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**THE DUTIES OF THE PUBLIC PROSECUTOR  
IN THE CRIMINAL FIELD  
TOWARDS VICTIMS AND WITNESSES,  
AND PARTICULAR THOSE THAT ARE JUVENILES**

**REPLIES TO THE QUESTIONNAIRE**

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**THE DUTIES OF THE PUBLIC PROSECUTOR  
IN THE CRIMINAL FIELD TOWARDS VICTIMS AND WITNESSES,  
AND PARTICULAR THOSE THAT ARE JUVENILES**

**QUESTIONNAIRE**

1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?
2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?
3.
  - a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?
  - b. What powers or responsibilities does the public prosecutor have in this area?
  - c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?
4. Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?
5. Is the public prosecutor empowered to mediate in criminal cases?
6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?
7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?

## ANDORRA

1. For reasons of procedural simplification and criminal policy, adopted out of a concern for more effective protection of the victim in criminal proceedings, our criminal justice system gives the criminal courts jurisdiction to decide also on the civil liability resulting from an unlawful act and to order compensation of the victim.

Article 18-1 of the Code of Criminal Procedure accordingly allows the victims or passive subjects of a criminal act and persons who suffer damage or loss derived from a criminal act to bring a civil action separately from or in conjunction with the criminal proceedings, and requires the public prosecutor's department to bring such an action should the person entitled to bring it fail to do so, unless that person expressly relinquishes this right or reserves the right to bring a civil action subsequently through the ordinary civil courts.

Similarly, Article 118 of the Code of Criminal Procedure provides that, at any stage in proceedings brought for wilful or involuntary offences against the physical integrity of the person, or for criminal damage or arson, the judge (batlle), or panel of judges, may, at a party's request, and after hearing the other parties and the public prosecutor's department, give a reasoned decision ordering the defendants and persons civilly liable to pay provisional compensation to the victim or persons financially dependent on him or her.

Regarding victims who are minors, the age of majority being 18 in Andorra, the Andorran Criminal Code provides for a number of aggravating circumstances where the victim is a minor.

In addition, the Criminal Code includes in its general list of penalties the loss or suspension of ascendants' rights of family authority over their descendants or persons under guardianship.

In cases where the victim is a minor, the Code of Criminal Procedure also provides for the possibility of holding the hearing in camera and for the use of procedures which prevent visual contact between the presumed offender and the minor victim, in such a way that the victim is afforded protection and the defence rights of the presumed offender are at the same time safeguarded.

Lastly, the Code of Criminal Procedure allows the competent court to review the defendant's personal situation at each stage in the proceedings in order to make his or her provisional release conditional on an obligation to refrain from approaching or coming into contact with the victim and approaching or living too close to the victim's home or workplace. The same obligations may subsequently be imposed on the sentenced person during the serving of his or her sentence and set as conditions for the suspension of custodial sentences.

2. The current Code of Criminal Procedure, dated 10 December 1998, sets out a formal or mixed accusatorial system. In other words, the power of trial in Andorran criminal proceedings always depends on the activity of a prosecutor who initiates the judicial action and who is either a public body or a private individual, but who is always independent of the trial body. The current Article 14 of the Code of Criminal Procedure provides that a criminal action may be public, where it is initiated by the public prosecutor's department, or private, where it is brought by a private injured party.

Regarding the initiation of criminal proceedings by the public prosecutor's department, Article 14 of the current Code of Criminal Procedure provides that a criminal action based on a misdemeanour or petty offence shall be public and that the public prosecutor's department shall bring such action in cases where an application by the injured party is unnecessary.

However, the same Article 14 of the Code of Criminal Procedure regards as not party to proceedings informers or injured parties who have not come forward formally as private prosecutors or civil claimants. Under the terms of this provision, injured parties wishing to bring a criminal action must lodge a complaint in the proper form, come forward as private prosecutors, appoint a lawyer, elect domicile in the Principality and, subsequently, once the legal classification of the offence has been established, seek a specific sentence for the offender and his or her accomplices.

The injured party may come forward as private prosecutor at any stage during the preparation of the case for trial.

3. Our criminal justice system has no special provisions relating to the protection of victims or witnesses who are in danger; but the police force responsible for public order and safety may be requested by the courts at any time, in the performance of its criminal police duties, to provide victims and witnesses with adequate protection in specific cases and according to the needs of the moment.

b) The public prosecutor's department directs police activity in all investigations prior to the commencement of pre-trial proceedings by the examining judge. When an examining judge commences pre-trial proceedings, the public prosecutor's department has jurisdiction to seek protective measures before the courts.

c) Although the public prosecutor's department is not empowered to impose protective measures, it directs police activity and may take steps to ensure that the protective measures it considers necessary to guarantee the victim's safety are put in place before the courts.

4. No.

5. No.

6. There are no particular provisions to this effect. In practice, however, when a victim applies to the public prosecutor's department for information on the progress of the proceedings, that information is provided.

7. Although decisions taken by the public prosecutor's department within its sphere of competence are not subject to appeal, complaints which have been lodged directly with the public prosecutor's department and have been the subject of a decision to discontinue proceedings may be brought before the courts again by private individuals.

In addition, when, in proceedings brought by an examining judge, the public prosecutor's department considers that there is no criminal case, the action may be brought and kept before the courts by a private individual acting as private prosecutor, provided a complaint has been lodged in the proper form.

## AUSTRIA

### Preliminary Remarks:

The role of the public prosecutor in the pre-trial phase and in trial is regulated in the Austrian Code of Criminal Procedure (Strafprozessordnung; abbreviated: StPO).

The organisation and conduct of business of public prosecution authorities and their organs are regulated by the Public Prosecutors' Act (*Staatsanwaltschaftsgesetz, StAG*) and the pertinent Implementing Ordinance (*DV-StAG*).

The "Strafprozessreformgesetz" (abbreviated: StPRG) contains an extended reform of the pre-trial phase of criminal proceedings as regulated in the Austrian Code of Criminal Procedure, has been published in the Federal Law Gazette (Bundesgesetzblatt; abbreviated: BGBl) on 23<sup>rd</sup> March 2004 (BGBl. Nr I 19/2004). It will enter into force by 1<sup>st</sup> January 2008, in other words until that moment the previous legal provisions are still in force and applicable. The STPRG also regulates provisions relating to victim protection. These provisions have already entered in force by 1<sup>st</sup> January 2006.

The law will provide for the public prosecutor to direct the proceedings as a lead authority which has to conduct and expedite investigations in cooperation with the criminal police until the case is ready for indictment or other finalization. The law will also strengthen the rights of the accused and of the victims of a punishable offence. The role of the court will be upgraded to make it a comprehensive instance of legal protection and to authorize it to decide on charges of denial of procedural rights (inspection of files, evidentiary requests) or of violations of subjective rights by the criminal police or public prosecutor.

As it seems that the questionnaires are mainly directed towards the future legal situation as amended (in der Fassung; abbreviated: idF) by the StPRG I also will focus my further answers on that topic, nevertheless pointing out the main differences to the current situation where necessary, trying to give you a quick (and maybe sometimes also a bit simplified) overview.

### **1) What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

The position accorded to the victim in criminal proceedings is the **position of a witness**, even if the victim is a minor, and – under certain conditions – the position of a party to the proceedings.

Minors have the right to be accompanied by a person of confidence during interrogations. Pursuant to section 49a para.1 Code of Criminal Procedure idF StPRG victims and certain persons, they relate to, have the right to inspect the files.

The victim having suffered damages in terms of civil law is entitled to join criminal proceedings, instituted by the public prosecutor against the offender as a privately interested party. As such the victim is entitled to assist the prosecutor during the proceedings concerning evidence and concerning his or her own claims for compensation. The victim has the right to inspect the files, to be present during the trial and to put questions to witnesses, etc.

**2) Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

Anyone whose rights have been infringed by a felony or by a misdemeanour to be prosecuted *ex officio* may join the criminal proceedings prior to commencement of the trial (Beginn der Hauptverhandlung) regarding his claims under private law and shall thus become a privately interested party [*Privatbeteiligter*] (Section 47 Code of Criminal Procedure). The victim has the right to inspect the files, to be present during the trial and to put questions to witnesses, to appeal to the court, etc.

Some misdemeanors determined by substantive law can't be prosecuted *ex officio*. In such cases the persons claiming to have suffered damages from the alleged offence (victims), are allowed to request for initiating criminal proceedings (Privatanklage). In case of verdict of not guilty, the victim has to bear the costs of the trial.

The public prosecution authorities, in the discharge of their statutory duties, are called upon to protect the interests of the state in regard to the administration of justice, especially criminal justice.

The public prosecutor has no responsibility to represent the victim, because Section 3 of the Code of Criminal Procedure obliges the prosecutor to give equal care to the consideration of circumstances that serve to incriminate and to exonerate an accused person (the principle of objectivity).

**3) a. In your system are there any means of protecting victims or witnesses, who are in danger (including minors)?**

Victim protection

The Austrian Ministry of Justice established a victim hotline, which victims can call during the day free of charge for support. 12 practicing lawyers inform victims about other organisations in the field of victim support.

The Ministry of Interior (and other sources) finances support centres for the victims of violence in the family (“Interventionsstellen” in all Austrian provinces). The police have the power to banish presumed offenders from their home and to prohibit return for up to 10 days (20 days, if a court order to the same effect is applied for within the said time limit).



The Austrian legal system provides several possibilities for the victims to be heard in civil and criminal proceedings and to be protected.

The victim is entitled to institute civil proceedings against a (known) offender with the aim of restitution or compensation for material and non-material harm suffered.

The victim who has suffered damages in terms of civil law is entitled to join criminal proceedings, instituted by the public prosecutor against the offender as a privately interested party. As such, the victim is entitled to assist the prosecutor during the proceedings concerning evidence and concerning his or her own claims for compensation. The victim has the right to inspect the files, to be present during the trial, to put questions to witnesses, etc. Pursuant to section 50 Code of Criminal Procedure support centres for victims are entitled to support the privately interested party in criminal proceedings. If proceedings are discontinued by the public prosecutor, the victim is to be informed and in special cases has the right to uphold the prosecution as a "subsidiary prosecutor". The compensation (or restitution) claims of the victim may, as a matter of principle, be dealt with by the criminal court as part of its judgement. In practice, however, only in a minority of cases such claims are decided upon by the criminal judge, in particular if the legal and factual questions involved can be easily assessed and no additional evidence is deemed necessary. In other cases the victim is referred to the civil courts with his/her claims.

Compensation paid to the victim has great influence on the sentence because it is a mitigating circumstance, and it may even lead to the waiving of prosecution against the offender, if either compensation was complete before the offence was reported, or otherwise in minor cases, and it is often ordered by the court as a condition for suspended sentences.

In Austria there is a right to psychosocial and legal support for victims of sexual offences and for victims of violence during the trial ("Prozessbegleitung") on a case-by-case-basis. Support during the trial means providing access to specialist information, (legal) advice and (psychosocial) support for victims (adults and children) and their relations, as well as cooperation with all involved groups of professionals throughout the pre-trial and trial proceedings (section 49a Code of Criminal Procedure ).

All authorities active in criminal proceedings (including the police) are obliged to inform victims about their rights and to take into account the interests of victims, especially with regard to the protection of privacy (by not exposing personal data, photographs,...by extending the possibility of excluding the public from trials in the interest of victims). The 1992 amendment of the Mass-Media-Statute also created a liability to protect victims from secondary victimization through offensive reporting to address cases of publication of the identity of victims by media. Pursuant to section 47a of the Code of Criminal Procedure, all authorities active in criminal proceedings (including the police) are obliged to inform victims about their rights to compensation and restitution, as well as psychosocial and legal support during the trial (before the first interrogation has taken place). Pursuant section 177 para.2 and section 195 Criminal Code of Procedure idF

StRPG victims have to be informed about the release of the alleged perpetrator from prison and pre-trial detention.

There are special provisions to protect victims of sexual offences. Under certain conditions they have the right to refuse to testify and they have the right to be accompanied by a trusted person during interrogation. Section 162a and 250 para.3 of the Austrian Code of Criminal Procedure provide that in special cases - especially in the case of child victims of abuse - interrogation has to be carried out through the use of video, and in cases of children they may be interrogated by an expert witness (psychologist). All courts are now equipped with video technology so that videotaped testimony is commonly used now.

With the aim of avoiding the “secondary victimization” of victimized children and other victims of violent or sexual offences (including trafficking in human beings), section 162a StPO provides the prosecution and the defendant (defence lawyer) with the opportunity of asking questions through the judge or an interrogation expert (often a psychologist; see sec 162a para 2 last sentence StPO). If special circumstances mean that a witness’ testimony at trial might not be possible due to factual or legal reasons, the investigating judge has to ensure during pre-trial proceedings, that the prosecutor and the defendant (and his/her attorney) are able to participate in interrogations of witnesses and put forward their questions (otherwise excluded in pre-trial interrogations). In this case the investigating judge can arrange for the video recording of the testimony (sec 162a para 1 StPO). Pursuant to sec 162a para 3 StPO, minors under the age of 14 who may be victims of sexual abuse always have to be interrogated in the above way. Other witnesses (adult victims of sexual abuse, members of the family of the defendant, other minors under the age of 14) have the right to request such a procedure.

The recording of testimony on video during the pre-trial phase offers the victim being questioned the so called “privilege (of a witness) to refuse to testify” at the trial (“Entschlagungsrecht” - sec 152 para 1 and 5 StPO). The investigation judge has to instruct the witness, that in case of refusing the testimony the video recording can be presented during the trial (sec 162a para 4 StPO). Interrogation of witnesses in such a careful way pursuant to sec 162a StPO is also provided for the trial: According to sec 250 para 3 StPO and in the interest of the witness (especially concerning victimized children and other victims of violent or sexual offences) the presiding judge has to apply the described provisions concerning the interrogation of witnesses in a separate room and the recording of his/her testimony via video link during the trial. Nevertheless, the presiding judge has to ensure, that other members of the bench (lay-judges), the prosecutor, the accused and his/her attorney can follow the testimony and ask questions. Sexual abuse victims are to be informed about the possibility of the above mentioned careful interrogation – methods (section 47a para.2 Code of criminal Procedure)

With the Criminal Procedure Amending Act 1999 which entered into force on the 1<sup>st</sup> January 2000, a successful model project on mediation (offender-victim-reconciliation) was implemented into the Austrian Code of Criminal Procedure.. These provisions point out that in many cases compensation and restitution for the victim is as important as

penal sanction. Compensation and redress for the victims as a precondition to discontinuing proceedings is generally provided for in the provisions on diversion. In civil proceedings – for vulnerable victims also in criminal proceedings - there is the possibility for a crime victim to get a lawyer free of charge if he/she is not provided with enough funds. Victims can also obtain free legal advice at regional courts, at advisory services set up by the bar association and at a lot of semi-public and non-governmental organizations. There is also the possibility to seek informal arbitration by judges at all regional courts in Austria.

In cases of domestic violence there is the possibility to obtain a temporary injunction from the court that obliges the violent partner to leave the household for a period of one week and up to three months. Besides information and legal advice from voluntary organisations, there are semi-public shelters, which also provide temporary shelter for women and their children as well as psychological, social and financial assistance.

Section 47a para.1 StPO provides the right to an interpreter from a published register for foreign-language victims in order to protect their interests in criminal proceedings.

### Witness Protection

The Austrian Code of Criminal Procedure contains several provisions allowing or obligating the recording of testimony given in courtrooms by video (or other visual media). Above all Sections 162a and 271a StPO provide for this instrument during the pre-trial and the trial phase of criminal proceedings.

Please see Question 3.a, section F in answer to this question.

Pursuant to section 166 para 1 StPO, the personal data of witnesses with the exception of the statement with their name and their connection to the accused are to be recorded in the minutes in such a way that it does not come to the attention/ is not mentioned in the presence of third persons. The witnesses' protection of privacy is to be observed in particular during the indictment and during the trial (section 248 para 1 StPO).

Beyond that, during the first set of questioning about his personal details, a witness is allowed to declare another address than that of his permanent residence. These provisions are designed to counteract the reasonable fear on the part of witnesses to exposing themselves or their relatives to danger through declaring their personal data and whereabouts in public.

If witness fears exposing himself or another person to grave danger or loss of life, health or of personal liberty, section 166a StPO entitles judges to grant an exemption from depositions about personal identity or from answering other questions which would reveal the identity of the witness. This provision also permits a witness to remain anonymous throughout the proceedings.

According to the Austrian Constitution (principle of fair trial subject to article 6 paragraph 3d EMRK), section 166a StPO as well as a ministerial decree of the Federal

Ministry of Justice, it is acceptable under the above mentioned conditions, for witnesses to disguise themselves, by wearing wigs, sunglasses etc.

**b. What powers or responsibilities does the public prosecutor have in this area?**

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

The investigating judge has to ensure during pre-trial proceedings, that the prosecutor and the defendant (and his/her attorney) can participate in interrogations of witnesses conducted pursuant to section 162a StPO and put forward their questions. The public prosecutor can apply for protection measures.

The STPRG is designed to enforce the role of the prosecutor in the pre-trial phase. The law provides for the public prosecutor to direct the proceedings as a lead authority which has to conduct and expedite investigations in cooperation with the criminal police until the case is ready for indictment. The role of the court will be upgraded to make it a comprehensive instance of legal protection and to authorise it to decide on charges of denial of procedural rights (inspection of files, evidentiary requests) or of violations of subjective rights by the criminal police or public prosecutor.

**4) Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?**

Public prosecutors in Austria are obliged to prosecute cases where there is sufficient evidence to show that a crime may have been committed that is subject to the principle of mandatory prosecution (section 34 para 1 of the Code of Criminal Procedure). The public prosecution authorities, in the discharge of their statutory duties, are called upon to protect the interests of the state with regard to the administration of justice, especially criminal justice.

Section 3 of the Code of Criminal Procedure obliges the prosecutor to give equal care to the consideration of circumstances that serve to incriminate and to exonerate an accused person (principle of objectivity).

In particular in applying measures of diversion (*payment of a sum of money, probationary period with or without certain obligations, community service, victim-offender-mediation*) the public prosecutor has to take into account the needs and interests of the victim and, in particular, to include compensation of the victim into the arrangement designed to discontinue proceedings under certain conditions and with the consent of the suspect.

**5) Is the public prosecutor empowered to mediate in criminal cases?**

The public prosecutor is empowered to request mediation in criminal cases. Social workers are responsible for carrying out the mediation.

Pursuant to section 90a of the Code of Criminal Procedure, the public prosecutor has to refrain from prosecuting a criminal act if on the basis of the facts, a punishment does not seem necessary to keep the suspected person from committing further crimes or to keep other persons from committing crimes. Other options include the payment of fines (section 90c), carrying out services in the public interest (section 90d), imposing a period of probation combined with help from probation services and complying with any restrictions (section 90f), or an out-of-court victim-offender mediation (section 90g).

However, this chapter may be applied only if the criminal act does not fall within the competence of a court comprising lay judges (this is generally the case if the offence is punishable by more than five years imprisonment), and the criminal act did not entail anyone's death.

Up to the point where the suspect is indicted, the public prosecutor has the possibility to refrain from prosecuting for a criminal act. After this time, only the court is empowered to initiate mediation in criminal cases.

**6) Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

If the victim is a privately interested party, the court is obligated to inform the victim about when the trial is taking place or about the decisions not to prosecute.

Pursuant to section 177 para.2 and section 195 Code of Criminal Procedure idF StRPG), victims have to be informed about the release of the alleged perpetrator from prison or pre-trial detention.

Furthermore section 47a para.3 Code of Criminal Procedure obliges the public prosecutor and the court to inform the victim about decisions to refrain from prosecuting a criminal act, about terminating proceedings and suspending proceeding against a known perpetrator of a criminal act.

**7) Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

A private party may – following admission by the court – act as prosecutor himself (subsidiary motion – Section 48 StPO) if he finds that the public prosecutor has unjustly discontinued proceedings. If the public prosecutor ceases to prosecute a case after the indictment has taken effect, the indictment may be upheld by a simple statement of the victim (subsidiary prosecutor).

In the case of a subsidiary motion, the person who claims to have suffered damages deriving from the alleged offence (usually the “victim” who claims compensation) acts instead of the public prosecutor, a role which is usually but not necessarily fulfilled by his/her barrister. In the case of a not guilty verdict, however, the subsidiary prosecutor has to bear the costs of the proceedings.

The STPRG is designed to give to the victim and any other person who has a legal interest in the prosecution of the alleged perpetrator, the right to request that proceedings be reinstated that have been discontinued by the public prosecutor. The higher court of appeal (Oberlandesgericht) makes judgements on such requests (see Sections 190 to 192 and 195 StPO idF StPRG).

## AZERBAIJAN

### 1

Under *section 87.8* of the *Criminal-Procedural Code* of the Republic of Azerbaijan, which deals with a “victim”, a victim may use his/her rights and performs his/her obligations personally or by means of a representative. If the victim is not an adult or is a disabled person, his/her legal representative may use his/her rights in the way provided for by the legislation.

According to the legislation, if there are sufficient grounds for causing a direct psychological, physical injury or financial loss to a physical person as a result of an act concerned with criminal law, that person is considered as a victim.

A victim has the following rights:

- to know the meaning of the charge;
- to give a testimony;
- to give an explanation;
- to present materials to be attached to a criminal case file and studied during the court hearings;
- to make protests;
- to make inquiries;
- to demand his/her recognition as a special prosecutor any time prior to the commencement of a court investigation;
- to protest against actions of bodies carrying out the criminal process and demand the registration of this protest in the investigation or other procedural records;
- to participate in the hearings of a Court of First Instance and the Court of Appeal, or in studying the materials of the case;
- if his/her representative is not present in the hearings of a Court of First Instance and the Court of Appeal, to personally make speeches and remarks;
- to make an appeal or cassation against an inspector's, investigator's, prosecutor's or court's decisions or actions;
- to reconcile with an accused by means of a special accusation in the process of prosecution;
- to protest against information given to him/her by the body carrying out the prosecution process or against complaints of the participants of the criminal process;
- to participate in cassation or additional cassation, or in considering the incidents or newly uncovered incidents of violation of rights and liberties, or if he/she protests against other participants of the criminal process;
- to get from the state a compensation specified by the legislation for the loss he/she has suffered as a result of an act covered by the criminal legislation;
- to get a compensation for the expenses made in respect of the criminal case and the loss he/she has suffered as a result of unlawful actions of the body carrying out the criminal process;
- to get back the property, official documents (belonging to him/her) in original,

which were taken from him/her by the body carrying out the criminal process as a material evidence; to get back the property (belonging to him/her) from a person who has performed actions covered by the criminal legislation;

- to have a representative and to terminate his/her powers;
- to withdraw any complaint, including a complaint about actions against him/her covered by the criminal legislation, submitted by himself/herself or his/her representative.

At the same time, a victim shall perform the following obligations:

- to summon when requested to do so by the body carrying out the criminal process;
- to give a testimony when demanded to do so by the body carrying out the criminal process;
- to present items, documents and samples he/she possesses when demanded to do so by the body carrying out the criminal process in order to make a comparative inquiry;
- if there are grounds for doubting the ability to correctly understand and describe what has happened, to pass the ambulatory expertise when demanded to do so by the body carrying out the criminal process in order to determine this;
- to obey an inspector's, investigator's, prosecutor's or presiding judge's instructions;
- not to leave the court room without the presiding judge's permission before a break was announced;
- not to spread information concerning personal immunity, family, state, profession, commerce and other secrets protected by the legislation.

## **2**

Under *section 315* of the *Criminal-Procedural Code*, a victim has a right to participate in all court hearings during a trial by using the rights provided for by the legislation.

As far as the other question is concerned, it should be noted that our domestic legislation does not provide for a right of a prosecutor to represent a victim. Under *section 102.2* of the *Criminal-Procedural Code*, lawyers or other people, who have a notarised power of attorney granted by a competent person, may participate in the criminal process as the victim's representative.

