well reflected in Luxembourg legislation, either because already provided for in national law or introduced with the transposition of the Directive. As for rights already present in Luxembourg law, the right to return of property and the right to decision on compensation from the offender in the course of criminal proceedings must be mentioned. Rights newly introduced are the right

of victims to be accompanied by a person of their choice, the right to receive information from the first contact with the competent authority, their right when making a complaint and the right to interpretation and translation under art. 3, art. 4, art. 5 and art. 7 of the Directive. For the latter right, the legislator went even further than requested by the Directive, since interpretation and translation is automatically given at some stages and for certain documents.

The report shows that, while some rights are only partially worked out in the legislation, they find satisfying protection in practice. Practice ensures that victims enjoy to the right to understand and to be understood set out in art. 3 of the Directive, regulates the assessment of whether or not someone is proficient in the language in the context of art. 5 and art. 7 of the Directive and manages a victim's access to victim support services and their different tasks set out in art. 8 and 9 of the Directive.

Although the synergy of legal implementation and good practices under many aspects form the strengths of the Luxembourg system, it is there were also some shortcomings lie. These can be seen in the absence of a general system whereby police authorities refer the victim to the victim support services, a case-by-case approach when deciding on alerting victims of escape or release of the offender and for enactment of protection measures for victims other than those of domestic violence and human trafficking.

While the abovementioned rights are mostly legally guaranteed for these two latter groups of victims, the failure to extend the relevant provisions to victims in general jeopardises legal certainty and is to be regarded as a shortcoming in the Luxembourgish implementation of the Directive.

Another shortcoming lies in the failure to fully introduce the right to protection of victims with specific protection needs during criminal proceedings and the right to reimbursement of expenses into Luxembourg law.

In conclusion, one can say that, in general, the Luxembourg system complies with the Directive, since almost all rights exist in law or in practice. However, as discussed above, there is room for improvement on specific aspects of the Luxembourg system, in order to provide even better protection and guidance for victims.

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Appendix 1 – Contact list of interviewed professionals

#	Name	Institution	E-mail	Phone #
1		Prosecutor 1		
2		Prosecutor 2		
3		Head of the SAV		
4		Psychologist of the SAV		
5		Lawyer		

Commented [IC1]: I kindly ask you to fill in this table with data from interviewees.

You don't need to fill in the names, if interviewees do not wish to have their names in the report. You also don't need to write the e-mail and phone. But the number of the interviewee and institution should be mentioned.