## **3a**

Under *section 123* (Requirement of taking measures for state protection of victims, witnesses, accused and other people participating in the criminal process) of the *Criminal-Procedural Code*, the body carrying out the criminal process shall take measures of protection upon a request of a victim, witness, accused or other people participating in the criminal process, or its own initiative, by taking an appropriate decision if any of them needs a protection from acts covered by the criminal legislation or a possibility of such need has been determined.

The body carrying out the criminal process shall consider a petition or request of



participants of the criminal process for taking measures of protection without a postponement, but not later than 72 hours from receiving these petitions. The result of considering the petition or request shall be informed to a petitioner immediately and a copy of an appropriate decision of the body carrying out the criminal process shall be sent to him/her.

In case of receiving a copy of decision, which rejects the petition or request, he/she may complain to a court within a period of 5 days from receiving it, or not receiving a copy of decision from the body carrying out the criminal process within a period of 7 days, he/she may apply to the court for taking measures of protection.

Should a participant of the criminal process be menaced or attacked after he/she was refused to take measures for protection, or any other facts occur, which were not shown in the petition or request, this does not prohibit refiling a petition or request for taking measures of protection.

Taking of measures of protection with regard to participants of the criminal process is carried out in circumstances and way provided for by the legislation.

Under *section 6* (Bodies ensuring protection of a person requesting the protection) of the *State Protection of Participants of the Criminal Process Act* of the 11<sup>th</sup> December 1998, the bodies ensuring the protection are the following:

1. the bodies that have taken a decision to take measures of protection;
2. the bodies carrying out the measures of protection on the basis of that decision.

A decision to take measures of protection with regard to a person requesting the protection is taken by the body carrying out the criminal process in the way specified by the criminal-procedural legislation. According to that decision, competent local municipalities are commissioned to take measures of protection with regard to a person requesting the protection.

Under *section 7* (Forms of measures of protection carried out with regard to a person requesting the protection) of the Act, the forms of measures of protection are the following:

1. to guard a person requesting the protection, his/her apartment and property;
2. to give a person requesting the protection individual means of protection and warn him/her about an existing danger;
3. to temporarily keep a person requesting the protection in a safe place;
4. to secure confidentiality of information related to a person requesting the protection;
5. to change the job, place of work or education, and residence of a person requesting the protection;
6. to change identification documents and appearance of a person requesting the

- protection;
7. to hold closed court hearings, which a person requesting the protection participates in, in the way specified by the legislation.

**b**

Under *section 84* (Prosecutor) of the *Criminal-Procedural Code*, a prosecutor, who procedurally leads the initial inquiry, while supervising the inquiry and initial investigation, is empowered to ensure carrying out of measures of protection with regard to a victim, witness, accused or other people participating in the criminal process.

**c**

The rules on carrying out measures of protection are specified by this and other pieces of legislation of the Republic of Azerbaijan.

Information about threat of murdering, using force, destroying property and causing loss to a person requesting the protection, which was found out by the bodies ensuring protection, qualifies as a ground for carrying out measures of protection.

The body carrying out the criminal process shall consider a petition or request of participants of the criminal process for taking measures of protection without a postponement, but not later than 72 hours from receiving these petitions. The result of considering the petition or request shall be informed to a petitioner immediately and a copy of an appropriate decision of the body carrying out the criminal process shall be sent to him/her.

In case of receiving a copy of decision, which rejects the petition or request, he/she may complain to a court within a period of 5 days from receiving it, or not receiving a copy of decision from the body carrying out the criminal process within a period of 7 days, he/she may apply to the court for taking measures of protection.

The body carrying out measures of protection informs the body carrying out the criminal process about the measures of protection that were taken and their result, and files a petition to terminate them when the circumstances menacing the protected persons are eradicated.

**4**

Under *section 284* (Familiarisation with materials of a criminal case before drafting an indictment bill) of the *Criminal-Procedural Code*, an investigator, who decides that the collected proofs are sufficient for drafting an indictment bill and sending a criminal case to a prosecutor, who procedurally leads the initial inquiry, informs a victim or his/her representative about the completion of the initial inquiry, specifies the venue and time for the participants of the criminal process to familiarise themselves with materials of the criminal case. Should the victim's representative be unable to come at the specified time, the investigator postpones the familiarisation with materials of a criminal case for a period of up to 5 days. If the representative does not come within this period, the victim is provided with an opportunity to have another representative.

According to *section 287 of the Criminal-Procedural Code*, once the victim or his/her representative have familiarised himself/herself with the materials of the criminal case, the investigator finds out whether or not there is any petition filed by victim or his/her representative to carry out a further investigation or take new procedural decisions. At their request, they can be given up to 48 hours to prepare and file a petition in writing.

The investigator takes a justified decision to completely or partially reject the petition and presents a copy of this decision to the person, who filed it, not later than 48 hours from the moment of filing of the petition. The criminal case may not be sent to the prosecutor, who procedurally leads the initial inquiry, until the petition has been dealt with. A complaint about the investigator's decision to refuse to carry out a further investigation or take new procedural decisions may be made to the prosecutor, who procedurally leads the initial inquiry, within a period of 48 hours from the moment of presenting a copy of the decision to completely or partially reject the petition.

Should the prosecutor, who procedurally leads the initial inquiry, reject the complaint about rejection of the petition concerning the case already sent to a court, this does not prohibit filing the petition with the court.

Irrespective of who filed the petition and whose interests it may affect, after the petition is satisfied the investigator shall provide an opportunity for the victim or his/her representative to familiarise himself/herself with those materials of the criminal case that relate to the petition.

The investigator presents the criminal case and the indictment bill to the prosecutor, who procedurally leads the initial inquiry. Having familiarised himself/herself with the indictment bill and the materials of the criminal case, while taking a decision to send the case to the court, the prosecutor immediately informs the victim or his/her legal representative by explaining them their right to file a petition with or make a complaint to the court in the future.

## 5

According to the criminal-procedural legislation, a prosecutor does not have a right to mediate in the criminal process.

It should be mentioned that an *ad hoc* Working Group on Perfection of Legislation, which exists by the Anti-Corruption Commission, works on introducing the idea of "plea bargaining" into the criminal-procedural legislation.

## 6

According to the criminal-procedural legislation, a victim has the following rights in respect of procedural act related to him/her:

- to familiarise himself/herself with a minutes of investigation or other procedural acts, which he/she participated in, and make notes in relation to the correctness and completeness of information in the minutes;
- to demand entering in the minutes the situations, which are worth taking a note of,

- occurred while he/she was participating in investigation or other procedural acts as well as during the court hearings; to familiarise himself/herself with a minutes of the court hearings and make notes in relation to it;
- to familiarise himself/herself with the materials of a case and make a photocopy of the necessary documents related to him/her from the moment of completion of an initial investigation as well as termination of dealing with the criminal case;
  - should the body carrying out the criminal process take decisions that affect his/her rights and legal interests, to be informed by the body about these decisions and, at his/her request, obtain their copy.
  - to obtain a copy of a decision to terminate dealing with the criminal case, a decision to summon as an accused, a decision to refuse commencing criminal proceedings, an indictment bill, a ruling or decision of court.

## 7

Under *section 87.6.14* of the *Criminal-Procedural Code*, a victim has a right to make an appeal or cassation against an inspector's, investigator's, prosecutor's or court's decisions or actions.

## CROATIA

### **1) What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

The victim in a criminal proceeding can be accorded a dual status. First and foremost, the victim has the status of an injured party. The Criminal Procedure Act defines the injured party as a person whose specific personal or property right has been violated or endangered by an offence.

As an injured party the victim can, either by him or herself or assisted by someone acting on their behalf, take part in proceedings by attending investigative actions or the main court hearing; he/she has the right to propose evidence, ask questions, file a claim against property that is the subject of the proceedings.

In a shortened procedure (for offences punishable by a prison sentence of up to five years), if the public prosecutor is not present at the main hearing, the injured party has all the rights that the public prosecutor.

The position of the victim as a witness varies and depends on whether he/she is an adult or a minor. An adult victim is questioned during criminal proceedings like any other witness, whereas a minor is examined under special rules applicable to minors. These persons are normally examined separately via a video link installed in another room and with the help of experts.

### **2) Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

A victim may initiate proceedings by bringing charges before the police or the public prosecutor.

As mentioned under 1. above, the victim has the right to take part in proceedings, ask questions, propose evidence and in a shortened procedure, if the public prosecutor is not present at the main hearing, he/she has all the rights of the public prosecutor, including the right of appeal. For offences for which proceedings are initiated *ex officio*, the public prosecutor initiates proceedings, represents the charges brought, and thereby has the responsibility of representing the victim. It is up to the victim to decide whether to file a property claim as part of the current proceedings or to file it separately in a civil suit.

### **3) a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?**

Our system makes a distinction between the protection of endangered victims or witnesses in and out of proceedings. Under the Criminal Procedure Act, during the trial

an endangered witness can be examined by hiding his/her identity (vocal and visual distortion). Protection outside court is covered by a special law, the Witness Protection Act. It is possible to protect an endangered witness and persons close to him or her.

**b. What powers or responsibilities does the public prosecutor have in this area?**

The public prosecutor can propose to the court a special method of questioning the witness or a method of his/her participation in proceedings (concealing the identity or the appearance of the person) and the court decides on the matter.

The Chief Public Prosecutor of the Republic of Croatia is alone empowered to put forward a proposal to the Witness Protection Commission that a person be included in the out-of-court witness protection scheme.

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

The public prosecutor is not empowered to impose protection measures. If he/she has presented an out-of-court witness protection proposal, then he/she is proposing at the same time to a special witness protection task force to take urgent protection measures. Witness protection is carried on after the proceedings are over.

**4) Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?**

For offences which are prosecuted *ex officio* the public prosecutor is taking decision upon the basis of the law.

In other words, in case of a reasonable suspicion that an offence has been committed, the public prosecutor's duty is to initiate criminal proceedings.

The law provides for an exception when it comes to offences punishable by up to three years in prison. In such cases the public prosecutor may, with the consent of the suspect and permission of the injured party (victim), decide to defer prosecution, in which case the suspect is required to make amends (indemnification and the like). If the suspect makes such a move, criminal charges will be dropped.

**5) Is the public prosecutor empowered to mediate in criminal cases?**

As a rule, the public prosecutor is not empowered to mediate in criminal cases. As already mentioned, his/her role is to initiate criminal proceedings on the basis of the law.

**6) Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

The public prosecutor is required to inform the injured party on a dismissal of criminal charges. If proceedings have been initiated and the public prosecutor decides not to prosecute, the victim can obtain any further communications from the court.

The victim has the right of access to the public prosecutor's files and the right of getting any clarifications concerning him/her.

**7) Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

The victim has no right of appeal against a decision of the public prosecutor not to prosecute.

As mentioned under 6. above, the public prosecutor's decision to drop criminal charges is communicated to the victim who can, within a period of 8 days can resume prosecution by making a declaration to this effect before the court, in which case he/she acquires all the rights vested in the public prosecutor.

The court decides whether or not to accept such a proposal for the resumption of prosecution.

**CZECH REPUBLIC**

1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?

The legal definition of the injured person is given in section 43 of the Criminal Procedure Code: the one who was hurt through a crime as far as his health is concerned or who was caused property, moral or other damage. The status of an injured person is granted to everyone who suffered harm as the result of a crime that is the subject of penal proceedings. A person shall not be considered an injured person if he feels morally or otherwise injured as a consequence of the criminal offence, but if, the resulting loss has not been caused by the offender, or if it is not a direct consequence of the crime. The injured person whose property was damaged by the criminal act can ask for compensation during the penal proceedings.

An injured person has the position of a party in the penal proceedings (independent of the other parties, namely the public prosecutor). An injured person may also waive their procedural rights as the injured person under this law through his/her explicit statement to this effect communicated to the agency involved in the criminal proceedings.

If the injured person has claimed damages and proves that he/she has insufficient means to pay for an attorney and ask for help, the chairman of the bench of the court in the first instance, and the judge in the preparatory proceedings, may decide to grant legal assistance through an attorney free of charge or at a reduced fee. This does not apply if the nature of the damages claimed or the amount. The request for this decision is submitted by the injured person in the preparatory proceedings by means of the state attorney who adds thereto his/her own comments. The chairman of the court and the judge in the preparatory proceedings appoint an advocate as the injured person's attorney. The cost resulting from including such an attorney is paid by the state.

Act no. 218/2003 Coll., the Juvenile Justice Act states that in proceedings involving juveniles, the injured person should receive compensation for damages as a result of an unlawful act. The act also provides that bodies acting under the Juvenile Justice Act are obliged to take into account the interests of an injured person, instruct such a person on his/her rights giving him/her every opportunity to exercise their rights. The injured person may exercise his/her rights during criminal proceedings either on his/her own or through a third person - statutory representative, guardian or authorised person.

The public prosecutor and, during trials, the presiding judge should judge the relevance and suitability of special ways of conducting the proceedings in order to compensate for damages. The injured person should be informed by the body in charge if a juvenile declares willingness to compensate for damage caused by the act.

The injured person may choose to be represented by an authorised person, who, based on a representation agreement and a power of attorney, is entitled to represent the injured



person in criminal proceedings. The authorised person submits motions, applications and remedial measures for and on behalf of the injured person. An authorised person is in most cases a lawyer.

If a child was injured as a consequence of a crime, or damage was incurred to their property, (moral or other) by virtue of Section 43, Paragraph 1 of the Criminal Procedure Code, then he/she is seen as an injured person and is entitled to a statutory representative or guardian who will exercise his/her rights on their behalf under the Criminal Procedure Code. The competency to acquire rights and duties of a child is limited and, therefore, it is its statutory representative who is entitled to exercise the rights of an injured child. However, if, during criminal proceedings, the minor comes of age (18<sup>th</sup> birthday or gets married), the rights of the statutory representative or guardian become null and void.

If the statutory representative of an injured person is not able to exercise his/her rights and there is a danger of delay, the presiding judge, and in a preparatory procedure the public prosecutor, shall appoint a guardian to exercise the rights of an injured person. The decision to appoint a guardian applies to cases of the authorised person of an injured person being in hospital or abroad for a long time or in cases of a conflict of interests existing between the statutory representative and the injured person such as when a parent commits a crime injuring his or her child.

The Criminal Procedure Code defines an injured party (see the legal definition of an injured person - in Section 43, Paragraph 1 of the Criminal Procedure Code). Thus the notion of an injured person characterizes the procedural position of a person injured by a crime, and defines his position during the entire criminal proceedings.

A Victim is a wider concept than that of an injured person as applies to persons that have been injured as a direct consequence of a crime as well as those that have been injured indirectly. The notion of a victim is used in criminology - particularly its part referred to as victimology and in Act no. 209/1997 Coll., on the compensation of crime victims as amended (coming into force on 1<sup>st</sup> January 1998).

Under Act no. 209/1997 Coll., on compensation of crime victims as amended (hereinafter "Act no. 209/1997 Coll."), it is possible to make cash payments to compensate crime victims. Act no. 209/1997 Coll., has been passed in view of the European Convention on the Compensation of Victims of Violent Crimes. Under Act no. 209/1997 Coll., a victim is thought of as a natural person whose health has been damaged as a consequence of a violent crime. People who are the dependants of a person killed as the result of crime are also thought of as victims if the killed victim supported or was obliged to support the survivor. Under this act, victims of violent crimes must be instructed during the proceedings on the conditions of being compensated in cash. The Czech Republic supports the activities of various non-governmental organisations aimed at aspects specified in Art. 6, para. 3 of the Protocol (for example, the organisation Bílý kruh bezpečí – White Circle of Safety).

2. Are victims allowed to take part in, or to initiate proceedings?  
Does the public prosecutor have any responsibility for representing the victim?

As mentioned above, an injured person is a party to criminal proceedings with broad procedural rights. An injured person (regardless of his decision to claim damages) is entitled to file a motion for additional evidence at the beginning of the preparatory proceedings and later on during any trial that follow. During the entire proceedings, an injured person is also entitled to inspect documents, attend the trial, including the appeal trial. During the trial, the injured person may, if the presiding judge permits, ask questions to the persons being interrogated. At a court hearing, such a person has the right to make a statement before the hearing is closed. Last but not least, an injured person is entitled to propose remedial measures against the decisions of investigative, prosecuting and adjudicating bodies.

Criminal proceedings in the Czech Republic are part of public law. No private action may be brought as part of criminal proceedings as in countries like Germany and Austria, but there exists what is referred to as public action brought by the State against the person accused of committing a crime (although in some cases with the consent of the injured person – see below the answer to Question 7).

Under Article 80 of the Constitution of the Czech Republic, a public action is brought by the Public Prosecutor's Office, which is seen as part of the Executive. The exclusive position of the Public Prosecutor's Office in criminal proceedings is also based on the principle of legality (Section 2, Paragraph 3 of the Criminal Procedure Code), according to which the public prosecutor is obliged to prosecute all crimes that he/she learns of, and on the accusatorial principle (Section 2, Paragraph 8 of the Criminal Procedure Code), according to which a court trial is only possible after the public prosecutor has started proceedings. Thus, **an injured person**, although he is an independent party to criminal proceedings, cannot **initiate proceedings**, since this is the right of the State alone.<sup>1</sup>

When supervising the preparatory proceedings, the public prosecutor must see to it that injured persons can exercise their rights. Pursuant to Sec. 46 of the Rules of Criminal Procedure, the investigating, prosecuting and adjudicating bodies are obliged to inform the injured of their rights and provide them with the possibility of enforcing them. Similarly, under Sec. 14, Act 209/1997 Coll. (refer to the answer to the question 23 in the introductory part), the investigating, prosecuting and adjudicating bodies in criminal proceedings relating to bodily injury or death are obliged to inform the victim of his rights and of how they can enforce these rights.

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<sup>1</sup> In this regard, the resolution of the Constitutional Court of the Czech Republic, file no. I. ÚS 249/2000 of 27.09.2000 should be noted. The Constitutional Court has adjudicated that, in the continental European concept, the fact that the definition of crime, the prosecution of the perpetrator of a crime and his/her punishment is a matter of the relationship between the state and the perpetrator of a crime constitutes the characteristic sign of a modern rule of law. Through its bodies, the state decides by the rules of criminal procedure as to whether a crime has been committed and who has committed it. The reason is that no subjective, constitutionally guaranteed right of a natural person or legal entity to another person being prosecuted exists.

If the court, public prosecutor or police ascertain that the victim is in possible danger as a result of the accused person's liberty, then they are obliged to inform the victim or witness of his/her right to demand information on about the accused person's release or escape from prison. Victims or witnesses are entitled to ask for this information from the court or the public prosecutor's office. The aforementioned regulation (section 44a of the Criminal Procedure Code) was inserted by the Amendment of the Criminal Procedure Code n. 283/2004 Coll.

3. a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?

Section 55 para. 2 of the Criminal Procedure Code regulates anonymous witnesses.

If circumstances suggest that a witness or a member of his/her family are in danger, and if protection cannot be ensured in any other manner, then the law provides the agency involved in the criminal proceedings shall take measures to conceal the witness' identity of the witness, including their face. Their first and last names and other personal data will not be mentioned in the record but kept separately and may be disclosed only to the bodies involved in the criminal proceedings in the given case. The witness shall be informed of the right to ask to hide his/her face and to sign the record using a fictitious name, under which the witness's actual personal data will be kept. If grounds for hiding the witness' face and/or the keeping of a separate file containing his/her personal data are no longer relevant, the agency conducting the criminal proceedings will add this data to the criminal file, and the witnesses' face will no longer be concealed.

On 1<sup>st</sup> June 2001, the Act no. 137/2001 Coll., on special protection of a witness and other persons in connection with criminal proceedings, and on amendments of the Act no. 99/1963 Coll., Rules of Civil Procedure, came into force. It allows for the protection, relocation, help with social integration in a new environment, and concealment of a person's real identity. § 55 par. 2, Rules of Criminal Procedure relates to the procedure for protecting a witness in criminal proceedings.

Special measures to protect witnesses are regulated in the Act no. 137/2001 Coll. These means are physical protection, moving witnesses and their family members to new locations, promoting of protected persons for the purposes their social participation in new surroundings.

Witness protection measures are authorised by the Ministry of Interior (the public prosecutor or judge makes a proposal to the Ministry of Justice).

If the police do not identify any reason to keep a record of an interrogation conducted under section 55 para. 2 of the Criminal Procedure Code, despite the witness insisting on it, then the police must submit the matter to the state attorney who decides if the police proceeded correctly and properly.

The Criminal Procedure Code consists of special provisions in connection with witnesses' protection in files and data (section 65 of the Criminal Procedure Code), during court proceedings (§ 183a of the Criminal Procedure Code) and during court trials (§ 209 of the Criminal Procedure Code).

The institution of the Crown Witness does not exist in the Czech legal regulation. This provision formed part of a Draft of the Amendment to the Criminal Procedure Code, which was rejected by the Deputies' Chamber of the Parliament in October 2005.

If the court, public prosecutor or police organ ascertain that the victim is in danger in connection with accused person's stay at liberty, then these organs are obliged to warn the victim(s) or witness(es) that they may demand information about the accused person's release or his/her escape from prison. Victims and witnesses are entitled to demand information from the court or the public prosecutor's office. The aforementioned regulation (section 44a of the Criminal Procedure Code) was inserted the Amendment of the Criminal Procedure Code n. 283/2004 Coll.

The basic principle governing the interrogation of minors under 15 years old is the requirement that interrogation be limited to one time.

Victims who are minors are interviewed by a special police unit during preliminary proceedings, and can only be interviewed once (cf. section 102 para. 1 of the Criminal Procedure Code). Someone with experience and knowledge of juvenile education must be involved in the examination of witnesses under 15 years old. Victims who are minors may ask for the interview to be postponed to a later date or to have it cancelled/discontinued if it would have an unfavourable effect on the psychological condition of the minor being interviewed. If there is no harm in delaying the interview, then the agency involved in the criminal proceedings will agree to such a motion.

A second interview of a minor is only possible in emergency cases. The regulations governing this are motivated by efforts to prevent secondary victimisation of the minor, caused by the system that is supposed to protect the minor, in the course of dealing with the first victimisation (the result of crime). The negative effect of the criminal proceedings on a minor are also limited by the modified provisions in Section 102, Paragraph. 2 of the Criminal Procedure Code under which the court may decide that evidence may be given in a written form and via the reading the report of the interview with the minor under 15 years of age without the necessity to fulfil the conditions given by Section 211 of the Criminal Procedure Code (for him to appear in person?).

b. What powers or responsibilities does the public prosecutor have in this area?

In these cases, the public prosecutor supervises and ensures that the preparatory proceedings are carried out properly.

During the preliminary stage of the proceedings, the public prosecutors share the responsibility of protecting the human rights and fundamental freedoms of the victim

with the police. The prosecutor may decide to allow less serious interference to be made with these fundamental rights and freedoms (e.g. requesting information subject to bank privacy laws or those obtained from tax authorities, order monitoring of a bank account).

The public prosecutor's most important power can be considered the responsibility they assume for (ordinary) prosecution. In other words, although it is the police who usually decide to initiate a criminal prosecution, the public prosecutors have the competence to examine whether the criminal prosecution was initiated according to the law and is well-grounded, within the framework of their supervision during the preliminary stage of proceedings. In case any fault is found, the prosecutor can cancel the criminal prosecution immediately. It is relatively common for the public prosecutor to cancel decisions to start criminal prosecutions, either on the grounds of an accused person's complaint (see below) or of his/her own initiative.

Whether of their own initiative or from the accused person's initiative, the public prosecutor must examine whether the criminal prosecution is lawful and well-grounded. The public prosecutor also decides on any complaints against decisions to start criminal prosecutions. The public prosecutor also has this control during the whole course of investigation.

c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?

In this connection, the alternatives of remand in custody should be mentioned, which take various forms such as a guarantee given by an association of citizens or a by a trustworthy person of the future conduct of an accused person, a written pledge by the accused person, supervision by a probation officer, bail, and, in minors, entrusting a minor into the care of a trustworthy person. These measures may replace remand in custody and, if the body deciding about the detention takes one of such measures, an accused person may be left at liberty or be released from custody. If he/she breaks the rules or limitations set, his/her detention may be resumed.

The proposal of the Criminal Code recodification (at present time this proposal is being debated in the Deputies' Chamber of the Czech Parliament) – as to the sanction prohibition of specific activity and the possibility relating to imposing adequate restriction and appropriate duties – consists identical regulation.

4. Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?

Under Section 46, of the Criminal Procedure Code, the investigative, prosecuting and adjudicating bodies, including the public prosecutor, are obliged to instruct an accused person on his/her rights and give him/her every opportunity to exercise their rights. This is an obligation of the public prosecutor and also relates to an injured person who is not entitled to damages.

An injured person must also be instructed on the substance of the institute of composition as provided under Section 309 et seq. of the Criminal Procedure Code.

Section 309 regulates settlement between parties. In accordance with this provision, during preparatory proceedings, the court and the public prosecutor may decide to approve a settlement and suspend the criminal prosecution in the proceedings of the criminal offence which the law sets forth an imprisonment for the upper limit of which is less than five years if:

- a) the defendant states he/she has committed an offence for which he/she is prosecuted, and there are no justified grounds to doubt that his/her statement was made of his/her free will;
- b) the defendant pays the injured person damages for the criminal offence, or if he/she executes the acts required for their payment, or otherwise compensates the loss caused by the criminal offence; and
- c) the defendant deposits the settlement funds in the court's bank account, and for the account of the public prosecution office in the preparatory proceedings, the financial amount designated for socially beneficial projects, and the amount must be reasonable/sufficient with regards to the gravity of the offence; the defendant's person, and his/her personal and property conditions (standing). The defendant, injured person and the public prosecutor may lodge an appeal against the decision in accordance with subsection 1, with a dilatory effect.

The public prosecutor sees to it that the police has duly instructed the injured person in compliance with the provision of Section 14 of Act no. 209/1997 Coll., on the compensation of crime victims.

An injured person is entitled to free or reduced price representation when claiming damages and if there is a justified need. In cases where the minor is entitled to free representation, the financial situation of the minor's family will be assessed. In the vast majority of cases, an injured person's role in criminal proceedings also involves being a witness. Under these circumstances, he/she is entitled to the same protection granted to witnesses who are in danger.

An injured person has a right to change their mind about prosecution for crimes enumerated by Section 163 by his/her consent. If he/she declines to give this consent or revokes it, the prosecution cannot take place. Recently, however, this right of an injured person may only be exercised by a person over 15 years of age. Act no. 265/2001 Coll., which amends the Criminal Procedural Code, formulates the relevant provision in quite a new way by stating that if a minor under 15 years of age has been injured by a crime, the consent of such a child has no legal relevance and prosecution must be initiated. Similarly, consenting to prosecution under duress and as a consequence of threats, pressure, dependence, and subordination, will make the consent null and void.

5. Is the public prosecutor empowered to mediate in criminal cases?
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The public prosecutor is not empowered to mediate between the accused and the injured person. It is the Probation and Mediation Service that is in charge of this mediation.<sup>2</sup>

Mediation involves an out-of-court settlement of the dispute between the accused and the injured person and efforts to settle conflict arising during criminal proceedings. Mediation can only be carried out if both the accused and the injured person approve.

The Probation and Mediation Service also provides assistance and cooperation during pre-trial preparations. Public prosecutors make use of the assistance and cooperation offered by the Probation and Mediation Service mostly to uncover the causes of crimes and to settle disputes between accused and injured persons.

The assistance and cooperation offered by the Probation and Mediation Service in criminal proceedings is designed to help:

- a) replace remand custody with alternative measures,
- b) have proceedings of a special type based on the type of crime involved,
- c) find alternatives to punishment other than prison.

When public prosecutors make use of the assistance and cooperation offered by the Probation and Mediation Service, they do so on the principle that such help can:

- a) helps reduce harmful consequences of crime for injured persons and other persons affected by the crime,
- b) provides special care for juvenile persons and accused persons only a little older than juveniles,
- c) contributes to the protection of the rights of persons and to coordinate social and therapeutic methods of working with the accused, especially with juveniles and drug addicts,
- d) contributes to preventing of crime.

When supervising the legitimacy of preparatory proceedings, the public prosecutors require that the Probation and Mediation Service create conditions conducive to compromise and pre-trial settlement, as opposed to standard criminal prosecution. The Probation and Mediation Service is authorised to mediate compensation agreements and to draw up compromise agreements between the accused and injured parties, as well as provide the conditions for other procedures of this type.

6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?
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The public prosecutor must always inform the injured person about the way the case has been handled. The injured person may lodge a complaint against the decision of the police to discontinue a case, a decision made by the public prosecutor. An injured person

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<sup>2</sup> The Probation and Mediation Service was established by Act no. 257/2000 Coll., on Probation and Mediation Service (in force since 1<sup>st</sup> January 2001).

may, since the 2001 amendment to the Criminal Procedure Code, also appeal against a resolution to discontinue criminal prosecution or to re-classify the case as an administrative infraction, or some other administrative delict.

The Act no. 283/2004 Coll., amending the Criminal Procedure Code, has improved the way injured persons (victims) are informed in some specific cases. It has changed the duties of the investigative, prosecuting and adjudicating bodies in cases where they conclude that a witness is in danger from the accused or convicted person being at liberty, instructing the injured person or witness on the option to request information as to whether an accused person has been released or escaped from prison, or as to whether a convicted person has been released or has escaped from prison. An accused person or witness may file such a request with the court and, during the preparatory process, with the public prosecutor.

7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?

The Czech Criminal Procedure Code does not provide for the initiation of criminal proceedings at the proposal of an injured party (victim).

Section 163 of the Criminal Procedure Code states that for criminal offences where a specific relationship exists between accused and the injured party, the perpetrator will not be prosecuted in the case that injured party does not expressly give his/her consent to criminal prosecution.<sup>3</sup>

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<sup>3</sup> The criminal prosecution for the criminal offences of violence against a group of inhabitants and against an individual in accordance with section 197a, defamation in accordance with section 206, failure to give help in accordance with sections 207 and 208, infringing foreign rights in accordance with section 209, injury to health in accordance with sections 221, 223, and 224, endangering by venereal disease in accordance with section 226, restriction of personal freedom in accordance with section 231 subsections 1,2, blackmail in accordance with section 235 subsection 1, violation of domestic freedom in accordance with section 238 subsections 1,2, theft in accordance with section 247, embezzlement in accordance with section 248, unauthorised use of foreign thing in accordance with section 249, unauthorised interference with the right to a house, apartment, or non residential area in accordance with section 249a, fraud in accordance with section 250, participation in accordance with sections 251 and 252, usury in accordance with section 253, concealment of a thing in accordance with section 254, violation of the obligations when managing foreign property in accordance with section 255, damage of a creditor in accordance with section 256, and damage of a foreign thing in accordance with section 257 of the Criminal Code, against the person who is in relation to the injured person with regards to which the injured person would have right to refuse his/her testimony as witness (section 100 subsection 2), and criminal prosecution for the criminal offence of rape in accordance with section 241 subsections 1, 2 against the person who is or has been at the time of committing the offence in relation to the injured person as a spouse or a family partner, as well as the criminal offence of drunkenness in accordance with section 201a of the Criminal Code if it otherwise shows the features of the facts of the case of certain of the above criminal offences, may be initiated and continued in an already initiated criminal prosecution only with the consent of the injured person. If there are several injured persons in consequence of one offence, the consent of even only one of them suffices. If the injured person does not submit his/her statement to the state attorney or police agency in writing, its content shall be mentioned in the record. The injured person may withdraw his/her consent with the criminal prosecution through an explicit statement at any time, and until that time, when the court of appeal leaves the court room to have the final session. The expressly rejected consent, however, may not be newly granted.



Consent of the injured person with the criminal prosecution for one of the criminal offences referred to under section 163 subsection 1 of the Criminal Procedure Code is not required if

- a) such offence causes death;
- b) the injured person is unable to give his/her consent due to a mental disease or deficiency for which he/she has been deprived of the capability to execute legal acts, or for which his/her capability to execute legal acts has been restricted;
- c) the injured person is a under fifteen years old;
- d) it is obvious that the consent was not given, or if it was withdrawn under duress caused by threats or pressure.

If the injured person does not respond immediately to the invitation of the agency bringing the criminal proceedings, as to whether he/she agrees with the criminal prosecution in accordance with section 163 of the Criminal Procedure Code, he/she will be granted time to consider and prepare a statement, up to a maximum of 30 days. After this time has elapsed, consent can no longer be given. The injured person must be informed thereof in writing.

## DENMARK

1) The victim of a crime is generally considered to have a party-like status in a criminal case. The “real” parties to the criminal case are of course the prosecution service and the defendant. This party-like status for the victims includes situations when the victim is a minor, although the victim in such a case should act together with his or her legal guardian/parental authority. Being a party to the case implies certain rights for the victim to be found in the Danish procedural code – the Administration of Justice Act (AJA). Some rights are only given to victims of more serious and violent crimes.

2) Victims cannot initiate criminal proceedings, apart from a very few situations subject to private cause of action. A victim can initiate civil action, but such civil claims will often be dealt with during the criminal case. The public prosecutor is under certain obligation to help the victim mainly in relation to claims for economic compensation (Chapter 89 of the AJA), but also in other situations in accordance with administrative regulations.

3) a) and b) Provisions of the AJA make it possible by mere procedural means to try to protect victims and witnesses before and during the trial, inter alia by concealing their identity as a whole or partly or by having the defendant - but not his counsel - removed from the court room during the examination of a witness or victim. Such measures are decided by the court on the initiative of the prosecutor or after a request by the witness or the victim. It can be added that child victims can be interviewed before the trial and their statement be reproduced during the trial by means of a video recording of the statement. Non-procedural safeguards for victims and witnesses in danger will be taken by the police if needed after consultation with or by request of the prosecution service.

c) The public prosecutor will generally have to rely on court decisions and on the police, when it comes to the use of protection measures, at least the more efficient ones. When the proceedings are over protection is a matter for the police. If a victim or witness is intimidated the prosecutor should consider to start a criminal case against the perpetrators.

4) Speaking in general terms the decision to prosecute or not will and should not be influenced by specific wishes and needs of the victim. In other words, in Denmark criminal proceedings are considered a matter for society and the public interest, although the special interests of victims are recognized. A small number of minor crimes are thus only prosecuted if the victim so wishes and in all cases a prosecutor should among other criteria applied in the decision-making process take into account the position and needs of the victim.

5) Mediation is still not a part of Danish criminal procedure although some test projects have been carried out.

6) The general answer is affirmative. A decision not to prosecute must for instance be communicated to the victim.

7) A decision not to prosecute can within four weeks be brought before a superior prosecuting authority, which can make a full review of the case.

## ESTONIA

### **1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

**A Victim is according to section 37 of the Code of Criminal Procedure (CCP)** a natural or legal person to whom physical, proprietary or moral damage has been directly caused by a criminal offence or by an unlawful act committed by a person not capable of guilt. The rights of victims in criminal proceedings are the following according to **section 38 of the CCP:**

(1) A victim has the right to:

- 1) contest a refusal to commence or termination of criminal proceedings;
- 2) give or refuse to give testimony;
- 4) submit evidence;
- 5) submit requests and complaints;
- 6) examine the report of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts;
- 7) examine the materials of the criminal file;
- 8) participate in the court hearing;
- 9) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the charges and punishment set out in the charges.

A victim may file an appeal with a Prosecutor's Office against refusal to commence criminal proceedings; he or she may file an appeal with the Office of the Prosecutor General against termination of criminal proceedings or dismissal of an appeal by a Prosecutor's Office (CCP §207).

On the basis of the request of a victim a Prosecutors Office shall submit a criminal file, a recording made in a criminal proceeding or physical evidence to a victim. A victim has the right to make excerpts from the materials of the criminal file and request that copies be made of the materials of the criminal file by the Prosecutor's Office (CCP §224).

**According to CCP § 70 if the victim is under 14 years of age**, he or she shall be heard in the presence of a child protection official, social worker or psychologist. The body conducting the proceedings may involve a child protection official, social worker or psychologist in the hearing of a minor over 14 years of age.

**The Law (CCP § 12) stipulates restrictions on public access to court sessions**

- 1) in order to protect a state or business secret;
- 2) in order to protect morals or the private and family life of a person;
- 3) in the interests of a minor;

4) in the interests of justice, including in cases where public access to the court session may endanger the security of the court, a party to the court proceeding or a witness.

**The participation of a counsel throughout a criminal proceeding is mandatory if at the time of commission of the criminal offence, the person being defended was a minor (CCP §45).**

**2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

**According to CCP § 193 an investigative body or a Prosecutor's Office commences criminal proceedings** by the first investigative activity or other procedural act if there is reason and grounds therefor. The reason for the commencement of criminal proceedings is a report of a criminal offence or other information indicating that a criminal offence has taken place. The grounds for a criminal proceeding are constituted by ascertainment of criminal elements in the reason for the criminal proceeding.

**Section 41 of the Code of Criminal Procedure (CCP) stipulates that a** victim who is a natural person may participate in the criminal proceeding personally or through a representative. Personal participation in a criminal proceeding does not deprive the person of the right to have a representative. A victim who is a legal person may have a contractual representative in a criminal proceeding in addition to the legal representatives. In criminal proceedings, state legal aid shall be provided to victims on the bases to the State Legal Aid Act.

**Prosecutor presents the interests of the victim during whole criminal procedure.**

**3. a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?**

Taking into account the gravity of a criminal offence or the exceptional circumstances relating thereto, **a preliminary investigation judge may, at the request of the Prosecutor's Office, declare a witness anonymous by a ruling in order to ensure the safety of the witness.** In a court proceeding, a witness bearing a fictitious name shall be heard by telephone using voice distortion equipment, if necessary. Questions may be submitted to the witness also in writing (CCP §67).

A body conducting the proceedings may organise long-distance hearing of a witness if the direct hearing of the witness is complicated or involves excessive costs or if it is necessary to protect the witness or the victim (CCP §69).

**b. What powers or responsibilities does the public prosecutor have in this area?**

According to the Witness Protection Act (§ 4) the Central Criminal Police organises witness protection. **Supervision over witness protection shall be exercised by the Office of the Prosecutor General.**

**According to section 12 of the Witness Protection Act the Prosecutor General or a prosecutor appointed by him or her grants the permission for entry into the witness protection agreement.** In deciding on granting consent for entry into witness protection agreement, the prosecutor has the right to examine the protection file and other information collected, to interview the protected person and the person conducting the proceedings who submitted the application, and their close relatives. Where possible, the opinion of the relevant prosecutor responsible for the legality and efficiency of the pre-trial criminal proceedings is asked. The prosecutor has the right to make amendments to the draft witness protection agreement, also to assign the collection of additional information to the witness protection authority within a set term. The witness protection authority shall terminate the processing of an application for witness protection if the prosecutor refuses to grant permission for entry into the witness protection agreement.

**The prosecutor grants a permission for the amendment of the conditions of a witness protection agreement** if the protection measure applied to the protected person or his or her close relatives are changed or in the case of termination of application of protection measures (Witness Protection Act §15).

**A witness protection agreement is terminated with the permission of the Public Prosecutor's Office** (Witness Protection Act §16).

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

According to Witness Protection Act section 8 witness protection is applied during the pre-trial proceedings, the judicial proceedings and after the judicial proceedings. The duration of the application of witness protection depend on the degree of risk to the protected person and on the conditions of the witness protection agreement and compliance with the conditions by the protected person.

Look also previous answers.

**4. Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?**

Look also previous answers.

**5. Is the public prosecutor empowered to mediate in criminal cases?**

**According to section 239 of the CCP a court may adjudicate a criminal matter by way of settlement proceedings at the request of the accused or the Prosecutor's Office. Settlement proceedings shall not be applied** in the case of criminal offences in the first degree for which the lightest punishment is prescribed as at least four years' imprisonment in the Penal Code; also if the accused, his or her counsel or the Prosecutor's Office does not consent to the application of settlement proceedings; in the

case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of settlement proceedings; **if the victim** or the civil defendant **does not consent to the application of settlement proceedings**.

According to the CCP §240 if a Prosecutor's Office considers application of settlement proceedings possible, the Office shall explain to the victim, civil defendant, suspect or accused the option of applying settlement proceedings, their rights and the consequences of application of settlement proceedings.

The draft Amendment Code to the Code of Criminal Procedure has been prepared to include **the possibility to adjudicate a criminal matter by way of conciliation procedure**. The conciliation procedure is possible only with the consent of victim, accused, the Prosecutor's Office and the court.

**6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

Yes, in the case of termination the criminal proceedings or dismissal of an appeal by a Prosecutor's Office (CCP §207).

**7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

If an appeal is dismissed by an order of the Office of the Prosecutor General, the appellant may file an appeal against the order with the circuit court through an advocate within one month as of the receipt of a copy of the order (CCP §208).

## FINLAND

1) Victims who are minors (under 18 years old), are represented in criminal proceedings by their legal guardians (usually their parents). Minors who have reached the age of 15 have equal authority with their parents to act during criminal proceedings and to bring charges against a suspect. Victims, and especially victims who are minors, have the right to ask the Court to appoint a counselling attorney and/or a qualified support person to assist them both during the criminal investigation and the trial.

Note: Besides bringing charges himself, the victim also has a right to file a complaint against the District Prosecutors Office for decisions not to prosecute. Such a complaint can be made either to the Office of the Prosecutor General, the Parliamentary Ombudsman or the Office of the Chancellor of Justice. The Prosecutor General can decide to revoke the District Prosecutor's decision not to prosecute.

2) Victims, as well as the public prosecutor, have a right to raise charges against a suspect. The rights of the victim are secondary, however, and only really come into play when the Prosecutor decides not to bring charges against the suspect. In certain types of crimes, so called complainant offences (*asianomistajarikos*), (e.g. light assault and defamation), the Prosecutor cannot charge the suspect without the consent of the victim.

The public prosecutor has an obligation, when requested by the victim, to represent him/her during any civil based claims. The prosecutor has a right to refuse such a request only if representing the victim would harm his primary obligation, i.e. instigating criminal charges, or if it would be in conflict with the criminal charge or if the claim would be clearly inadmissible.

3) a. As of yet, there is no specific witness or victim protection program in Finland. Progress is being made on this issue, however, and the Ministry of Interior and the National Bureau of Investigation (*Keskusrikospoliisi*) have started a project with the aim of bringing a witness and victim protection program into being in a few years.

Witnesses and victims can testify in court without the defendant being present or alternatively "from behind a mirror". Testifying by videoconference or telephone is also possible. Anonymous testifying is not possible, however. The police have a right, when e.g. compiling case files which the suspect has a right to receive copies of, to keep secret all other personal data concerning victims and witnesses other than their names.

b. The prosecutor has no direct powers or responsibilities in this area. The prosecutor can protect witnesses by recommending that the police, victims and witnesses make use of the measures outlined under point 3 a.

c. The prosecutor is not empowered to impose any protection measures.



4) The victim's needs and wishes are aspects that the prosecutor has to take into consideration when considering whether or not to press charges. However, the general rule is that the prosecutor has an obligation to press charges when the evidence of the case suggests that the suspect has committed a crime (*virallisen syytteen alaiset rikokset*). When it comes to minor offences the prosecutor has the right to decide not to press charges, though he considers that the suspect is guilty of an offence (called "Imputable decision not to raise charges"). The victims' wishes are one of the main considerations that the prosecutor can base such decisions on.

5) The public prosecutor himself cannot mediate in a case. Although he has the right to refer a case to mediation, which then takes place at a mediation office provided by the local administrative authorities.

6) The public prosecutor does not have an obligation to inform a victim of actions taken with respect to a case before bringing charges against the suspect or making a decision not to press charges. Usually the victim finds out about upcoming court proceedings from the Court once charges have been pressed.

7) Besides bringing charges himself, the victim also has a right to file a complaint regarding the District Prosecutors decision not to prosecute. Such a complaint can be made either to the Office of the Prosecutor General, the Parliamentary Ombudsman or the Office of the Chancellor of Justice. The Prosecutor General can decide to revoke the District Prosecutor's decision not to prosecute.

**FRANCE**

- 1.** The victim is a party to the proceedings if he/she has lodged a complaint and requested compensation for the damage suffered. This right applies to minors, who are represented by their parents or a third party specifically appointed for that purpose.
- 2.** As plaintiffs, victims may apply to be joined to proceedings already under way and may even initiate them if the public prosecutor takes no action. The latter is not, however, empowered to represent victims directly, but speaks and takes part in proceedings “on society's behalf”.
- 3. a.** Yes, in that victims and witnesses may seek police protection by lodging an application with the public prosecutor.  
**b.** The prosecuting authorities have a duty to ensure that victims and witnesses are protected. Any person who threatens or seeks to intimidate them is liable to prosecution (cf. Articles 434-5 and 434-15 of the Criminal Code. – Penalty: three years imprisonment and/or €45,000 fine).  
**c.** The public prosecutor’s powers are linked to his or her general duty to assist victims and witnesses but he or she may not directly impose specific protection measures, which are a matter for the administrative authority (Prefect) responsible for public order.
- 4.** No, the public prosecutor is only required to inform the victim of the date of the hearing when he or she initiates proceedings. It is then for the victim to assert his or her claims concerning the alleged damage.
- 5.** Yes, the public prosecutor has the right to initiate criminal mediation which is one of the “alternatives to prosecution”.
- 6.** Yes (Art. 40-2 of the Criminal Code).
- 7.** Yes, either by appealing to the Principal State Prosecutor (Art. 40-3 of the Code of Criminal Procedure (CCP)) or by applying to the investigating judge to be joined to the proceedings as a civil party (Art. 85 of the CCP).

## GERMANY

1) By reporting the offence to the investigating authorities, the victim of an offence (aggrieved party) often sets the investigation in motion. The victim of an offence provides important evidence as a witness. Furthermore, the victim is also entitled to active participation in and information about the proceedings as well as to certain protective measures. In principle, the rights of victims who are minors do not differ from those of adult victims. However, because of their special need for protection, protective measures will be required more frequently in cases where the victim is a minor.

2) Investigative authorities will take action *ex officio* as soon as they learn or suspect that a criminal offence has been committed. As a rule, this happens when the victim of the crime makes a complaint. In this way the victim of an offence can often initiate proceedings.

The victim of an offence takes part in the proceedings primarily as a witness. Furthermore, as the aggrieved party, he or she can join the prosecution as a private accessory prosecutor. In doing so, the aggrieved person becomes an official party to the proceedings and may thus make applications and lodge his/her own appeals during the court proceedings. But even if the aggrieved party does not join the prosecution as a private accessory prosecutor, he/she has special rights, such as the right to access the criminal file and to be present at the main hearing.

When making procedural or substantive applications and decisions, the public prosecution must take into account all circumstances of the individual case, including the victim's interests. However, the public prosecutor does not formally represent the victim. Rather, as a party to the proceedings, the aggrieved party has a position of his/her own and may be represented by counsel.

3) a) Victims who are in danger can be protected on two legal levels: firstly, the police may take special protective measures, including using witness protection programmes in which the witness is given a new identity and a new place of residence. Secondly, the Code of Criminal Procedure provides for certain specific measures aimed at avoiding the victims' exposure to risks during the hearing. Such measures include, for example, the exclusion of the public or the accused during the examination of the witness, examination of the witness via video conferencing link, the presentation of a record of a prior examination of the witness in order to avoid a new hearing, or the non-disclosure of the witness's place of residence.

b) The public prosecutor cannot impose police witness protection measures; he can only suggest them to the police. In accordance with the general distribution of tasks between the public prosecution office and the court, the public prosecutor can himself impose criminal procedural measures in criminal proceedings or apply to the court for the imposition of such measures.

c) Police protection measures cannot be imposed by the public prosecutor; he can only suggest them to the police.

4) On the basis of the facts and the legal situation, the public prosecutor decides whether or not there is sufficient suspicion for pressing public charges. Purely subjective wishes or needs of the victim are not taken into consideration.

In deciding according to their discretion whether or not to terminate proceedings (for example pursuant to sections 153 and 153a of the Code of Criminal Procedure), the public prosecution office must also take into account the victim's interests.

5) In appropriate cases, the public prosecution office and the court are to work towards victim-offender mediation in every stage of the proceedings.

6) If the public prosecution office terminates the investigation proceedings, the victim will be informed of this in writing. Upon request, the victim can be informed about the outcome of the court proceedings. Furthermore, the victim is to be informed, upon request, about the imposition or lifting of any measures involving deprivation of liberty against the accused or about any relaxation of prison conditions.

7) If the public prosecution office terminates an investigation on the grounds of a lack of sufficient suspicion that an offence has taken place, the victim is entitled to lodge a complaint with the Prosecutor General's Office. In the case of a complaint's dismissal by the Public Prosecutor General's Office, the victim is entitled to appeal the dismissal before the Higher Regional Court.

## ICELAND

1. According to the Code of Criminal Procedure (CCP) the victim has the position of a witness. This also applies in cases of child victims. However, the victim has the right to make claims for compensation and has certain rights to free legal representation. The victim always has the right to legal representation in cases of sexual offences and in other cases concerning serious offences against the person. Initial statements of child victims/witnesses are made under specific court sessions, audio- and videotaped. The child should not have to reappear before the court during the proceedings of the case.

2. Reference is made to the answer to question no. 1.

3. a. Article 108 of the General Penal Code (GPC) applies to witness protection and reads as follows: “Anyone causing another person or his/her close relatives or others connected to him/her physical violence, illegal force or threat (...) due to his/her reporting to the police or a court of Law shall be subject to imprisonment for up to 6 years or fines in case of mitigating circumstances”.

As a main rule, court proceedings should be open to the public. According to Article 8 of the CCP, the judge may make exceptions from this principle, for instance in order to protect victims and witnesses. According to Article 59 of the CCP the judge may decide to expel the suspect from the courtroom while a witness makes its statement and witness identity may be kept secret in order to protect its safety.

Under the Child Welfare Act a child can be removed from its home if its immediate environment is considered to be hazardous or otherwise not presentable.

Under the CCP, a judge may order a restraining order, subject to police request.

b. The prosecutor may make claims in order to protect witness safety under court proceedings (see answer to question 3.a.).

Restraining orders are made by police lawyers. Prosecutors are not afforded the powers to make such requests under the CCP.

c. The CCP does not empower prosecutors to impose alternate protection measures.

4. Several offences of defamation and against the inviolability of private life will be subject to official indictment only according to the submission of the injured party.

Otherwise the decision to prosecute is based on the prosecutors evaluation of the evidence. If the prosecutor considers that the established facts will not be adequate or likely to secure a conviction he/she shall let the case rest.

5. No.

6. According to the CCP the prosecutor shall notify the victim when indictment has been made known to the defendant.

Furthermore, the prosecutor has the duty to inform the victim of the outcome of the court proceedings and of any further proceedings, for instance in relation to appeal.

7. The victim may ask for reasoning of a decision not to prosecute. Decisions of police prosecutors not to prosecute may be appealed to the Director of Public Prosecutions.

## IRELAND

### **1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

The Director of Public Prosecutions enforces the criminal law in the courts on behalf of the People of Ireland. The victim is primarily a witness in the proceedings. This is the case whether the crime is against an adult, or a child. There is provision in certain circumstances for minors to give evidence by live television link or by video-recording.

There is statutory provision for Victim Impact Statements to be made to courts at sentencing. In determining the sentence to be imposed for a violent offence or a sexual offence, a court must take into account any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.

In such cases the court may, where necessary, receive evidence or submissions concerning any such effect and must, where requested by the person in respect of whom such offence was committed, hear the evidence of that person as to the effect of the offence on him or her.

It has also been the practice of the courts to accept such evidence from a member of a deceased victim's family in homicide cases.

### **2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

While victims primarily participate in proceedings as witnesses, there is a limited right for any person ("a common informer") to make a complaint to a District Court judge in relation to an offence and to conduct a private prosecution in the District Court (lower court) in their own name. This citizen's right to prosecute has survived the establishment of the Office of the Director of Public Prosecutions.

However, despite this provision for the initiation of criminal proceedings by any person, victims do not ordinarily initiate criminal proceedings. Only the public prosecutor (the Director of Public Prosecutions), save in respect of a limited number of offences reserved to the Attorney General, may prosecute on indictment (more serious offences). In the vast majority of cases proceedings are commenced on behalf of the People of Ireland by a member of An Garda Síochána (the Police), who prosecute summary offences (less serious cases) in the District Court in the name, and in accordance with the directions of, the Director of Public Prosecutions.

The public prosecutor (Director of Public Prosecutions) does not have a responsibility for representing the victim. Rather he prosecutes cases on behalf of the People of Ireland and not just in the interests of any one individual. For this reason, although the views and interests of the victim are important, they cannot be the only consideration when deciding

whether or not to prosecute. However, the Director will always take into account the consequences for the victim of the decision whether or not to prosecute or in relation to the acceptance of a plea and will consider any views expressed by the victim or the victim's family.

Please also see the more detailed response set out in the reply to question number 4 below.

**3. a. In your system are there any means of protecting victims or witnesses who are in danger?**

In exceptional circumstances An Garda Síochána (the Police) provide protection to witnesses. A Witness Security Unit at Garda Headquarters operates a Witness Protection Programme. Decisions in relation to who, and in what circumstances a person, may be admitted to the Programme are made by a non statutory body under the aegis of An Garda Síochána. It is an offence, punishable by up to 10 years imprisonment, to seek to discover the whereabouts, name or other particulars of witnesses who have been relocated under a programme operated by An Garda Síochána for the protection of witnesses.

Irrespective of whether a witness is the subject of such a programme, a Court may permit witnesses who are in fear or subject to intimidation to give evidence via live television link.

It is also an offence, punishable by up to ten years imprisonment, to threaten, intimidate, menace or put in fear a person who is assisting in the investigation of an offence, or is a witness, potential witness, a juror, potential juror or a member of his or her family, with the intention of obstructing or interfering with the investigation or the course of justice.

In addition, in any case involving a sexual offence or an offence involving violence or the threat of violence to a person, evidence may be given by any person (apart from the accused), whether from within or outside the State, though a live television link. Where the person is under 17 years of age this may be done unless the court sees a good reason to the contrary. Where the person is over 17 years it may be done if the court permits it. This facility for the giving of evidence means that the witness can give his or her evidence without having to be physically present in the courtroom.

Legislation also provides for the anonymity of victims of rape or other sexual assault offences to be protected. When a person has been charged with such an offence no matter likely to lead members of the public to identify a person as the complainant in relation to that charge may be published in a written publication available to the public or be broadcast except as authorised by a direction given by the court in the interest of justice.

Several statutory measures also provide for *in camera* hearings in certain criminal matters. For example, the general public are excluded from incest proceedings. In all other criminal proceedings of an indecent or obscene nature the court may exclude all



persons apart from officers of the court, the parties to the case, their counsel or solicitors, persons directly concerned with the case and bona fide representatives of the press. This exclusion only applies while the witness is giving evidence.

**b. What powers does the public prosecutor have in this area?**

The operation of the Witness Protection Programme is a matter for An Garda Síochána. Please also see the replies to (a) above and to (c) below.

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

The public prosecutor (Director of Public Prosecutions) is not empowered to impose protection measures. Whether or not to impose protection measures and at what stage is a matter for An Garda Síochána (the Police). Please also see the replies to (a) above

**4. Is the public prosecutor required to take the victim's needs or wishes into account in any decision to prosecute? If so, how?**

The public prosecutor (Director of Public Prosecutions) is not required to take the victim's needs or wishes into account in any decision to prosecute or not to prosecute.

The Director of Public Prosecutions prosecutes cases on behalf of the People of Ireland and not just in the interests of any one individual. For this reason, although the views and interests of the victim are important, they cannot be the only consideration when deciding whether or not to prosecute. However, he will always take into account the consequences for the victim of the decision whether or not to prosecute and will consider any views expressed by the victim or the victim's family.

The Director of Public Prosecutions has given the following undertakings in relation to victims of crime:

- (a) to have regard to any views expressed by victims of crime when making decisions in specific cases whether or not to prosecute;
- (b) to examine any request from a victim of crime for a review of a decision not to prosecute and in appropriate cases to have an internal review of the decision carried out by an officer other than the one who first made the decision. In the light of the judgment of the Supreme Court in *Eviston -v- DPP* (31 July 2002) the Director is entitled to review an earlier decision not to prosecute and to arrive at a different decision even in the absence of new evidence. The Director is required to apply fair procedures in the exercise of this function;
- (c) to seek a review of sentences which he considers unduly lenient in accordance with the provisions of section 2 of the Criminal Justice Act, 1993.

- (d) that the Office of the Chief Prosecution Solicitor will work with An Garda Síochána (the Police) to ensure that victims are fully informed of developments in the prosecution of perpetrators of offences, especially those of a violent or sexual nature, and at the request of the victim, facilitate a pre-trial meeting with a representative from the State Solicitor's Office and counsel to discuss the case. (It should be pointed out, however, that the State Solicitor will not discuss evidence with witnesses in advance of the case). They are also committed to ensuring that the victims will be treated with the utmost consideration and respect and to explaining, wherever possible, the court processes involved.

The Director will also give careful consideration to any request, properly considered and freely made, by a victim that proceedings be discontinued. It must be borne in mind, however, that the expressed wishes of victims may not coincide with the public interest and in such cases, particularly where there is other evidence implicating the accused person or where the gravity of the alleged offence requires it, the public interest may require the continuation of a prosecution despite the victims wish to discontinue.

The staff of the Director's Office do not meet victims of crime to discuss decisions. However, victims of crime may write to the Office if there is a point they wish to make about a particular decision.

**5. Is the public prosecutor empowered to mediate in criminal cases?**

No.

**6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

The public prosecutor (The Director of Public Prosecutions) is not required to inform the victim of an action taken in a case concerning him or her and does not disclose the reasons on which decisions not to prosecute are based.

However, the Director of Public Prosecutions has undertaken to work with An Garda Síochána (the Police) to ensure that victims are kept fully informed of developments in the prosecution of perpetrators of offences, especially those of a violent or sexual nature.

In the most serious cases such as sexual offences and murder, the victim or murder victim's family will be offered a pre-trial meeting involving the victim, the prosecution solicitor and the barrister dealing with the case. In most other cases the prosecution solicitor will also, at the victim's request, arrange such a meeting. The purpose of pre-trial meetings is to explain to the victim what will happen in Court. There are strict rules which prevent barristers discussing the actual evidence that victims will give. This is intended to prevent the witness being told what evidence to give or to avoid any suggestion that this has happened.

The Director's policy not to give reasons publicly has been interpreted as precluding him from giving reasons to victims. This aspect of the policy is at present under review.

**7. Does the victim have a right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

The Director of Public Prosecutions is independent when carrying out his functions. However he has undertaken to examine any request from a victim of crime for a review of a decision not to prosecute and in appropriate cases to have an internal review of the decision carried out by an officer other than the one who first made the decision.

There is a statutory prohibition on communicating with the Director or an officer of the Director of Public Prosecutions for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or for the purpose of influencing the making of a decision in relation to a review of a sentence. This prohibition, however, does not apply to victims or accused persons, their legal advisers or family members.

## ITALY

### **1.**

The victim of a crime can bring an action against the defendant, in the criminal proceeding, to claim damages.

A minor can sue the defendant by means of those who exercise the parental authority. If they lack, a guardian is appointed by the judge for this specific purpose, upon request of the public prosecutor.

From a more general point of view, victims can take part in the proceedings only designating a defending counsel, who can present memorials. Associations and bodies representing interests injured by the crime can participate in the proceedings, provided that the victim agrees.

The counsel for the victim is allowed to take part in the hearing aimed at collecting pieces of evidence exposed to risk of vanishing. All the parties can take part in such hearing and the evidence gathered in it has full validity in trial.

### **2.**

The Italian procedural system entitles the victim (or his/her strict relatives) to take part in the trial as injured party, with assistance of an attorney and – if necessary – with legal aid, as well as to be heard during the proceeding and to present evidence.

The victims cannot initiate the proceeding (with the exception of some cases, for whom the justice of the peace has jurisdiction and an action by the victims is necessary).

The public prosecutor cannot act on behalf of the victims.

### **3a**

Yes. The experience gathered in mafia cases led to a system of rules aimed at the protection of victims and witnesses (minors included) exposed to a risk.

### **3b**

The public prosecution has no direct power in this field, but – in accordance with its position as a party in the proceedings – its duties include that of asking the competent authorities to give protection to the victim of a crime or to a witness who cooperated with justice.

### **3c**

The public prosecutor cannot directly adopt protective measures.

During the trial, as well as after the end of it, the public prosecutor acts (with the requests mentioned above: see question 3.b) when dangers for the safety of the persons involved (or of their relatives) are envisaged.

**4.**

No. The Italian Constitution provides that the criminal action is compulsory.

**5**

No.

**6**

Yes, before the beginning of the trial.

If the public prosecutor is going to ask the judge to dismiss a case, the victim of the crime must be informed, if he/she asked so during the preliminary investigations.

**7**

In the situation mentioned above (answer No. 6, second part), the victim can oppose the public prosecutor's request of dismissal.

The judge for the preliminary investigations takes the final decision.

## LATVIA

1. A person who has been harmed through a criminal offence is qualified as a victim by decision of the Prosecutor, but solely with the written consent of the victim. The victim is one of the persons involved in the criminal procedure.

A victim who is a minor may not exercise criminal procedural rights at his own discretion. All the rights of a victim who is a minor are fully held by his representative.

2. The victim has the right to participate in criminal procedures, in all stages of the procedure and in all types of procedures.

During criminal prosecution and when charges are held in Court, the Prosecutor is responsible that the victim has the procedural opportunity to demand and to obtain moral and material compensation.

3. a. Such measures are envisaged by the Latvian Criminal Procedure. Special procedural protection is instaurated, if the victim or the witness has given evidence on a serious or especially serious crime. Victims who are minors or witnesses may be granted special procedural protection in criminal procedures concerning sexual crime or violence against the minor.

b. During prosecution, the Prosecutor has the obligation to assess requests submitted by victims, by witnesses or by other persons on the matter of how seriously their life, health or property is threatened considering the evidence they have given. If the Prosecutor deems that special procedural protection should be granted, he submits his proposal to the Prosecutor General who takes the decision on special procedural protection to be instaurated.

The Prosecutor General after examining the request, the Prosecutor's proposal and the Case, as well as, if appropriate, after hearing the threatened person, his representative or the defence, takes the decision on special procedural protection to be instaurated.

c. (*see answers 3b*) Special procedural protection is discontinued by decision of the Prosecutor General or a Court decision in any stage of the criminal procedure, if:

- 1) the reason for the protection is no more present,
- 2) the person has refused the protection,
- 3) the person by his own actions has rendered protection impossible.

This means that special procedural protection is granted up to the time (including after termination of the criminal procedure) when the life, health or property of the person to be defended is no more threatened or if the protection has been rendered impossible through the actions of the person to be protected. In the case where the person refuses

special procedural protection, the decision on such a request is taken by the Prosecutor General or the Court depending on the stage of the procedure.

4. In cases where public criminal prosecution is initiated only after an application of the victim, the victim may influence the Prosecutor's decision of holding the accused person criminally liable. If in the course of the procedure there is a settlement between the victim and the person accused, the criminal procedure shall be terminated.

In other cases of public criminal prosecution, the victim cannot exercise any influence on the public charges maintained.

5. The Criminal Procedure Law does not hold the Prosecutor as an intermediary, however, the Prosecutor is responsible to ensure that the rights of the victim, including the right of a settlement with the person who has harmed him, be explained to him. When there is a possibility of a settlement, reconciliation between the victim and the person who has committed a criminal offence this may be facilitated by an intermediary trained by the Public Probation Service. If the Prosecutor during the prosecution stage concludes that reconciliation is possible and that it may be useful to involve an intermediary, he informs the State Probation service about it. An official of the State Probation Service acts as an intermediary in reconciling the victim with the person who has harmed him.

6. The Prosecutor informs the victim about the criminal procedural activities having a direct bearing on the interests of the victim, and explains to him the right to appeal against the actions or decisions taken by the Prosecutor and the procedure for doing so.

If there is a need for special investigatory activities to clarify the circumstances during a criminal procedure, they are carried out without informing the victim about it, but in the final pre-trial stage of the criminal procedure, the victim has the right to acquaint himself with the evidence obtained through any such activities.

7. Yes, the victim has the right to appeal against the Prosecutor's decisions on two subsequent levels of office.

## LIECHTENSTEIN

### **1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

The victim is treated as a witness. If he/she is a minor he/she has the right to be accompanied by a person of confidence during interrogations. The court can grant victims the right to inspect court files and to make copies. Any victim having suffered injuries or damages is entitled to join criminal proceedings as a so called “private party” (Privatbeteiligter). As such the victim has the right to assist the prosecutor during proceedings concerning evidence and concerning his/her claims for compensation. The private party also has the right to inspect court files, to be present during the trial and to ask questions to defendants, witnesses and experts.

### **2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

Victims may initiate proceedings by reporting a crime to the police or to the public prosecutor. Anyone whose rights have been infringed by a felony or by a misdemeanour to be prosecuted ex officio may join the criminal proceedings as a so called “private party” (Privatbeteiligter). As a private party the victim has the right to inspect the court files, to be present during the trial and to ask questions to witnesses, defendants and to make applications to the court.

Some misdemeanours are not prosecuted ex officio by the public prosecutor. In those cases the persons, who claim to have suffered damages from the alleged offence, are allowed to initiate criminal proceedings (Privatanklage). However in case of a non-guilty verdict the victim has to bear the costs of the trial.

Public prosecutors have to protect the interests of the state with regard to the administration of justice and are obliged to give equal care to the considerations of circumstances that serve to incriminate and to exonerate an accused person (principle of objectivity). Hence they do not represent the victim.

### **3. a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?**

#### Victim protection

If the well-being of a child is endangered and the danger is imminent, the Child and Youth Authority (Office of Social Affairs) can place the child in a protected placed , for example with relatives or in an institution (§ 215 of the General Civil Code, LGBl. 1993 No.54).

If a complete removal from the child’s previous environment is necessary, against the will of the legal guardians, and if it is not possible to place the child with relatives or



other appropriate individuals close to the child, the court transfers the custody of the child to the Office of Social Affairs in whole or in part (withdrawal of care, of education and/or of the administration of the assets of the child).

The Office of Social Affairs and also the National Police (when other offices are closed) places a child in danger in the local Socio-Pedagogical Living Group for Young People.

The victim is entitled to initiate civil proceedings against an offender in view of a restitution or compensation for material and immaterial harm suffered.

The victim having suffered damage is entitled to join criminal proceedings as a so called “private party” (Privatbeteiligter). As such the victim is entitled to assist the prosecutor during the proceedings concerning evidence and concerning his/her claims for compensation. The victim has the right to inspect the court files, to be present during the trial, to put questions to defendants, witnesses, experts etc. If proceedings are discontinued by the public prosecutor the victim is to be informed and in special cases has the right to uphold the prosecution as a “subsidiary prosecutor”. The claims for compensation or restitution by the victim are dealt by the criminal court in its judgement. In practice however only in a minority of cases such claims are decided by the criminal judge in particular only in those cases in which the legal and factual questions involved can easily be assessed and no additional evidence is deemed necessary. In other cases the victim is referred to the civil courts with his/her claims.

If the defendant compensates the victim this has an influence on the sentence because compensation of the victim is a mitigating circumstance. Sometimes the court may make compensation a precondition for a suspended sentence.

All authorities active in criminal proceedings including the police are obliged to inform victims about their rights and to take into account the interests of victims especially with regard to the protection of privacy (e.g. by not exposing personal data, photographs or by extending the possibility of excluding the public from trials in the interest of victims). Pursuant to Article 31b Code of Criminal Procedure all authorities are obliged to inform victims about their rights.

There are special provisions to protect the victims of sexual offences. Under certain conditions they have the right to refuse their testimony and they have the right to be accompanied by a person of confidence during interrogations. In special cases interrogation has to be done by video, in case of interrogation of children by an expert witness. At the Princely Court there is a special room with the necessary technical equipment.

In order to avoid “secondary victimisation” of children and victims of violent or sexual offences, the Code of Criminal Procedure includes provisions that questions are to be asked indirectly through the judge or an expert (e.g. psychologist) by means of video conferencing. If the interrogation takes place during pre-trial proceedings the prosecutor and the defendant and his/her attorney can participate and put forward questions, which is

otherwise not allowed in pre-trial interrogations. In this case the interrogation is video recorded.

Persons under the age of 18 who are victims of sexual abuse must be interrogated in the above mentioned way. Other witnesses have the right to request such a procedure. The video recording of the testimony during the pre-trial phase offers the interrogated victim the so called “privilege to refuse testimony” during the trial. The interrogation of witnesses in such a careful manner can also be conducted during the trial.

In civil proceedings the victim of a crime can apply for a lawyer free of charge if he/she does not have enough funds.

The police have the power to banish presumed offenders in domestic violence cases from their home and to prohibit return for up to ten days. This period can be extended for up to twenty days if a court order is applied for. Also it is possible to obtain a temporary court injunction which obliges the violent partner to leave the household for up to three months. Voluntary or semi public institutions offer temporary shelter for women and their children as well as psychological, social and financial assistance.

#### Witness protection

The personal data of witnesses with the exception of the name and information on how the witness is related to the defendant are to be recorded in the minutes in such a way that it does not come to the attention of third parties present at the hearing. If it is to be feared from certain facts that the witness would expose him/herself or another person to grave danger for his/her life, health or liberty the judge is entitled to grant an exemption from depositions on the personal identity or from answering other questions allowing conclusions on the identity of the witness.

#### **b. What powers or responsibilities does the public prosecutor have in this area?**

These powers lie with the investigating judge in the pre-trial proceedings and with the presiding judge during and after the main trial.

#### **c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

No.

#### **4. Is the public prosecutor required to take the victim’s needs and wishes into account in any decision to prosecute? If so, how?**

If a conviction is probable, the public prosecutor is obliged to prosecute any offence that comes to his attention. Public prosecutors have to protect the interests of the state and are obliged to give equal care to the considerations of circumstances that serve to incriminate and to exonerate an accused person (principal of objectivity).

However certain offences can only be prosecuted by the public prosecutor if the victim applies for a prosecution (Antragsdelikte) or if the victim gives his/her consent to a prosecution (Ermächtigungsdelikte).

**5. Is the public prosecutor empowered to mediate in criminal cases?**

Under the present provisions of the Code of Criminal Procedure the public prosecutor is not empowered to mediate in criminal cases. However the government has introduced an amendment which was heard in parliament in December 2005. It is expected that the law will be passed later this year and will come into force on the 1<sup>st</sup> of January 2007. The proposed amendments will allow the public prosecutor to refrain from prosecuting a criminal act if he considers punishment unnecessary in order to keep the suspected person from committing further crimes or to generally deter people from committing crimes. Instead of taking the case to the court the public prosecutor can offer the defendant a payment of an amount of money, or the furnishing of services in the public interest or the public prosecutor can put down the case for a period of probation combined with assistance by probation officers and complying with certain duties. Finally the public prosecutor can attempt an out-of-court-victim-offender mediation. Certain serious crimes are excluded from mediation. Another precondition is that the guilt of the perpetrator is not considered to be grave and that the criminal act did not entail the death of a person.

**6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

If the victim is a private party (Privatbeteiligter) the court is obliged to inform the victim about the date of the hearing and also about a decision of the prosecutor not to prosecute. Otherwise the victim has no rights to be informed of action taken in a case concerning him.

**7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

A private party may uphold a prosecution (subsidiary motion) if he/she disagrees with the public prosecutors decision to discontinue the pre-trial proceedings. If the public prosecutors ceases to further prosecute the case after an indictment has been filed the victim may uphold the indictment by simply stating to do so (subsidiary prosecution).

## LITHUANIA

### **1) What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

Only natural person who has suffered physical, property or moral damage because of a criminal offence shall be recognized as the victim. A person shall be recognized as the victim further to the decision of the pre-trial investigation officer or the prosecutor or further to the court ruling. The victim is given respective rights and duties.

- *rights*: the victim is entitled to adduce documents and objects which are of significance for the investigation, to submit requests, to demand disqualifications, to examine the material collected in the course of pre-trial investigation, to appeal against the actions, decisions or rulings of the pre-trial investigation officer, prosecutor, or pre-trial judge, to participate when hearing the case in a court of law, to appeal against the judgment or ruling made by the court, to present his closing arguments;
- *duties*: the victim is obliged to testify, to appear before the pre-trial judge or the court when summoned, to avoid obstructing the pre-trial investigation entities and the court to carry out procedural actions concerning him, to obey procedural order.

Accordingly to Art. 55 of Code of Criminal Procedure of the Republic of Lithuania (hereinafter referred to as CCP), the victim is entitled to professional legal assistance rendered by the lawyer or the lawyer's assistant. In accordance with the power of attorney, the victim may authorize any other person with university degree in law to represent his interests in criminal proceedings. The law grants the victim the right to state legal assistance in case he doesn't have the means to pay for the services of the lawyer. In such case, the procedure established by the Law of the Republic of Lithuania on Legal Assistance Guaranteed by the State is to be followed.

Persons who are under 18 years of age are recognized as juveniles. The interests of a juvenile must be represented in criminal proceedings by his/her legal representative. Legal representatives may be the following persons: parents, adoptive parents, guardians, carers of a juvenile victim, or persons authorized by the institution which is in charge of taking care of or fostering the juvenile victim. Legal representatives are usually permitted to participate in the proceedings together with the person whom they are representing, except for the cases where the presence of legal representative would be against the interests of the juvenile.

Art. 186 of CCP regulates the interrogation of a juvenile witness and juvenile victim. They are interrogated only if material circumstances of the case cannot be established by using any other means.

The victim who is under 18 years of age may only be interrogated by pre-trial judge. In the course of pre-trial investigation, the victim who is under 18 years of age is usually interrogated not more than once. Video and audio recording may be made during his/her interrogation. If the suspect or his defence counsel is present when interrogating a victim under 18 years of age, the pre-trial judge must then ensure that such victim would not be exposed to any improper influence. The victim under 18 years of age shall be summoned to appear in the court hearing only in exceptional cases. A representative of the victim under 18 years of age has the right to be present during his/her interrogation. Upon the request of the parties to the proceedings or at the discretion of pre-trial investigation officer, prosecutor or pre-trial judge, a representative of the state children's rights protection agency or a psychologist may be called to participate in the interrogation of the victim under 18 years of age, where they assist in the interrogation of such victim, taking his/her social and psychological maturity in careful consideration.

**2) Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

Yes, they are. In private prosecution cases, the complaint shall be filed and the claim upheld in court by the victim. In case of the minority of the victim, the claim may be upheld by his/her legal representative.

The prosecutor shall also be entitled to present to the court at any stage of private prosecution proceedings, prior to the opening of the trial proceedings, a written application that he will prefer public charges in that particular case.

In addition, the victim may, by submitting a written request to the prosecutor, initiate investigation actions. Accordingly to Paragraph 6 of Art. 178 of CCP, the victim and his/her representative shall have the right to be present when procedural actions are performed upon his/her request, to examine, without any reservations or restrictions, the records of such procedural actions, make comments as to the contents of the records. If the interrogation is being conducted further to the request, during such interrogation the victim and his/her representative shall have the right to pose questions to the person under interrogation.

**3) a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)? b. What powers or responsibilities does the public prosecutor have in this area? c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

Yes, there are. The following means of protecting victims or witnesses who are in danger (including minors) are provided for in the legal system of the Republic of Lithuania:

\* Preserved anonymity of victim/ witness

The anonymity of victim/witness may be preserved in accordance with Art. 199 of CCP of RL in the following cases:

1. where there is a threat of real danger for the life, health, freedom or property of the victim, the witness, their family members or close relatives;
2. where the testimony of the victim or the witness is of great importance for the criminal case;
3. when the victim or the witness participates in the proceedings relating to grave or major crime.

The anonymity of victim/witness shall be preserved only in case where all the grounds specified under this Article exist.

**b)** Accordingly to Art. 198 of CCP, the prosecutor, upon receiving the request of victim/witness for the preservation of his/her anonymity, shall, in case grounds necessary for the preservation of anonymity exist, preserve the anonymity of victim/witness, as well as take appropriate measures in order to ensure the confidentiality of information which could disclose the identity of victim/witness whose anonymity is being preserved.

Accordingly to Art. 200 of CCP, before the interrogation, the victim or the witness may request that their anonymity be preserved. Prosecutor shall then make a reasoned decision to preserve anonymity. The decision to preserve anonymity shall be kept separately from the dossier of the case.

\* Confidentiality of pre-trial investigation data relating to juvenile victims

Art. 177 of CCP stipulates that the data about juvenile victims shall not be made public. This provision should not be regarded as absolute prohibition of providing any kind of information on pre-trial investigation, in case of juvenile victims. The fact about pre-trial investigation may be revealed, however, such information may not contain any data which, when disclosed, could lead to the infringement of children's rights, or to have negative influence on a juvenile. Information on the contents of testimony given by a juvenile victim, detailed information on the types of injuries caused to a juvenile victim and possible consequences of such injuries shall not be made public. As a rule, the names, surnames and any other personal data of juveniles are not specified.

In case of necessity, the prosecutor shall warn the parties to the proceedings or any other persons, who have been witnesses to pre-trial investigation actions when they were being carried out, that it shall not be permitted, without the authorization of the prosecutor, to make the information on pre-trial investigation public.

\* Protection against criminal influence

On 13 February 1996, the Law of the Republic of Lithuania on Protection of Parties to Criminal Proceedings, Operational Activity Entities, Officers of Judicial and Law Enforcement Authorities Against Criminal Influence was adopted.

The measures of protection against criminal influence are aimed at protecting life, health, property, constitutional rights and freedoms of witnesses, victims, and any other persons involved in criminal proceedings, as well as ensuring thorough and objective analysis of all the circumstances of the case. In accordance with Article 4 of this Law, measures of protection against criminal influence may be applied with regard to witnesses and victims if, when conducting pre-trial investigation or deciding criminal cases relating to major or grave criminal offences, there is a legitimate reason for assuming that:

1. persons' life or health is in danger;
2. persons' property may be destroyed or damaged;
3. constitutional rights and freedoms of persons may be infringed.

The measures of protection against criminal influence are applied with regard to such persons and their close relatives if these persons have cooperated actively with the officers of judicial and law enforcement authorities, assisted in disclosing a criminal offence, or supplied the officers of judicial and law enforcement authorities with any other valuable information.

The measures of protection against criminal influence may be ordered and applied when pursuing operational activity, in the course of pre-trial investigation or when a criminal case is tried before a court of law, as well as when the operational activity or the hearing of a criminal case in the court of law is over.

Article 5 of this Law provides the following list of measures of protection against criminal influence:

1. physical protection of a person or his/her property;
2. temporary transfer of a person to a safe place;
3. setting up of special regime under which personal information is provided in passport units and any other official information centres;
4. change of place where a person resides, works or studies;
5. change of personal and biographical data;
6. plastic surgery changing person's appearance;
7. dispensing a firearm or special means of protection to a person.

It shall be forbidden to apply such measure of protection against criminal influence to which the person to be protected, who is capable of expressing his/her own will, objects.

Procedure and conditions for applying particular measures of protection against criminal influence are established in the Regulations of Protection Against Criminal Influence (approved in accordance with the Resolution No. 119 of the Government of the Republic of Lithuania of 13 February 1997). The measures of protection against criminal influence may be applied with regard to persons who are to be protected if these persons address the Prosecutor General or Deputies Prosecutor General, Chief Regional Prosecutor or Deputies of Chief Regional Prosecutor, or Chief District Prosecutor with a request for

taking measures of protection against criminal influence and if competent law enforcement authorities receive official or confidential information relating to real threat to the safety of persons who are to be protected.

c) Upon receiving the request of the person concerned or the operational information about real threat to the safety of witnesses or victims, the Prosecutor General or Deputies Prosecutor General, Chief Regional Prosecutor or Deputies of Chief Regional Prosecutor, or Chief District Prosecutor shall, within 3 days from the moment of receipt of the aforementioned request or information, deal with them and decide to apply measures of protection against criminal influence with regard to some particular person who is to be protected, or decide not to apply such measures with regard to that person. In this case, an appropriate decision is drawn up.

**4) Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?**

Yes, the prosecutor is required to take the victim's needs into account when making the decision to initiate pre-trial investigation. Accordingly to Paragraph 1 of Art. 166 of the Code of Criminal Procedure of the Republic of Lithuania, one of the grounds for initiating pre-trial investigation is the victim's complaint, application or report about a criminal act.

The person who has suffered from a criminal offence files a complaint wherein the information on the possibly committed criminal offence is provided. The prosecutor is also required to receive and record all verbal reports about criminal offences that are presented to the prosecutor's office. A person who has filed a complaint, application or report is notified of the initiation of pre-trial investigation. The prosecutor may also initiate the pre-trial investigation at his discretion as soon as it is established that the committed criminal offence may cause danger to the public or involve any other circumstances due to which it is necessary to commence proceedings without delay.

Proceedings of private prosecution cases are provided for in Chapter XXX of CCP of RL. Article 407 lists specific Articles of the Criminal Code with regard to which pre-trial investigation shall not be commenced. However, if the committed act is of public importance or if this act has caused damage to the person who cannot defend his/her lawful interests because of important reasons, the prosecutor is entitled to initiate pre-trial investigation.

**5) Is the public prosecutor empowered to mediate in criminal cases?**

No, the prosecutor is not empowered to mediate in criminal cases. Art. 38 of the Criminal Code of RL regulates the release from criminal liability when the reconciliation between the culprit and the victim is reached.

The present Code of Criminal Procedure provides for the possibility of court mediation only, which is established in Art. 413. Accordingly to this Article, when the court



receives a complaint filed by the victim or an application of his legal representative lodged in accordance with the procedure of private prosecution, the victim and/or his legal representative and the person accused of committing criminal offence shall be summoned before the judge for reconciliation.

**6) Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

Yes, he is. Accordingly to Article 161 of the CCP of RL, it is necessary to notify the person of the procedural measure of constraint which had been imposed on him if the following conditions exist:

1. if the application of such measure has been terminated;
2. if the notification of the person concerned about the measure would not obstruct further investigation.

The decision to inform the person about the procedural measures of constraint he had been subject to shall be made by the prosecutor who organizes and directs pre-trial investigation. The person who has been subject to procedural measures of constraint without his knowledge shall only be notified of the fact that these measures have been applied with regard to him. The person must not be informed about the contents of that information.

In case of termination of criminal proceedings, all collected information relating to private person's life must be destroyed immediately. The decision to destroy such information shall be made by the Chief Regional Prosecutor. Following this procedure, some particular information must also be destroyed when it is decided that this information or part thereof will not be used during criminal proceedings because of its irrelevancy to the proceedings, even though criminal proceedings are not terminated.

**7) Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

Yes, he/she does. The prosecutor, upon receiving the complaint, application or report, and, where appropriate, clarification thereof, may refuse to commence pre-trial investigation only in case where the facts about the committed criminal offence, which are provided in the complaint, application or report, are obviously incorrect. When refusing to commence pre-trial investigation, the prosecutor shall draw up a reasoned decision. The copy of the decision to refuse to commence pre-trial investigation shall be sent to the person who has filed the complaint, application or report. The victim may appeal against the prosecutor's decision to the pre-trial judge.

## MOLDOVA

1) In accordance with the provisions of the Criminal Procedural Code, the public prosecutor is an official person who, within the limits of his competence, carries out criminal prosecutions on behalf of the state, represents the prosecution in court, and carries out other duties as listed in the present code. The prosecutor has the right to initiate civil cases against the accused person, defendant or person who is materially responsible for the deed of the accused. The defendant, in the interests of the victim who finds him/herself unable to act or is dependent on the accused, or for any other reason cannot exercise his/her right to initiate a civil case (i.e. juveniles). In addition, the public prosecutor starts prosecutions ex officio and on the basis of preliminary complaints from victims.

2) According to the Criminal Procedure Code, the victim (plaintiff)'s crime report/complaint that started a criminal prosecution should be immediately registered in the established way, be settled by the criminal prosecution body or by the prosecutor, and the victim should be informed of the results. The plaintiff also has the right to ask the criminal prosecution bodies or the prosecutor to recognize him/her as a damaged party (victim) in a criminal case.

3) In the Criminal Procedure Code is stipulated if there is evidence exist that a witness', victim's, or their close relative(s)' life (lives), physical integrity or liberty are in danger due to their involvement in a criminal case, then the judge or court may permit the hearing to be held without the presence of this witness. Instead the hearing is done using a video link, provided that there are adequate technical means of doing so. The witness' voice can also be distorted in such a way that they cannot be recognized.

**In certain cases, where the victim's private life has suffered harm, the defendant accused of committing a sexual crime and the defence counsel will not be able to present evidence on the victim's character or personal history, except in cases when the court provides this permission.**

According to legal provisions number 1458 from the 28.01.1998, witnesses and other persons who provide assistance during criminal proceedings are provided with legal, organisational, technical and other means to protect their health, lives, and property, as well as that of their families or close relatives (spouse, parents and children, adopters and adoptees, siblings, grandparents and grandchildren). The Prosecutor General and subordinate prosecutors supervise the legality of the execution of these measures.

4) In accordance with the Criminal Procedure Code, the victim benefits from the right to:

- file an additional complaint to the criminal prosecution body or to the public prosecutor;
- request information on the settlement of his/her complaint;

- ask the criminal prosecution bodies to recognize him/her as a damaged party (victim) in a criminal case;
- submit a request to be recognized as a civil party in a criminal case;
- to challenge the prosecutor's for the non-initiation of criminal prosecutions within 10 days of receiving a copy of the **criminal complaint**,
- until the complaint is settled, to be informed of the evidence **that led to the charges**.
- The damaged party in the criminal process has the right to:
- be informed by the prosecutor or by the criminal prosecution body of any decisions adopted regarding his/her rights and interests,
- get, at his/her request, copies of these decisions at no cost, as well as copies of decisions of cessation or classification of the proceeding in the respective case, of non-initiating the criminal prosecution, a copy of the sentence, of the decision or of other final court judgment; submit complaints against actions and decisions of the prosecutor or criminal prosecution body, as well as to challenge the court judgment regarding the caused damage;
- formulate objections against the prosecutor's actions or of the body that carries out the criminal proceeding
- to request for his/her objection to be included in the minutes of the respective action, etc.

5) There is no mediation process in Moldovan criminal law.

6) After the prosecutor has checked the quality of the materials/evidence pertaining to the criminal case, he/she is obliged to inform the damaged party, civil party and their representatives about the results of the criminal prosecution, as well as where and how they can receive information about the materials in the hands of the prosecution. The civil party and their legal representatives are presented only the materials regarding the civil action to which they are party. For details see above point 4).

7) Complaints against illegal actions by the prosecutor or the criminal prosecution body may be submitted to the instruction judge by the suspect, accused, damaged party, by other participants at the trial or by other persons whose rights and legitimate interests have been violated by these bodies. The victim or the damaged party has the right to challenge to the instruction judge:

- the refusal of the prosecutor or criminal prosecution body to receive the complaint or denunciation on the preparation or commission of a crime, to satisfy the requests, in the cases provided by law, to start criminal prosecution;
- the ordinances on the cessation of the criminal prosecution, dismissal of the criminal case or withdrawing the person from the criminal prosecution;
- other acts and actions for which the law provides this type of remedy.

The complaint may be submitted, within a period of 10 days, to the instruction judge at the prosecutor's office or criminal prosecution body that has committed the violation is located.

The complaint shall be examined by the instruction judge within 10 days, with the prosecutor's participation and the presence of the person who lodged the complaint. The victim or damaged party that has lodged the complaint not being present shall not impede the examination of the complaint. The prosecutor is obliged to provide the court with the respective materials. The prosecutor and the victim or damaged party that has lodged the complaint shall give explanations during the examination of the complaint.

The instruction judge, considering that the complaint is well- founded, shall adopt a court order obliging the prosecutor to liquidate the found violations of human rights and freedoms or the rights and freedoms of the legal entity and, depending on the case, shall declare the nullity of the challenged act or procedural action. Finding that the challenged acts or actions have been taken according to the law and that the human rights and freedoms or the rights and freedoms of the legal entity have not been violated, the instruction judge shall deliver a court order on the rejection of the submitted complaint. The copy of the court order shall be sent to the victim or damaged party who has lodged the complaint and to the prosecutor.

## MONACO

1. Article 73 of the CCP provides that “*any person harmed by a serious crime, a less serious offence or a petty offence or who, under Article 68, is entitled to lodge a complaint on behalf of another person, may apply to the competent court to be joined to the proceedings as a civil party at any stage in the proceedings until their conclusion.*”

Article 75, paragraph 2, of the Monegasque CCP provides, with regard to less serious and petty offences, that in the event of a private prosecution, in other words where the victim initiates proceedings, “*the prosecuting party shall be deemed a civil party by virtue of the mere fact of bringing a private prosecution*” against the perpetrator before the relevant court. Where proceedings are brought in this way, no formal application to be joined to the proceedings as a civil party need therefore be lodged.

As minors do not have legal capacity, only their legal representatives may take such steps on their behalf. Where there is a conflict of interests (parental violence against a child), an ad hoc statutory representative may be appointed.

Similarly, a complaint with an application to be joined to proceedings as a civil party claiming damages may be lodged only through a child victim’s legal representatives. Criminal cases in which minors are accused are systematically heard in camera.

2. Any person who considers they have suffered damage as a result of a less serious offence (*délit*) may initiate criminal proceedings either by applying to the investigating judge to be recognised as a civil party claiming damages or by bringing a private prosecution in the criminal court (Articles 74 and 75 of the CCP).

Any person who considers they have suffered damage as a result of a petty offence (*contravention*) may initiate criminal proceedings by bringing a private prosecution in the police court (Article 75 of the CCP).

The public prosecutor has no role in representing victims. A representative of the public prosecution service nonetheless presides over the Legal Aid Office, which is composed of three members and rules on the appointment of a lawyer to assist and represent victims of offences, including minors, free of charge.

3. a. In view of its situation as a “mini-state” and its special, particularly demographic, characteristics, apart from certain legal provisions designed to safeguard witnesses’ testimonies during the investigation phase<sup>4</sup> and the trial<sup>5</sup>, there is as yet no legislation or particular practice governing witness protection in the Principality of Monaco.

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<sup>4</sup> In particular, Article 130 of the CCP, which provides that, in the event of a duly attested illness of the witness or any other impediment, the investigating judge will, if it is urgent to do so, go to the witness.

<sup>5</sup> See Article 317 of the CCP, which provides “The president may, before, during or after the witness has given evidence, have one or more of the accused removed”.

This situation should change in future since accession to the Council of Europe has led the Principality to endow itself with a New Code of Criminal Procedure, which is at present only at the draft stage but should be brought before parliament in the next few months. It makes provision for “the special case of anonymous testimony” (Article 186 of the draft New CCP), an important protective measure. This procedure is provided for in two cases:

- where “*the taking of evidence is likely seriously to endanger the life or physical safety of the witness or of members of his or her family or friends*”;
- “*if the witness is an undercover police officer or agent*”.

Since 2003 the Principality of Monaco has been a party to the United Nations Convention Against Transnational Organized Crime, known as the Palermo Convention, which was opened for signature on 15 December 2000. Following the country's accession to the convention in 2003 a bill implementing it in domestic law was drawn up. This bill, which is still at the draft stage, also establishes penalties for the use of physical force, threats or intimidation against witnesses.

There is no legal provision for special protection of child witnesses in criminal or civil cases to safeguard them from possible reprisals or pressure. On the other hand, criminal cases in which the accused is a minor are systematically heard in camera.

**b. and c.** Where the public prosecutor is informed that a minor's safety or health is in danger, he or she will lodge a request for "educational assistance" with the guardianship court so that all necessary protection measures can be taken. The child's fate is then the sole responsibility of the court.

In case of emergency, the Principal State Prosecutor may order the placement of a child or adolescent at risk in the local children's home. This emergency decision is regularised as soon as possible by an application to the guardianship court.

It should be noted that the police can, at the public prosecutor's request, provide a person with police protection if the context of the case so requires or if the person concerned has received threats.

Minors detained in prison are held in a special section, where they are kept in individual cells at night and have no contact with adult prisoners (Article 9 of Order 3031 of 12 August 1963).

**4.** When deciding whether or not to prosecute, the public prosecutor is not bound by the lodging or withdrawal of a victim's complaint.

Conversely, in cases where a minor is charged with an offence, the public prosecutor may seek a discharge only if the victim has explicitly stated his or her wish not to be joined to the proceedings as a civil party.

5. There is no legislation establishing or forbidding mediation in criminal cases. Such mediation nonetheless exists in practice under written instructions given to the police by the Principal State Prosecutor (pecuniary regularisation of cases involving the writing of uncovered cheques, desertion of family, obtaining credit by fraud in a hotel or restaurant, etc.).

6. The public prosecutor informs victims of action taken in cases concerning them, but is not legally required to do so.

7. A decision by the prosecuting authorities not to prosecute is not irrevocable; the victim may send a further letter to the Principal State Prosecutor within the limitation period and the case may be re-examined.

A victim may also trigger a prosecution by lodging a complaint with the investigating judge along with an application to be joined to the proceedings as a civil party (Article 74 of the CCP), but the judge is obliged to conduct an investigation only where asked to do so by the Principal State Prosecutor. A victim may also bring a private prosecution (Article 75 previously cited).

## NORWAY

The legislation concerning victims and their role in criminal proceedings is at the moment being reviewed in Norway, and there are expected rather extensive changes of the legislation during the next year. The answers below, however, are given according to the current legislation.

### **1)**

A victim has the right to inspect the documents and to be informed of the outcome of the case and to claim for compensation. In certain cases the victim has the right to be represented by a counsel. In other perspectives, the victims are not accorded any position in the criminal proceedings. There are no difference in the position of a juvenile and an adult victim. (However, there are special provisions of taking evidence from juvenile victims/witnesses).

### **2)**

As a rule, the victim cannot take part in or initiate the criminal proceedings, apart from claiming damages, as stated above. The victim might in some cases have the possibility to initiate a private criminal case, but this option is not often used. The public prosecutor has no responsibility in representing the victim; on the contrary, the prosecutor must act objectively.

### **3) a., b. and c**

There are measures of witness protection and legislation concerning anonymous witnesses.

#### Witness protection:

The witness protection programme involves different measures, a.o. relocation and change of identity of the witness. The programme is handled by the Police Directorate and by the local police. The Prosecutor does not make the decisions of whether or how a witness should be protected, but gives his/her recommendations and informs the police of incidents, f.ex. in court, that indicates that the witness is in danger.

#### Anonymous witnesses:

A witness may, under certain circumstances, be kept anonymous in the sense that that the identity of the witness is not revealed to other than the court, prosecutor and the defence. The public prosecutor makes an application to the court for the admittance of an anonymous witness. This may be done at any stage of the case. If the court accepts the application, the witness remains anonymous during the case and after the proceedings are over.

### **4)**

In some minor cases, the victim's application for prosecution is necessary. In other (most) cases, the victim's needs and wishes are not necessary or formally decisive for the decision to prosecute. However, if a victim states that he/she does not want the case



prosecuted or appealed, the prosecutor might take this into account in his/her decision of whether to prosecute/appeal or not.

**5)**

No. However, mediation conducted by a mediation board is possible in minor cases. The prosecutor might decide that such mediation should be tried instead of prosecution.

**6)**

The public prosecutor is required to inform the victim of an indictment or a decision not to prosecute, and of the outcome of the criminal proceedings.

**7)**

The victim can make a complaint to the superior prosecuting authority over a decision not to prosecute. In some cases, the victim might also initiate a private criminal case.

## PORTUGAL

1. Under Portuguese criminal procedure a victim, i.e. a person who has a right that the law sets out to protect, in particular by creating an offence, may apply to be joined to proceedings as a private prosecutor (*assistente*) if he or she is over 16 (Article 68-1-a of the CCP).

If the victim is under 16 or lacks legal capacity, his or her legal representative may apply to become a private prosecutor, unless the representative was involved in the commission of the offence in question (Article 68-1-d of the CCP).

On an application to the relevant judge, private prosecutors may be joined to proceedings at any stage prior to the trial and pronouncement of judgment; in doing so, they accept the state of the proceedings as they stand (Article 68-3 of the CCP).

Private prosecutors acquire the status of assistants to the public prosecutor and subordinate their participation to the action taken by the prosecutor in the case concerned. In particular, they must:

- a) take part in inquiries and the pre-trial investigation by producing evidence and asking that appropriate steps be taken;
- b) independently press charges even where the public prosecutor does not do so because the prosecution is based on a private accusation;
- c) lodge appeals against decisions that directly concern them, even if the public prosecutor has decided otherwise.

Minors do not usually receive special treatment under Portuguese criminal procedure. At the same time, where a minor claims to be the victim of an offence but the right to lodge a complaint cannot be exercised because the perpetrator is the minor's legal representative, the public prosecutor may initiate proceedings where special public interest considerations so require (Article 113-5 of the Criminal Code).

Where prosecution depends on a complaint, the public prosecutor may also, in cases provided for by law, initiate proceedings if the victim's interest so requires, including with respect to offences violating the freedom and sexual self-determination of a child under 16 (Articles 113-6 and 178-4 of the Criminal Code).

2. Victims may take part in criminal proceedings as outlined above. If a victim has decided not to ask to be joined to the proceedings as a private prosecutor, he or she has the procedural status of a witness.

Victims may always trigger a prosecution by lodging a complaint or bringing accusations.

In the case of certain offences, known as private or semi-public, criminal proceedings may be brought only if the victim lodges a complaint (Articles 49-1 and 50-1 of the CCP).

The public prosecutor represents victims only in so far as he or she is empowered to seek civil compensation on their behalf, but solely concerning persons and interests he or she represents by law, namely, persons lacking legal capacity, persons who are absent and homeless persons.

**3.a.** Portuguese criminal law makes provision for protection of witnesses in criminal cases where their life, physical or psychological wellbeing, freedom or property of significant value are put at risk by reason of their role in helping to establish the facts of a case (section 1-1 of Act 93/99 of 14 July).

Witness protection measures may involve concealing a witness's identity at any stage in proceedings where all of the following conditions are met (section 16 of Act 93/99 of 14 July):

- a) the testimony or statements concern the offences of trafficking in human beings or criminal association or an offence carrying a maximum prison sentence equal to or exceeding eight years, if committed by members of a criminal association in pursuance of that association's aims or activities;
- b) the witness and members of his or her family or friends may be at risk of serious jeopardy to their lives, physical integrity, freedom or property of significant value;
- c) there are no grounds for doubting the witness's credibility;
- d) the testimony or statements provide evidence of importance to the proceedings.

When making statements or testifying in open court or during face-to-face confrontation, the witness or private prosecutor may have his or her appearance and/or voice disguised so that he or she cannot be recognised; teleconferencing is also possible (sections 4 and 5 of Act 93/99 of 14 July).

Additional ad hoc measures may also be taken where justified on security grounds, namely (section 22 of Act 92/99 of 14 July):

- a) recording in the case-file of a home address other than the usual one or an address not consistent with the civil law provisions on choice of domicile;
- b) use of a government vehicle to transport those taking part in proceedings;
- c) provision of a closed room, possibly guarded and subject to security measures, on judicial and police premises;
- d) police protection, extended to family members and friends;
- e) prison conditions allowing the person to remain apart from other prisoners and transportation in a separate vehicle.

During proceedings and even after their conclusion, the witness, his or her spouse, ascendants, descendants, brothers and sisters and friends may be granted special protection, provided that all the conditions below are fulfilled (section 21 of Act 92/99 of 14 July):

- a) the testimony or statements concern the offences of trafficking in human beings or criminal association or an offence carrying a maximum prison sentence equal to or exceeding eight years, if committed by members of a criminal association in pursuance of that association's aims or activities;
- b) the person's life, physical or psychological wellbeing or freedom are seriously jeopardised;
- c) the testimony or statements have proved or are presumed to be essential for the discovery of the truth.

The special protection programme involves the application of one or more administrative protection and support measures, namely (section 22 of Act 92/99 of 14 July):

- a) officially issued identity papers bearing particulars different from those given in the papers they replace;
- b) alteration of the facial or bodily appearance of the individual concerned;
- c) transport in a government vehicle of persons participating in proceedings;
- d) provision of a closed room, possibly guarded and subject to security measures, on judicial and police premises;
- e) police protection, extended to family members and friends;
- f) prison conditions allowing the person to remain apart from other prisoners and transportation in a separate vehicle.

Where any step in the proceedings necessitates the participation of a witness who is especially vulnerable, in particular because he or she is very young or old, is in poor health or has to give evidence against a member of his or her family or a closed social group of which he or she is a member and with which he or she has a dependent or subordinate relationship, regardless of whether the above measures are taken, a public official working for the social services or any other particularly well-qualified person may be appointed to provide the witness with support, in order to guarantee spontaneous and sincere testimony (sections 4-1 and 6-1 of Act 92/99 of 14 July).

**b.** If the conditions set out in reply 3.a. are fulfilled, the public prosecutor must request that the testimony be given with the appearance and/or voice disguised in order to make the witness difficult to recognise and, if necessary, request that the evidence be taken by teleconference (sections 4-1 and 6-1 of Act 92/99 of 14 July).

In the context of in camera proceedings, where the conditions set out in reply 3.a. obtain and it has been confirmed that they do so, the public prosecutor must also request non-disclosure of the witness's identity at one or more stages in the proceedings (section 17-1 of Act 93/99 of 14 July and Article 2 of Legislative Decree 190/2003 of 22 August).

The ad hoc security measures mentioned in reply 3.a. are ordered, during the investigation stage, by the public prosecutor of his or her own motion or at the request of the witness or his or her legal representative or on the proposal of the police, and, during subsequent stages, by the court at the public prosecutor's request (section 20-2 of Act 93/99 of 14 July).

With regard to the support given to particularly vulnerable witnesses, during the investigation stage the public prosecutor should take those measures considered necessary to guarantee spontaneous and sincere testimony, appointing, to that end, a public official employed by the social services or any other person particularly well-qualified to support the witness; during subsequent stages, the public prosecutor may ask the court to take such measures (sections 26 and 27 of Act 93/99 of 14 July).

c. In accordance with the replies to questions 3.a. and 3.b., the public prosecutor is solely empowered to order ad hoc security measures or measures concerning support for particularly vulnerable witnesses during the investigation stage.

4. In the case of offences punishable by a custodial sentence of up to five years, the public prosecutor must obtain the consent of victims who have applied to be joined to the proceedings as private prosecutors before ordering a temporary stay of proceedings (Article 281-1-a of the CCP).

Where criminal proceedings concern ill-treatment between spouses or persons cohabiting in conditions analogous to those of spouses or between parents and children, the public prosecutor may also decide a temporary stay of proceedings, with the investigating judge's consent, at the victim's request in view of the latter's situation and provided that the accused is not subject to a similar measure in connection with an offence of the same nature (Article 281-6).

5. The Portuguese legal system makes no provision for mediation in criminal cases of this kind.

With respect to offences punishable by a custodial sentence of up to five years, where all the other legal conditions are met, the public prosecutor may, with the consent of the investigating judge, the accused and the private prosecutor, order a temporary stay of proceedings for a period which cannot exceed two years, while imposing requirements and rules of conduct on the accused (Articles 281 and 282 of the CCP).

6. When the preliminary inquiries have been completed, the victim in a criminal case is always informed of the public prosecutor's decision (Articles 277-3 and 283-5 of the CCP).

7. Victims who have already applied to be joined to proceedings as private prosecutors, or who do so within the time-limit for requesting opening of the pre-trial investigation, may request that that stage in the proceedings be initiated.

The subsequent pre-trial investigation is directed by a judge, its purpose being to have a judge verify, in the light of the circumstances of the case, the public prosecutor's decision not to prosecute (Articles 286-1 and 287-1-b of the CCP).

At the end of a period of thirty days from the date of the decision not to prosecute or its notification to the private prosecutor or complainant able to apply to be joined to the proceedings as a private prosecutor, if the opening of a pre-trial investigation has not been requested, the public prosecutor's superior may decide to press charges or to instigate additional preliminary inquiries, indicating in that case the measures to be taken and the time within which they should be performed (Article 278 of the CCP).

## ROMANIA

1. The Criminal Procedure Code, the General part, Title I, regulates the basic rules and actions in the criminal trial.

Acc to Art. 1, Par. 2, the criminal trial must contribute, among others, to the defense of the rule of law, to the defense of the individual and his/her rights and liberties.

Art. 15 of the Criminal Procedure Code provides for the possibility of the victim of a crime to bring a civil action against the accused or defendant and the party that bears civil responsibility for civil injury. It is possible to claim damages as a private individual during criminal investigation, as well as in court until the summons act is read out.

Being civil party does not impede the person who has suffered harm by crime to participate as harmed party in the same cause.

Civil action is exempted from stamp tax.

Acc. to Art. 17 of the Criminal Procedure Code, civil action is also initiated and carried on ex officio, when the harmed person is a person lacking or having limited exertion ability (Acc. to the legislation, minors younger than 14 years lack exertion ability and minors aged 14-18 have limited exertion ability).

For this purpose, the criminal investigation body or the court will ask the harmed person to present, through his/her legal representative or the person approving his/her acts, a report on the extent of the material or moral damage and data on the acts by which the damage has been produced.

The court must resolve ex officio the payment of the damages, even if the victim didn't bring civil action.

Acc. to Art. 18, par. 2 of the Criminal Procedure Code, when the harmed person is a person lacking or having limited exertion ability, the prosecutor, when taking part in the trial, is obliged to defend his/her civil interests, even if he/she hadn't bring civil action.

The person who, as a result of a criminal deed, has suffered a physical, moral or material harm, if taking part in the criminal trial, is called victim (Art. 24, par. 1 of the Criminal Procedure Code).

2. Yes. Acc. to Art. 221-222 of the Criminal Procedure Code, the criminal investigation body is informed by complaint or denunciation, or ex officio, when it discovers the perpetration of a crime in any other way. The complaint may be filed personally or by mandatory.

For the person lacking the exertion capacity, the complaint is filed by his legal representative.

The person with limited exertion capacity may file a complaint upon approval of the persons stipulated by the civil law.

Acc. to Art. 279 of the Criminal Procedure Code, Criminal action is initiated only upon prior complaint of the victim, in case of crimes for which the law stipulates that such a complaint is necessary.

In such cases, the prior complaint is addressed to the court or, when the perpetrator is not known, the victim may go to the criminal investigation body in order to identify him.

As already mentioned, the victim may take part in the criminal trial as harmed party or may bring civil action.

Civil action is initiated and carried out ex officio by the prosecutor when the victim is lacking or having limited exertion ability.

When taking part in the trial, the prosecutor must defend his/her civil interests, even if he/she hadn't brought civil action.

Law no. 211/2004 contains special measures for providing the protection of victims of crime.

Acc. to Art. 4 of Law no. 211/2004, judges, in case of crimes for which the prior complaint was made to the court, prosecutors, police officers and agents are obliged to inform the victims of crimes on:

- a) services and organizations providing psychological counseling and any other forms of assistance for the victims;
- b) the prosecution body to which they may address the complaint;
- c) the right to juridical assistance and the institution which might be addressed in order to exercise this right;
- d) the conditions and the procedure for getting free assistance;
- e) the trial rights of the harmed person, harmed party and civil party;
- f) the conditions and procedure needed in order or benefit of the provisions of Art 86/1 and the following ones of the Criminal Procedure Code on witness protection and of Law no. 682/2002 on witness protection;
- g) the conditions and procedure for granting financial compensations by the state.

3.A. Yes.

Acc. to Art. 86/1 of the Criminal Procedure Code, when there are evidence or indications that affirming the real identity of the witness or his/her residence could jeopardize his/her or other person's life, physical integrity or freedom, the witness may be allowed not to



declare this data, being given another identity under which he/she is going to come before the judicial body.

Acc. to art. 86/1 of the Criminal Procedure Code provides for the possibility of not hearing witnesses younger than 16 years of age in the judgment session, admitting instead a presentation of a prior hearing through audio-video recording, according to the procedure set out in Art. 86/2 Par. 2, 4, 5 and 7 of the Criminal Procedure Code.

Protection of witness's movement, by police supervision of his/her residence, provision of a monitored temporary residence and escort to the seat of the prosecutor's office or court, is stipulated in Art. 86/5 of the Criminal Procedure Code.

Means of protecting the victims of crime are set out by Law no. 211/2004, as following:

- a) Psychological counseling of victims of crime, granted for free, at request, for the victims of attempted murder, bodily injuries and other violent actions and bodily injuries committed against members of the family, other deliberate// crimes resulting in victim's serious bodily injury, rape, sexual intercourse with a minor, sexual perversion, sexual corruption, ill treatment to minor and the victims of crimes provided for in Law no. 678/2001 on preventing and combating trafficking in human beings, as subsequently amended and supplemented (Art. 8 and the following ones).
- b) Free juridical assistance for victims of attempted murder, serious bodily injuries or other felony resulting in victim's serious injuries, rape, sexual intercourse with a minor, sexual perversion.  
The victim's spouse, children and persons in care when the victim died as result of murder or other crimes resulting in the victim's death (Art. 14 and the following ones).
- c) Financial compensations granted by the state for the victims of crimes (art. 21 and the following ones).

Besides other special measures, Law no. 217/2003 on preventing and combating family violence stipulates, as a protection measure, which might be taken at the victim's request or even ex officio, when there are evidence or indications that a violent act inflicting physical or psychological pain on another member of the family, the coercion to medical treatment or medical hospitalization of the perpetrator and the interdiction of coming back to the family residence until the cessation of the dangerous condition.

Law no. 678/2001 on preventing and combating the trafficking in human beings provides for measures for protection and special physical, juridical and social assistance for the victims of these crimes. The law includes special dispositions for the minor victims.

Private life and identity of the victims of trafficking in persons are protected through the provisions of law.

The victims of crime have the right of physical, psychological and social recovery.

Minors, victims of trafficking in human beings, are granted special protection and assistance, in relation to their age.

Law no. 682/2002 on witness protection regulates the protection and assistance of witnesses whose life, physical integrity or liberty is threatened subsequent to holding information or data on the perpetration of felonies, which they provided or agreed to provide to the judicial authorities.

Protection regards the witness, the members of his/her family and the persons close to him/her, included in the witness protection program, according to procedures and conditions set up by law.

Law no. 272/2004 on protecting and promoting the child rights sets out measures for protecting the refugee children, children in case of armed conflict, against any kind of exploitation, against drugs consumption, against abuse or negligence, against kidnapping or exerting any kind of trafficking.

3. B. The prosecutor's competences in the field have already been stated by the answers to Question no. 2, related to exerting civil action ex officio, defending the interests of the victim etc.

The measures for witness protection set out in Art. 86/1 of the Criminal Procedure Code may be disposed by the prosecutor in the criminal pursuit stage and by the court, at the prosecutor's request, in the court investigation stage, for the witness or for any interested person.

According to Art. 86/2, the prosecutor may agree to the hearing of the witness in his physical absence, through technical means.

At the prosecutor's request, the court may admit to the carrying on of a technical expertise on the means used in hearing the witnesses.

According to Art. 86/5 of the Criminal Procedure Code, in the criminal investigation stage, the measures for the protection of the witness's movement are disposed by the prosecutor, under the terms laid down by law.

According Art. 5 of Law no. 682/2002 on witness protection, the prosecutor may order, during the criminal investigation, the inclusion of a family member or of a closed person in the witness protection program. During the trial, the prosecutor has the competence to propose this measure to the court.

The prosecutor or, respectively, the court will decide in maximum 5 days from receiving the proposal on the proposal of inclusion into the program.

On the grounds of Law no. 211/2004 on some measures for protection of victims of crimes, the prosecutor must inform the victim on the services and organizations providing

psychological counseling and any other forms of legal assistance for the victims; the prosecution body to which they may address the complaint; the right to juridical assistance and the institution which might be addressed in order to exercise this right; the conditions and the procedure for getting free assistance; the trial rights of the harmed person, harmed party and civil party; the conditions and procedure for getting financial compensations from the state.

According Art. 43 of Law no. 678/2001 on preventing and combating trafficking in human beings, the victims of these crimes have the right to get information on the judicial and administrative practicable procedures and the right to receive mandatory legal assistance in order to exercise their trial rights during all stages of the criminal trial. As the crimes of trafficking in human beings are in the prosecutor's competence during the criminal investigation, the prosecutor is obliged by law to adopt the measures mentioned above.

3.C. The prosecutor's competences have been stated in the answer to 3.B.

According to Art. 96/1, Par 2 of the Criminal Procedure Code, the protection of witness's identification data may be ordered by the prosecutor during the criminal investigation stage or by the court, during the trial.

In all cases, the documents on the real identity of the witness may be introduced in the criminal file only after the prosecutor, by ordinance, or the court, by closing, found out that the danger causing the adoption of the measure of protection has disappeared.

This means that the above mentioned protection measures may be imposed by the prosecutor during the criminal investigation. In the trial stage, the decision belongs to the judge.

Protection of witness's movement is decided by the prosecutor in the criminal investigation stage and carried out by the police. During the trial, the measure is decided by the court.

During the criminal investigation, the prosecutor may cancel this measure if he/she finds out that the danger causing the adoption of the measure has disappeared.

The inclusion of witnesses in the Protection program, on the grounds of Art. 7 of Law no. 682/2002 on witness protection, is decided by the prosecutor, during the criminal investigation, by ordinance.

The measure is implemented by the National Office for Witness Protection. Within 3 days from concluding the Protocol for including the witness in the program, the National Office for Witness Protection will inform the prosecutor, respectively the court, on the effective inclusion of the witness into the program.

The protection measures which might be provided for in the support plan are:

- a) protection of identity data;
- b) protection of testimony;
- c) hearing under a different identity, through special measures of distorting voice and image;
- d) protection of witness in pretrial confinement, arrest, imprisonment, in cooperation with the management of the detention institution;
- e) safety measures at their residence;
- f) change of residence;
- g) change of identity;
- h) change of countenance.

The program comes to an end if during the criminal trial the protected witness makes a false testimony, commits a deliberate crime, if there are indications or evidence that, subsequent to the inclusion in the program, the witness joined a criminal group or organization, didn't abide to the rules of the protocol, his/her life, integrity or liberty is not threatened anymore or at the witness's request.

The Program's cessation is decided by the prosecutor, through ordinance, or by the court, through closing. This means that the span of the measure is not conditioned by the span of the criminal trial.

4. The criminal trial is based, normally, on the principle of officiality.

However, the Criminal Code stipulates, for a series of crimes in which law finds that the victim's interest is more important than the social interest, the subordination of starting the criminal trial to the legal initiative of the victim.

According to Art. 221, par. 2 of the Criminal Procedure Code, when the initiation of criminal investigation can only be done after the prior complaint of the victim, the criminal investigation cannot begin in its absence.

The absence of the prior complaint, in the cases foreseen by law, is a cause for removing the criminal liability.

Withdrawal of the prior complaint and reconciliation of parties, if taking place in the cases and under the conditions laid down by law, are causes for the removal of civil liability.

According to Art. 279, let. a of the Criminal Procedure Code, in the case of crimes stipulated in the Criminal Code in Art. 180 (injuries or other violent acts), 184 par. 1 (bodily injury of second degree), 193 (threat), 205 (insult), 206 (calumny), 210 (theft among spouses or close relatives), 213 (breach of trust) and 220 (illegal occupation of real estate), the prior complaint is addressed to the court.

For offences other than those set out at let. a, for which the law provides for the necessity of prior complaint, it has to be addressed to the criminal investigation body or to the prosecutor.

Here are some crimes, in the competence of the criminal investigation body, for which the victim may prevent the initiation or carrying out of the criminal investigation:

- bodily injury, crime stipulated by Art. 181 of the Criminal Code;
- illegal intrusion in somebody's residence, crime stipulated by Art. 192, par. 1 of the Criminal Code;
- rape, crime stipulated by Art. 197, par. 1 of the Criminal Code;
- fraudulent management, crime stipulated by Art. 214 of the Criminal Code (if the asset doesn't wholly or partially belong to the state);
- destruction, crime stipulated by Art. 217, par. 1 of the Criminal Code (if the asset doesn't wholly or partially belong to the state);
- According to Art. 10 let. f and h of the Criminal Procedure Code, the criminal proceedings may not be initiated or carried out if:
  - the prior complaint of the victim, necessary for the initiation of criminal proceedings, is lacking;
  - the prior complaint was withdrawn or there was a reconciliation of the parties, for the crimes for which, according to the law, the withdrawal of the prior complaint or the reconciliation of the parties removes the criminal liability.

For this kind of crimes, the initiation of criminal proceedings is conditioned by the victim's will to file a prior complaint. If the complaint was filed, the victim may withdraw it or there may be a reconciliation of the parties.

5. As recognized in the domestic legislation, the prosecutor has no competence of mediation in criminal matters.

6. Yes

According to Art. 228 of the Criminal Procedure Code, when the informing act or one of the preliminary acts performed after receiving the complaint or denunciation leads to one of the cases impeding the criminal action, the prosecutor will confirm the proposal made by the criminal investigating bodies through resolution.

A copy of the resolution is forwarded to the informing person and, as the case may be, to the person towards which the preliminary acts were performed.

According to Art. 246, par. 2 of the Criminal Procedure Code, copies of ordinance or resolution through which the prosecutors decides the cessation of the criminal investigation are forwarded to the informing person.

The victim has to be informed also in case of exemption from criminal investigation (Art. 249, par. 2 of the Criminal Procedure Code) or in case of exemption from criminal investigation and execution of an administrative sanction.

In the case of sending to trial, the list of persons to be summoned, part of the indictment, will include the victim or, respectively, the civil party.

Therefore, according to the law, any prosecutor solution (copy of resolution or ordinance) is forwarded to the person who filed the complaint.

7. Yes.

According to Art. 278, par. 3 of the Criminal Procedure Code, in case of resolution of non-starting the criminal investigation or dismissing ordinance or resolution, the complaint is filed within 20 days from the date when the ordinance or resolution copy was forwarded to the interested parties, according to Art. 228 par. 6, 246 par. 1 and 249 par. 2 of the Criminal Procedure Code.

The complaint against measures taken or acts performed by prosecutor or carried out pursuant his/her orders is solved by the head of the prosecutor's office or, as the case may be, by the prosecutor general of the prosecutor's office attached to the appeal court or by the prosecutor chief of section of the Prosecutor's Office attached to the High Court of Cassation and Justice.

If the measures or acts belong to the head of the prosecutor's office, the prosecutor general of the prosecutor's office attached to the appeal court or the prosecutor chief of section of the Prosecutor's Office attached to the High Court of Cassation and Justice or were taken or performed pursuant their orders, the complaint shall be solved by the prosecutor's hierarchical superior.

The person filing the complaint and the other interested persons are informed on the resolution or ordinance solving the complaint against the resolution or ordinance for non-starting the criminal investigation, dismissing, exemption from criminal investigation or cessation of the criminal investigation.

According to Art. 278/1 of the Criminal Procedure Code, the victim and any person whose legitimate interests are harmed may file a complaint within 20 days from the date they were informed on the resolution or ordinance on their complaint's rejection to the court having, according to the law, the competence to judge the cause in first instance.

## RUSSIAN FEDERATION

### **1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

In compliance with art. 52 of the Constitution of the Russian Federation the rights of victims who have suffered from crimes and abuses of power are protected by the law. They are ensured access to justice and compensation of moral, physical and property damage inflicted in result of criminal and other abuses of power.

Pursuant to rules of chapter 2 of the Russian Federation Code of Criminal Procedure the victim is a party of criminal proceedings on the part of prosecution and subject to his (her) procedural positions the law vests victims with respective procedural rights and duties.

### **RUSSIAN FEDERATION CODE OF CRIMINAL PROCEDURE**

#### Article 42. Victim

1. A victim is a natural person upon whom physical, property and moral damage has been inflicted by a crime as well as a legal person in case damage to its property and business reputation has been caused by a crime. Decision to acknowledge as a victim is drawn up by a decision of the person conducting inquiry, the investigator and the public prosecutor.

#### 2. The victim shall be entitled

- 1) to be aware of charges laid against the accused;
- 2) to give testimony;
- 3) to refuse to give evidence against himself, his (her) spouse, and other close relative circle of which is defined by paragraph 4 article 5 of the present Code. Upon consent of the victim to give testimony he/she must be warned that his/her testimony may be used as evidence in criminal proceedings, even in case of his/her further refusal from this testimony;
- 4) to present evidence;
- 5) to file requests and challenges;
- 6) to give testimony in his/her native language or any other language he/she speaks;
- 7) to use assistance of interpreter free of charge;
- 8) to be represented by a representative;
- 9) upon consent of the investigator and the person conducting inquiry to participate in investigative measures performed upon his request or request of his/her representative;
- 10) to familiarize himself/herself with the records of investigative measures performed with his/her participation and to submit observations in this regard;

- 11) to familiarize himself/herself with decision on appointment of forensic examination and expert's conclusion in occasions specified by the second part of article 198 of the present Code;
- 12) after the end of preliminary investigation to familiarize himself/herself with all materials of the case-file, to write down any data and in any volume, to make copies of the case-file materials, also with the aid of technical means. If there are several victims participating in a criminal case each of them shall be entitled to familiarize himself/herself with the case-file materials which concern damage inflicted upon the given victim;
- 13) to receive copies of decisions on institution of criminal proceedings, on his/her acknowledgment in capacity of the victim and on refusal to do so, on termination of criminal case, on suspension of proceedings of criminal case as well as copies of sentences of the courts of the first instance and decisions of the courts of appeal and cassation instances;
- 14) to take part in trial of a criminal case in the courts of the first, second and supervision instances;
- 15) to intervene in pleadings;
- 16) to support prosecution;
- 17) to familiarize himself/herself with the records of judicial hearing and to make observations in this regard;
- 18) to make complaints against acts (omission) and decisions of the person conducting inquiry, the investigator, the public prosecutor and the court;
- 19) to complain against sentence, ruling or decision by the court;
- 20) to be aware of complaints and representations brought forward in criminal case and to submit objections on them;
- 21) to request for application of security measures pursuant to the third part of article 11 of the present Code;
- 22) to exercise any other powers stipulated by the present Code.

3. Reimbursement of property damage caused by the crime as well as of the expenses incurred in connection with his/her participation in the course of preliminary investigation and trial including expenses for representative according to article 131 of the present Code shall be ensured to the victim.

4. Amount of reimbursement in connection with a claim by the victim for reimbursement in specie of moral damage inflicted upon him/her shall be determined by the court during the proceedings of criminal case or in the course of civil proceedings.

5. The victim shall not be entitled

- 1) to evade appearance upon summons by the person conducting inquiry, the investigator, the public prosecutor and the court;
- 2) to give knowingly false evidence or to refuse to give evidence;
- 3) to disclose data of preliminary investigation if he/she has been earlier warned in this regard following the order specified in article 161 of the present Code.



6. In case of non-appearance of the victim without good reason after being summonsed he/she may be subjected to coercive delivery.
7. The victim shall bear responsibility pursuant to articles 307 and 308 of the Russian Federation Criminal Code for refusal to give evidence and for giving knowingly false evidence. The victim shall bear responsibility pursuant to article 310 of the Russian Federation Criminal Code for disclosure of data of preliminary investigation.
8. In criminal cases on crimes which resulted in the death of a person the right of the victim stipulated by the present article shall be transferred to one of his/her relatives.
9. In case a legal person is acknowledged as the victim its rights shall be exercised by a representative.
10. Participation of lawful representative or representative of the victim in criminal proceedings does not deprive him/her of the rights specified in the present article.

#### Article 45. Representatives of the Victim, Civil Plaintiff and Private Prosecutor

2. In order to protect rights and lawful interests of victims who are minors... their lawful representatives or representatives are to be obligatorily attracted to participation in criminal proceedings.
3. Lawful representatives or representatives of the victim, civil plaintiff and private prosecutor shall enjoy the same procedural rights as the persons represented by them.
4. Personal participation of the victim, civil plaintiff and private prosecutor shall not deprive him/her of a right to have a representative in criminal proceedings.

#### **2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

The victim is allowed to take part in proceedings of criminal case in the courts of the first, second and supervision instances.

Pursuant to art. 140 of the Russian Federation Code of Criminal Procedure a statement of crime filed by any persons including the victim shall be a grounds for institution of criminal proceedings. Basis for institution of criminal proceedings shall be availability of sufficient data indicating at the features of offence.

There is no notion of the public prosecutor's responsibility for representation of the victim's interests in the Russian legislation.

#### **3. a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?**

The issues of protection of victims and witnesses who are in danger are regulated in the Russian Federation by the Federal Law On the State Protection of Victims, Witnesses and Other Parties of Criminal Proceedings which obliges

specially authorized state authorities to ensure such protection of the mentioned persons by the means of the following security measures (art. 6):

- 1) personal guard, guarding of dwellings or property;
- 2) provision with special means of individual protection, communication and alerting of danger;
- 3) keeping confidential data on protection of an individual;
- 4) move to other place of residence;
- 5) replacement of documents;
- 6) change of appearance;
- 7) change of place of work (service) or studies;
- 8) temporary placement into safe location;
- 9) other measures of additional protection.

Measures of protection listed in paragraphs 4-7 are applied with respect to statements and criminal cases on grave or especially grave crimes.

Besides this, the issues of protection of victims and witnesses in the course of consideration of criminal cases in the courts are regulated by the Russian Federation Code of Criminal Procedure.

In case of availability of sufficient data that the victim, witness or other parties of criminal proceedings or their close relatives, relatives or dear ones are threatened with murder, use of violence, destruction or damage of property, or other dangerous illegal acts the court, the public prosecutor, the investigator, the body or the person conducting inquiry, within the scope of their competence, shall take the following security measures in respect of the mentioned persons.

Thus, pursuant to para.4 sec.2 art.241 (fully or partially) close judicial proceedings shall be allowed if it is required by the interests of ensuring security of the participants of judicial proceedings, their near relatives or dear ones. At the same time the court shall be allowed (sec.5 art.278) to perform interrogation of the above parties without disclosure of authentic data on their personalities under conditions excluding visual observation of them by other parties of judicial proceedings.

In case of necessity to ensure the security of the victim, his/her representative, the witness, their close relatives, relatives or dear ones the investigator shall be entitled not to indicate data on their personalities in the record of investigative measure in which the victim takes part. In such occasion the investigator, upon consent of the public prosecutor, passes a decision where he states the reasons for keeping such data secret, indicates the pseudonym of the party of investigative measure and gives a sample of his signature to be used in the records of investigative measures performed with his/her participation. The decision is placed in an envelope, then sealed and adduced to the case-file materials (part 9 art. 166).

In case of threat of violence, extortion and other criminal acts in respect of the victim, witness or their close relatives, relatives or dear ones control and recording of phone and other communications shall be allowed upon written application of the said persons and in its absence – on the grounds of judicial decision (part 2 art.186).

In order to ensure security of identifying person, presentation of a person for identification upon decision of the investigator may be performed under conditions which exclude visual observation of identifying person by a person being identified. In such occasion concurrent witnesses shall be at the place of location of identifying person (part 8 art.193).

For the purposes of protection of the rights of minors, upon request of the parties or upon initiative of the court, interrogation of victims and witnesses under 18 may be performed in absence of a defendant and the court shall pass a ruling or decision to this end. After return of a defendant to the courtroom he must be advised of statements of the said persons and given an opportunity to pose questions to them (part 6 art.280).

**b. What powers or responsibilities does the public prosecutor have in this area?**

Pursuant to the Federal Law On the State Protection of Victims, Witnesses and Other Parties of Criminal Proceedings the public prosecutor shall take decision on carrying out the state protection and perform supervision over execution of protection measures stipulated by the law with respect of the said persons.

The powers of the public prosecutor in this sphere according to the criminal procedural legislation are described in the answer to the previous question.

If there is an information that there are threats at the address of the victims and witnesses as well as their family members and other relatives, the court, or the public prosecutor taking part in the judicial proceedings are obliged, within the limits of their competence, to take measures as stipulated by the law for the protection of the life, health, honour, dignity and property of these persons. In particular, they are obliged to immediately advise corresponding units of law enforcement agencies regarding this. If data is available that there are features of offence in threatening actions, a case is initiated with respect to persons who threaten.

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

The public prosecutor who proceeds with a statement (communication) on offence or with a criminal case shall take decision on performance of the state protection. Carrying out of protection measures shall be vested with other law enforcement authorities.

Measures of the state protection may be applied at all stages of criminal proceedings as well as before institution of a criminal case.

Security measures are cancelled

- if grounds for their application are abolished i.e. data on existence of real threat of murder of the protected person, violence against him/her, destruction and damage of his/her property in connection with the participation in criminal proceedings;
- if their further application is impossible due to violation, by the protected person, of conditions of an agreement concluded with the agency which carries out security measures;
- upon written application of the protected person.

The judge (the court) while pronouncing sentencing judgment shall pass a ruling (decision) on cancellation of security measures or on their further application.

**4. Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?**

The public prosecutor shall be obliged to take account of the victim's needs and wishes in any decisions on institution of private prosecution, or private and public prosecution.

According to art. 20 of the Russian Federation Code of Criminal Procedure depending upon the nature and gravity of committed offence criminal prosecution including prosecution in the court may be public, private and public, and private.

Criminal cases on such offences as infliction of light harm to the health, beatings, calumny (without aggravating features) and insult are considered to be criminal cases of private prosecution, are instituted only on the grounds of the victim's application and are subject to termination in case of reconciliation between the victim and the accused.

Criminal cases on such offences as raping (without aggravating features), sexual assaults (without aggravating features), violation of equality of rights and freedoms of a person and a citizen (without aggravating features), breach of inviolability of private life (without aggravating features), violation of secrecy of correspondence, telephone, mail, cable and other communications (without aggravating features), infringement of inviolability of dwellings (without aggravating features), ungrounded denial to employ or ungrounded dismissal of a pregnant woman or a woman with children under 3 years, violation of copyright and related rights (without aggravating features), infringement of rights of invention and of patent law (without aggravating features) are considered to be matters of private and public prosecution, are instituted only on the grounds of application by the victim, but are not subject to termination upon reconciliation of the victim with the accused, save of the occasions specified in article 25 of the Russian Federation Code of Criminal Procedure (see below).

Criminal cases on all other offences are considered to be the matters of public prosecution.

The public prosecutor is entitled to institute private or private and public prosecution in absence of statement of the victim, if the offence in question was committed in respect of dependent person or other person otherwise not capable to autonomously use the rights belonged to him/her.

According to art. 25 of the Russian Federation Code of Criminal Procedure the public prosecutor is authorized, on the basis of application by the victim or the victim's lawful representative, to cease criminal proceedings against a person suspected or accused of a crime committed due to carelessness or of a crime entailing maximal punishment which does not exceed 5 years of deprivation of liberty if such person reconciled with the victim and rectified the inflicted damage.

Cessation of criminal proceedings in such occasion is possible only in regard to the suspect or the accused who committed an offence for the first time.

### **5. Is the public prosecutor empowered to mediate in criminal cases?**

In the Russian Federation the public prosecutor may not perform intermediary activities in criminal cases.

### **6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

Such duty of the public prosecutor is not provided for by the law. At the same time the victim, including the minor victim, is vested with a right to participate, personally or via his/her representative, in criminal prosecution of the accused together and simultaneously with official persons authorized to prosecute on behalf of the state, to put forward requests at any stage of criminal proceedings, to familiarize himself/herself with investigative measures performed with his/her participation as well as to submit observations regarding record of investigative measure. The victim is entitled to familiarize himself/herself with all case-file materials, to write down any data from it and to make copies of the records available in it after the completion of preliminary investigation. For ensuring these rights the investigator or the person conducting inquiry (and not the public prosecutor) is obliged to timely notify the victim regarding the completion of preliminary investigation and regarding the available opportunity to file a respective request.

In case of termination of a criminal case the investigator shall serve a copy of decision on termination of the case upon the victim.

In connection with the cases proceeded by the court, the victim shall be notified by the court with regard to all actions and decisions affecting his/her rights, inter alia, an obligation is imposed on the court to notify the persons concerned (inclusive of the victim) of representations made by the public prosecutor, to familiarize with their content and to forward copies of the mentioned records. The victim is vested with a right to raise objections on them.

**7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

Decision of the public prosecutor to dismiss the institution of a criminal case, to terminate a criminal case as well as other his decisions and actions (omission) which are able to cause damage to constitutional rights of freedoms or impede the access to justice may be appealed against by the victim to the court or the superior public prosecutor.

Full or partial refusal of the public prosecutor to prosecute in the courts of trial shall be mandatory for the court and entail dropping of the criminal case or the criminal prosecution. At the same time supervisory review of sentence of acquittal or decision on termination of criminal case is possible. Such review is admitted in connection with fundamental violations of the law committed in the course of trial, which influenced the outcome of the case, and is limited by one-year period.

## SLOVAKIA

1) If a minor is takes part in criminal proceedings as a victim, he/she has the status of an injured person. The rights of an injured person are laid out in Act 301/2005, part VII. Section 46 subs of the Code of Criminal Procedure, in force since the 1<sup>st</sup> January, 2006. Section 48, par. 1, of the Code of Criminal Procedure deals with the procedure for cases where an injured person's legal capacity is limited. Such person (victim) has to have a legal representative who takes part in the criminal proceedings and exercises his/her rights. Usually, one of the victim's parents is statutory representative of a victim. In the event that the legal representative cannot exercise the rights of the injured person (e.g. because of a conflict of interest or legal incapacity etc.), a guardian shall exercise the rights of the legal representative. During preliminary proceedings, the judge appoints a guardian once the prosecutor has made such a motion. Where a close person or a person to the guardianship of which a minor victim had been placed is an offender, it is primarily a state body or an authorized/commissioned representative of an victim assistance organization who is appointed as a guardian.

2) A minor who becomes a victim has the right to turn to prosecuting and adjudicating bodies (police and prosecutor) if he/she believes that his/her rights have been violated. Since a minor's rights are limited (Section 9, of the Act 40/1964, Coll., as amended, i.e. Civil Code), an adjudicating/ prosecuting body arranges for a statutory representative (or guardian or a child care and protection body or a child's school social worker) to be present during questioning of a minor who is reporting a crime. When a criminal prosecution is started on the basis of the reporting of a crime, the law enforcement body shall question the victim both as a victim and a witness in the case.

If questioning will be painful or have a negative impact on a child's psychological and moral development, then the questioning must be carried out taking into consideration the victim's age and it should be done as efficiently as possible in order to prevent repeated questioning in subsequent proceedings. A pedagogue or other person with education experience shall be involved in the questioning and contribute to the proper carrying out of the questioning, taking into account the level of mental development of the person questioned. If a statutory representative is deemed to be able to contribute to the proper course of a questioning, he/she shall be involved as well.

During further proceedings, such person shall be questioned again only when necessary, and only with the prosecutor's consent in the preliminary proceeding. In the proceeding before the court, the evidence is allowed to be produced by means of reading of records of questioning with no conditions to be met as required pursuant to the Section 263. If appropriate, a person who was involved in the questioning shall be examined as for the correctness and completeness of records as well as for a manner in which the questioning was carried out and a manner in which the questioned person testified.

The examination by means of video and audio equipment is carried out under the following conditions: a witness is under 15 years of age, a criminal act was committed on

next of kin or on person entrusted to one's care, or it is obvious that a repeated testimony of a person under 15 years could be influenced with regard to the circumstances of a case, or there are grounds to presume that a repeated examination might have negative impact on both mental and moral development of a person under 15 years of age. In such context, the examination of a minor shall be carried out only in exceptional cases. Within preliminary proceeding, any further questioning of a person under 15 years of age shall be carried out only upon consent of his/her statutory representative or guardian.

Prosecutor does not directly represent the victim. His judicial intervention is expressed in his right to file a motion to the judge for preliminary proceeding to appoint a guardian as well as in his right to give consent with repeated questioning of a minor within criminal prosecution. After the termination of investigation or of summary investigation this is only the prosecutor who is entitled to bring a charge to the competent court in specific criminal case as well as to commence procedure on settlement on guilt and punishment as well as to file to a court a motion to approve such settlement.

**3 a)** General provisions of the Code of Criminal Procedure may apply on protection of both minor victim and witness – these provisions allow the application of the institute of concealed witness as well as protected witness.

The provisions of the Act no. 395/2005, Coll., on social and legal protection of children and on social care, as amended, apply in the field of protection of minor victims interests against their next of kin or against the persons to the care of which they were entrusted in order to prevent further crisis situations as well as jeopardizing of the children's rights. In that Act, the Slovakia's international commitments were already implemented that result from conventions and international agreements by which the Slovak Republic is bound (e.g. Convention on Child's Rights, Convention on Civil and Legal Aspects of International Abductions of Children, Convention on Protection of Children and on Cooperation in International Adoptions etc.).

**b)** Usually, a policeman carries out the investigation or summary investigation. However, the Code of Criminal Procedure allows the whole investigation or summary investigation being carried out by the prosecutor, as well as any procedural act if a prosecutor deems it necessary. The prosecutor has got the predominant position in the entire criminal proceeding since he has right to give binding instructions to the policemen, to cancel their unlawful or ungrounded decisions and to replace these decisions by his own decision. Furthermore, the prosecutor has power to modify the course and the manner of the investigation or summary investigation. As far as the interests of minor victims are concerned, the prosecutor has the powers as mentioned in the item 2, last paragraph.

**c)** The prosecutor is not empowered to impose any protection measures over a minor victim. Only the agency for legal and social protection of children as well as the body for social care has such power. See item no. 3 a).

**4)** The prosecutor has the duty to prosecute any criminal offence of which he gained knowledge. This principle is breached by the provision of the Section 11, par. 1, Code of



Criminal Procedure in force since 1<sup>st</sup> of January, 2006, where criminal acts are listed where the injured person's consent is required to commence and continue the criminal prosecution. Domestic violence crimes are not mentioned among the listed criminal acts.

At the event that damage was caused to a minor victim through commission of a crime, the prosecutor may file a motion to the court in order to oblige the convicted person to compensate the damage caused to the victim given that the victim had claimed the damages properly and timely in the course of preliminary proceedings.

5) Pursuant to the Code of Criminal Procedure, the prosecutor may commence the proceeding on agreement about guilt and punishment either upon a motion by entitled person either by his own initiative. If such agreement is concluded, the prosecutor shall file the motion to approve it to the competent court and he proposes the summary judgment to be rendered.

6) The prosecuting and adjudicating body (policeman and prosecutor) has the duty to give written information to the victim at the first contact about his/her rights in criminal proceedings as well as about the organizations providing assistance to the injured individuals including the services provided. These bodies are obliged to caution a person of his/her rights as well as to provide him/her full possibility to assert them.

If an adjudicating and prosecuting body makes a decision to report on commission of a crime, it is obliged to send such decision to the injured person before the commencement of criminal prosecution because the injured person is entitled to file a complaint. If a policeman makes such decision, the supervising prosecutor shall decide about filing a complaint.

Furthermore, the prosecuting and adjudicating body has the duty to inform the injured person about the commencement of criminal prosecution as well as about the accusation. The injured person has the right to inspect the investigative file as well as to be informed about the results of the investigation.

The prosecutor has the duty to inform the injured person about bringing a charge and if the legal conditions are met to properly assert the right to damages, the prosecutor calls/summons the injured person to attend the commencement of procedure to agree on guilt and punishment.

7) Every prosecutor's decision not to prosecute shall be sent to the injured person within preliminary proceeding, because the injured person is entitled to file a complaint. The complaint is forwarded to that body against the decision of which it is directed. In this case, the superior prosecutor shall make the decision about the complaint.

**SLOVENIA****1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

In criminal proceedings under Slovene legislative, the victim has certain rights with regard to the course of the proceedings and to claim damages, as described in points 2-7 of this questionnaire.

Besides all the rights the victim is entitled to, juveniles (who must be represented by their legal representative – usually their parents) are obliged to also have an attorney during all the proceedings regarding criminal offences against sexual integrity and criminal offences of Neglect and maltreatment of minors. The role of such an attorney is to provide the victim all his/her rights during the proceedings, especially regarding protection of his/her integrity during the questioning in the court and regarding the claim for damages.

**2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

In cases of lighter criminal offences (punishable up to three years of prison), the victim has the right to make a motion for the prosecution and if the victim makes such a motion, the prosecutor is from then on required to prosecute the case as any other criminal offence liable to public prosecution.

In any criminal proceedings, the victim has the right to attend to the main hearing, to propose hearing of evidence, to examining the defendants and the witnesses, to give objections and to give other prepositions. The victim also has the right to claim compensation for damages.

The prosecutor has no responsibility for representing the victim.

**3. a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?**

The Code of Criminal Procedure provides the possibility of hiding the identity of the witness; The Witness Protection Act regulates the system of protection for witnesses who are in danger.

The Code of Criminal Procedure also implies the duty of special care to avoid any harmful questioning of witnesses who are victims and minors.

**b. What powers or responsibilities does the public prosecutor have in this area?**

During the court proceedings: the prosecutor is empowered to submit motions to the judge for granting witnesses the right to anonymity.

The witness protection procedure: the prosecutor (supreme state prosecutor) is a member of a special commission (there are 4 members all together, with a supreme judge as the president) whose task it is to grant and define a programme of protection for specific witnesses, who are in need of such protection. Witness protection procedures are started with a request from the prosecutor, who is prosecuting the case in which the witness appears. The protection proposal is then brought to the commission by The Prosecutor General of Republic of Slovenia.

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

After submitting a motion for protection (see point 3b) The Prosecutor General of the Republic of Slovenia has the possibility to order special protective measures in urgent cases. In such cases he/she can order: special counselling (by a special unit) for the witness, technical or physical security measures for the witness or temporary accommodation for the witness.

**4. Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?**

Except in the case, described under point 2, the victim's wishes and needs have no effect on the prosecutor's decision to prosecute (the prosecutor is required to prosecute).

**5. Is the public prosecutor empowered to mediate in criminal cases?**

The prosecutor has the possibility to transfer the case to the mediator (who is a lay person but is registered as a mediator in criminal cases), or

To execute proceeding of "suspend the prosecution". This is a special proceeding, similar to mediation, but the role of the victim in this proceeding is somewhat smaller and is reduced to the giving the consent to the task, imposed to the suspect by the prosecutor. If the suspect fulfils the given task (the task can be: retribution of the damage, payment of the certain amount of money for the humanitarian purposes, public work or payment of alimony), the criminal report is rejected.

**6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

Except in the cases, described below (see point 7), the prosecutor is not required to inform the victim of his/hes decisions.

**7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

If the prosecutor rejects the criminal report, the victim has the right to start prosecution proceedings himself. In this case, the prosecutor is obliged to inform the victim that the criminal report has been rejected and is also obliged to give the victim instructions on how to start the prosecution himself.

If the prosecutor decides not to proceed with the prosecution later in the proceedings (if he/she decides to withdraw the indictment or the request for a judicial investigation) the victim has the right to take the prosecution over but in this case the court is obliged to inform the victim of his/hers rights.

In both cases, the victim (if he/she decides to take the prosecution over) has the same rights in the proceedings as the state prosecutor.

## SPAIN

### **1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

One of the features of Spanish criminal law that does not occur in other European systems is the fact that civil and criminal proceedings are led together. The response of the legal system toward victims in order to compensate them, as far as possible, for the caused damage, whether the restitution property repairing the harm or the indemnity for the caused damage, is jointly led in the same proceedings, except where the injured party clearly expresses his will of reserve for civil actions.

Another specific feature of Spanish criminal procedure is the fact that the system recognises the right for victims to have the status of parties to criminal proceedings, with private accusation and therefore exercising not only civil but also criminal action.

In all cases, whether there is, or not, a party represented as private prosecution, the prosecutor has the obligation to promote this civil compensation to any injured party, including where the victim shows up on his own, as a party to the case, filing his/her own request for compensation, with the sole exception where the victim has expressly renounced to the redress.

To summarize, in Spain, the prosecutors always have the obligation to ask the compensation for the victim,

This is part of the organic statute of the public prosecution service about the functions of the Public Prosecution Service relating to victims:

“Article 3.

For the completion of the missions established in article 1, it falls to the Public Prosecution Service: .... 10. To see to victim protection during legal process by promoting the mechanisms set in place for the receipt of effective victim aid and assistance”.

When the victim is minor, the prosecutors have a special role in case this minor was without his father’s protection. If not, in any case, the Judge and the prosecutor should consider the circumstances the minor to ask measures to protect him / her.

### **2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

Yes. In Spain, victims have the right to initiate proceedings and also to take part in the proceedings as private accusation.

This allows them to produce evidence as they find suitable and to present all allegations and applications they have the right to file.

Consequently in criminal procedure, it is not unusual to find together with public action led by Prosecution, the victim, represented by lawyer, claiming an adequate conviction and, at the same time, requesting a civil compensation for damages and losses incurred.

In any case, the Public Prosecutor has the obligation to promote this civil compensation to any injured party except when the victim expressly renounced.

**3. a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?**

Yes. In Spain the law establishes a “protection order” in cases of domestic violence. This protection order is intended to urgently respond to the need for safety, assisting those persons who, in extreme situations, denounce their spouses or companions for violent acts that, on account of their dangerous character and of the aggressor’s proximity require urgent measures, before a final decision is taken.

We have also the possibility to deprive the father of his right to custody and to visit the children.

We have also special measures to protect minors in Court, and the judge may, considering the child’s personal circumstances, allow the minor to make statements through audiovisual techniques, which, by ensuring the principle of cross examination, avoid the minor to be personally confronted with the aggressor

**b. What powers or responsibilities does the public prosecutor have in this area?**

The prosecution may require measures found necessary, but his role is also defined by the Law as that of receiving body, together with the Investigating judge, regarding a request for protection. This implies the summons of a hearing before the Judge, so that a solution may be found on the requested protection order and on its scope

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

It is a duty of the prosecutor to ask the judge for the adoption of coercive measures, the law provides for a series of restraining measures, such as the prohibition to live or to hang out in a specific place, or to approach to the victim ..., but in any case the measure has to be adopted by the judge.

The prosecutor has no power to take the measure by him/ herself.

**4. Is the public prosecutor required to take the victim’s needs and wishes into account in any decision to prosecute? If so, how?**

No, the public prosecutor takes the decision only with legal reasons.

The sole exception is the “private crimes” for example insult, slander.

**5. Is the public prosecutor empowered to mediate in criminal cases?**

No, in Spain there is no mediation in criminal cases.

Only in cases of criminal jurisdiction about minors the prosecutor can mediate between victim and minor to obtain the most convenient sentence, especially for the minor.

**6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

Yes, although the law doesn't impose this obligation clearly, the Prosecutor General gave an instruction ( 8/05) for Prosecution Departments to be organised in such a way that it would allow victims to get more detailed information on their rights and on the evolution of the procedure and preliminary procedure.

In any case, the Spanish lawmaker has tried to ensure that victims may be heard as witnesses during trial, In this case, The prosecutor should summon them, so as to safeguard the victim's right to know when the trial takes place and to be informed on the decision taken in the Court's verdict.

**7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

There is not appeal against the prosecutor's decision, but the victim can act as accusation part.

In case that the prosecutor's decision is taken before the judicial proceedings (investigations by the prosecutor service) and the prosecutor decides not to prosecute, the victim can go to the competent judge and repeat his/ her denunciation.

**SWEDEN****1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

The aggrieved person is defined in law as a person against whom an offence has been committed or who was affronted or harmed by it.

Apart from being questioned at the trial, the aggrieved person is entitled to support the prosecution and – if so – may appeal to a superior court. The aggrieved person may also institute prosecution under certain circumstances. If the aggrieved person is a minor (under the age of 15), his legal representative has the same rights.

If the legal representative of an aggrieved person who is a minor is a suspect, the minor is entitled to legal counsel who will look after his interests.

**2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

The aggrieved person may institute a private claim in conjunction with the prosecution. When a private claim is based upon an offence subject to public prosecution, the prosecutor, upon request of the aggrieved person, *shall* prepare and present the aggrieved person's action in conjunction with the prosecution, provided that no major inconvenience will result and that the claim is not manifestly devoid of merit. If the aggrieved person desires to have his claim entertained together with the prosecution, he or she shall notify the investigation leader or the prosecutor of the claim and state the circumstances upon which it is based.

The aggrieved person may also be entitled to a legal counsel who will assist him with private claims and other issues concerning the prosecution and the trial. The aggrieved person is entitled to such a counsel if he or she, for example, has been sexually assaulted or sexually abused. Such a counsel may also be appointed in some other cases involving crimes against the person. If an aggrieved person is a minor, he is usually entitled to such a legal counsel.

**3. a. In your system are there any means of protecting victims or witnesses who are in danger (including minors)?**

Protection of victims and witnesses (including minors) is, according to Swedish legislation, a task for the Police Force. Today several Swedish police authorities have special units for personal security, including protection of victims and witnesses.

The government is preparing a bill which includes a new program for personal security. The purpose of the new program is to improve the security level of threatened persons.



**b. What powers or responsibilities does the public prosecutor have in this area?**

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

It is important that the cooperation between the police and the public prosecutor is efficient when it comes to security issues. If the public prosecutor receives information about threats against a witness, for example, he or she must inform the police immediately. The protection of victims and witnesses is, as stated above, a task for the police, but the police and the public prosecutor must liaise effectively with regard to security issues.

**4. Is the Public Prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?**

The Swedish public prosecutor is – as a general principle – obliged to prosecute when there is evidence enough to expect the court to find the suspect guilty. Unless otherwise prescribed, prosecutors must therefore prosecute offences falling within the domain of public prosecution. There are a few exceptions to this general principle. The prosecutor may, in certain circumstances, decide to limit the preliminary investigation and to waive prosecution, provided no compelling public or private interest is disregarded. The opinion of the aggrieved person in the issue of prosecution, has no vital importance for this question.

**5. Is the public prosecutor empowered to mediate in criminal cases?**

The Swedish legislation concerning mediation was introduced on the 1<sup>st</sup> July 2002. The law regulates the interaction between the perpetrator of an offence and the victim together with *an impartial mediator*. The public prosecutor is therefore not empowered to mediate in criminal cases. The regulation's main purpose is to provide guarantees of equity and fairness.

Mediation is not a criminal law sanction and is not part of the criminal justice procedure. In some cases mediation can lead to the cancelling of prosecution. Also, the court can take into consideration the fact that mediation occurred when deciding the sanction.

Mediation is available for offenders of all ages, even though its focus is on juvenile offenders. It is of greatest importance that mediation is undertaken voluntarily by both participants. It is essential that mediation is designed such that the victim and the perpetrator, feel that they have real possibilities to refuse to participate. A further basic requirement is that the offender must have accepted responsibility for the main elements of the offence even if he does not agree with all of the assertions of the victim. The offender should be given an opportunity to apologise to the victim during the meeting. The meeting can be concluded in such a way that the participants agree. Finally, the mediator should seek to help both participants.

## **6. Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

In Sweden the police and the prosecutor are obliged to provide victims with basic information concerning the investigation, i.e. state compensation, legal aid, the Act on Visiting Bans, victim support organisations, and the possibility of being allocated a support person or a counsellor. Provisions concerning information to the victim can be found in the Ordinance concerning preliminary investigation (Förundersökningskungörelsen [1947:898], FuK).

According to Section 13 § a the prosecutor shall inform the aggrieved person about:

- the obligation for the prosecutor to prepare and present the aggrieved person's action in conjunction with the prosecution,
- the aggrieved person's right to compensation according to The Criminal Injuries Compensation Act, and the applicable provisions on the procedure of these issues (paragraph 1).

If the aggrieved person can have a right to a legal counsel or visiting ban, the prosecutor shall as soon as possible inform him or her about his or her rights according to the Act of Legal Counsel for Aggrieved Persons or according to the Act on Visiting Bans (paragraph 2).

The aggrieved person shall also be informed about the provisions concerning his or her rights with regard to

- to be accompanied by a support person when visiting the police and appearing in court,
- legal aid and counselling according to the Legal Aid Act and which authorities and other organizations that can help him or her (paragraph 3).

The prosecutor is not obliged to give the aggrieved person the information in paragraphs 1 and 3 above if it is obvious that that measure is unnecessary or if the measure is combined with large difficulties.

According to section 13 b FuK the police or the prosecutor shall ask the aggrieved person if he or she wants to be informed about

- a decision to initiate a preliminary investigation,
- a decision to discontinue the preliminary investigation,
- a decision not to prosecute the suspect,
- the time for the main hearing, and
- the court's judgement.

According to Section 13 § c FuK the aggrieved person shall be informed in the case of the escape of a suspect who had previously been apprehended, arrested or detained.

According to 13 d § FuK is the prosecutor is obliged to, as soon as possible, inform the aggrieved person about a decision to prosecute the suspect.

If the police authority or the prosecutor decides that a preliminary investigation should not be initiated or that a preliminary investigation should be discontinued, or if the prosecutor decides not to prosecute the suspect, the aggrieved person who has made the report of the crime to the police authority or the prosecutor shall be informed of the decision. The same information shall be given to a aggrieved person who has instituted a private claim in consequence of the offence or have declared that he or she wants to be informed about the decision. It is though not necessary to give these persons this information, if the police authority has decided not to initiate a preliminary investigation or to discontinue a preliminary investigation, and if the investigation has not reach the stage where someone is reasonable suspected. However, this exeption to the main rule is not applicable when the aggrieved person has asked for the information in question.

**7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

The victim has no right of appeal to a court with respect to decisions not to prosecute, but can request that a superior prosecutor look at the decision. If a victim asks for it, the superior prosecutor is obliged to review the decision not to prosecute. The superior prosecutor may then decide whether or not to prosecute.

## SWITZERLAND

**Preliminary comment:** in Switzerland there are 26 cantonal codes of criminal procedure, a federal code of criminal procedure and a military code of criminal procedure. A draft Swiss code of criminal procedure harmonising the cantonal and federal codes of criminal procedure will be submitted to the Federal Parliament in 2006; it should enter into force in 2010. The replies are essentially based on the federal criminal procedure currently in force.

**1.** The Federal Act of 4 October 1991 on assistance to victims of offences (the LAVI) allows victims, particularly minors, to be provided with effective assistance and enhances their rights.

The Federal Act on criminal procedure of 15 June 1934 (PPF) also takes account of the position of victims (party status accorded to victims who apply to be joined to the proceedings as a civil party claiming damages, right of appeal against decisions not to follow up a criminal complaint or to suspend police inquiries).

The cantons designate the authorities responsible for prosecuting minors. They have set up special criminal prosecution authorities (juvenile judges and courts). A federal bill on the criminal procedure applicable to minors (PPMin) will shortly be submitted to the Federal Parliament.

**2.** Anyone (a simple informant, injured party, victim) may report offences punishable under federal law (section 100, paragraph 1, PPF). Victims who apply to be joined to the proceedings as civil parties claiming damages acquire party status. The public prosecutor does not represent victims.

**3.a.** At present military criminal procedure makes provision for protection measures for witnesses, persons called upon to provide information, the accused, experts, interpreters and translators. The draft Swiss code of criminal procedure makes provision for protection measures in respect of witnesses and victims (Art. 148 et seq.).

The LAVI contains provisions for the protection of victims and minors (anonymity, in camera proceedings, no confrontation with the perpetrator of an offence, children's testimony taken in a maximum of two sessions, investigator specially trained to work with minors). The same is true of the draft PPMIn (participation by legal representatives, presence of a person of trust, in camera proceedings).

If necessary, the police may, as part of their mission to protect citizens, be called upon to take protective measures in respect of victims or witnesses.

**b.** The first time victims are interviewed the police inform them of the existence of these protection measures (LAVI), and the public prosecutor sees that they are enforced.

c. According to the draft Swiss code of criminal procedure, the public prosecutor acts on request or of his or her own motion at every stage of the proceedings, but in principle not once the trial is over. However, the Confederation and the cantons may institute protection measures after the conclusion of proceedings.

4. Yes, by informing him or her of certain decisions (refusal to follow up a criminal complaint or suspension of police inquiries) that may be challenged before a judicial authority (the complaints court of the Federal Criminal Court).

5. No.

6. Yes. See above, replies to questions 1 and 4. He or she also transmits the indictment to the victim.

7. Yes. See above, reply to question 4.

**THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

1. The Criminal procedural code gives a very important and central position to the victim, and particularly tries to protect victims that are minors.
2. Victims are allowed to actively take part in the criminal procedure, particularly by providing evidence and testimony as witnesses. Victims can initiate criminal proceedings by submitting a criminal report to the public prosecutor or to a competent court. Initiating the proceedings before the public prosecutor is very easy and simple, and can even be done on the basis of an oral complaint.

The public prosecutor, by taking part in the criminal case is actually representing the victim and his rights at the same time.

3. The witness protection law deals with the protection of victims and witnesses. The public prosecutor has very important role as he/she is responsible for imposing protective measures for witnesses who are in danger. In cases of emergency, the public prosecutor can impose protective measures, but the normal procedure is that protective measures are imposed by a special body upon receiving a proposal from the public prosecutor. The public prosecutor has the power to propose stopping a specific protection measure.
4. The Macedonian Criminal Code proscribes some criminal offences which can be prosecuted by the public prosecutor only upon receipt of a request from the victim.

There is also possibility that public prosecutor can decide to stop criminal proceedings for criminal offences punishable by up to three years in prison, so long as the victim receives compensation.

5. The public prosecutor is not empowered to mediate in criminal cases, but his roles in the situations described above (4) are very important.
6. According to criminal procedural law, the public prosecutor is required to inform the victim of any action taken in a case concerning him/her.
7. Victim has the right to react to the decision of the public prosecutor not to prosecute. In this case the public prosecutor would inform the victim of his decision and reasons why he/she decided not to prosecute. After receiving this information, the victim can then start proceedings themselves before the competent court.

## TURKEY

1) In the Turkish criminal system, the rights of victims to appeal against decisions not to prosecute, joining the public prosecution have been long guaranteed under law, but the rights of victim have been strengthened by amendments to the law made in 2005.

As the older Code does not have a specific provision for questioning victims, the rules for questioning witnesses have existed on a more informal basis. In the new Code, the procedure for questioning victims is clearly stated. Accordingly, the position of the victim has been clarified.

In the Criminal Procedure Code numbered 5271 in force at present, the fourth Chapter is allocated to the rights of victims and complainants. In Article 233 of this Code, it is stipulated that “the victim and the complainant shall be questioned by the public prosecutor, the chairman of the Court or the judge upon being called to attend court. In this regard, provisions pertaining to the invitation of the witnesses shall be applied by analogy.” In Article 235 of the same Code, in cases where the victim or the complainant does not appear before the court despite the service of the date of hearing, no more invitation shall be sent to him/her. However, if it is necessary to examine the victim this provision shall not be applied. It is stipulated in Article 236 that where victim is examined as a witness, the provision pertaining to witnesses shall be applied, except for the ones pertaining to oath.

The rights of the victims and the complainants are arranged in Article 234 of Criminal Procedure Code. In spite of the fact that no definition for the expressions of victim, complainant or aggrieved person is provided for in the Code, in practice, the term of victim is used for the person who is directly affected by or subjected to a crime and the term of complainant refers to the parents/legal representative of the victim or the person who has the right to complain on his/her own. Just to clarify in the light of this explanation, where a child is exposed to a crime and directly affected by it, the child is referred as the victim and his/her parents or legal representative are referred as the complainant. Not surprisingly, those not yet 18 years old can exercise the rights provided in these Articles only through their parental guardians or tutors.

According to Article 234 of Turkish Criminal Code, during the investigation phase, the victim and the complainant are entitled to:

- Ask for collecting of evidence
- Be handed a copy of a piece of document unless the purpose or the secrecy of the investigation appears to be jeopardized
- Avail himself of the assistance of a lawyer or be represented by a lawyer in criminal proceedings if he/she does not have any
- Inspect the files, the goods seized through his/her lawyer
- Apply for remedies against decisions of public prosecutor not to prosecute.

During the prosecution phase he/she has the rights to:

- Be notified about the hearing date
- Joining the public prosecution against the accused
- Be given a copy of documents in evidence through his/her lawyer
- Ask for witnesses to be summoned
- Avail himself/herself of the assistance of a lawyer or be represented by a lawyer in criminal proceedings if he/she does not have one
- Apply for remedies against decisions of the court provided that that he/she has formerly joined the case.

As far as the specific arrangements for the minor victims are concerned:

First of all, if the victim is a minor, a lawyer shall be appointed to him/her regardless of his/her request. (Article 234/2)

On the other hand, in the case of a minor whose psychological health has deteriorated due to the crime committed, he/she can be examined only once as a witness with regard to the investigation or prosecution of the crime in question. Moreover, a psychiatrist or an expert on medicine or education shall be present during the examination of minors or other victims whose psychological health has been damaged (Article 236/3).

Apart from these specific arrangements, audio-visual recordings shall be kept during the examination of minors when being questioned as witnesses (Article 52).

2) In some cases, the rights of the victim to initiate criminal proceedings against a person and bring him/her before the Court of Peace directly or upon the decision of the public prosecution not to prosecute was provided in the *ex* Criminal Procedure Code numbered 1412, which was abolished when the new Code numbered 5271 came into force on 1<sup>st</sup> June 2005. However, the system called private proceedings (private prosecutions?) **no longer** exists in the new Code. However, if the public prosecutor formally charges the accused, the victim can join the public prosecution; have the status of a party and ask for evidence to be collected and witnesses questioned. Furthermore, he/she can apply for remedies against the decision of the court once he/she has become a joint party in the case.

If the victim has not joined the public prosecution, he/she can still be present during the hearings; however, in this case, he/she cannot exercise the right to apply for remedies.

On the other hand, regardless of whether the victims has the position of a party or not, the public prosecutor should observe the rights of the victims on the basis of the facts. The public prosecutor does not represents or follows the interests of the victim in the Turkish criminal system, though, as he/she can act both in favour of the victim or the accused, according to the facts in each case. Public prosecutors can demand the accused be set free where the facts establish that he/she has not committed the alleged crime or where there is insufficient evidence to conclude as such.



However, since with the aim of completing the process as soon as possible and not to cause the prescription of the criminal proceedings is followed in the new Code, the compensation claims can **no longer** be brought before the judge in criminal case. Where an application has been made to the civil court by the victim, the public prosecutor cannot participate. Therefore, the participation of the public prosecutor in criminal proceedings with a view to establishing the facts can indirectly assist in the compensation for the victim's loss, since the conviction of the accused for crimes against the victim can be used as a basis in civil proceedings. This is aside from the fact that the Prosecutor may or may not be in favour of the accused (except for the proceedings in the Court of Peace).

3) There is no specific provision for the protection of victims or witnesses in the Turkish Criminal Procedure Code at present. The Law on Prevention of Profit-Oriented Criminal Organizations numbered 4422 has been abolished with the entry into force of the Turkish Penal Code numbered 5252. The former Law had specific provisions for the protection of witnesses falling within the scope of the investigations and prosecutions conducted against profit-oriented crime organizations with reference to Article 20 of Law on Fight against Terrorism dated 1991 numbered 3713. The said provision stipulated that every means shall be taken by the State in order to provide for the safety of witnesses. Currently, the public prosecutor cannot take any measures to directly ensure the safety of witnesses; however, the person who claims that he/she is in danger may apply to the governor of their region.

On the other hand, apart from protecting the safety of victims and witnesses, some other kinds of measures are stipulated in the Criminal Procedure Code, such as keeping the identity of the witnesses secret where necessary. Article 58 of the Criminal Procedure Code provides that necessary measures shall be taken with a view to keeping the identity of the witness secret if there is a reason to fear that revealing the identity of the witness would cause a grave danger for the witness or for his/her family. In line with this provision, the personal data of the witness shall be kept secret by the public prosecutor, the judge or the chairman of the court. Moreover, if the examination of the witness in the presence of other persons in the court constitutes a grave risk and this risk cannot be avoided by any other solution or it will endanger to find out the truth, the judge can examine him/her without the presence of those who have the right to be present. In this case, however, an audio-visual recording shall be kept during the examination of the witness.

It is worth to note that with a view to getting rid of the loopholes which occurred due to the abolishment of Code numbered 4422, a Committee has been established in the Ministry of Justice to work on reform packages. Improvements still need to be made to bring our system up to universal standards.

4) The prosecution of certain crimes mentioned in Turkish Penal Code relies on the victim's complaint. In such cases, the public prosecutor cannot investigate or write a letter of indictment without the complaint of the victim.

Apart from this, a public prosecutor who has been notified of a crime that has been committed shall directly start to inspect in order to decide whether to prosecute or not to do so. In such cases, the withdrawal of the complaint cannot have any effect on the public prosecution.

In other words, the public prosecutor shall take into account the wishes and needs of the victim where the crime can only be prosecuted upon the victim's complaint, however, where it does not depend on the complaint of the victim, the public prosecutor can investigate on his own initiative and arrange for a letter of indictment when he/she is informed that a crime has been committed.

With regard to the needs of the victims;

Where the victim is a minor or deaf-mute or where his/her psychological health has been affected, efforts are made to meet some of their needs by the appointment of a lawyer or presence of a psychiatrist or an expert on medicine/education during their examination. These kinds of needs are, of course, not an element which can effect the decision of the public prosecutor on whether to prosecute or not to prosecute. The provisions of mediation mentioned below are preserved.

**5)** Public prosecutors have competence for the institution of mediation which has recently been introduced in the Turkish criminal system. The aim of this procedure is to solve the problems between the victim and the perpetrator at the earliest stage possible; to ensure that the perpetrator takes the responsibility for having committed a crime; and to build peace between the parties. Mediation cannot be applied to all kinds of crimes. According to paragraph 8 of Article 73 of Turkish Penal Code numbered 5252, only crimes for which prosecution depends on the complaint of the victim are subject to mediation. Unlawful registration of personal data, insults, non-serious injuries are examples of crimes to which mediation process can be applied.

According to Article 253 of Criminal Procedure Code numbered 5271, where the crime committed is subject to mediation, the public prosecutor asks the perpetrator whether he/she takes responsibility for committing the crime. In the event that he/she takes responsibility, the public prosecutor asks whether he/she will compensate the material or other harms and/ or pay damages. If the perpetrator agrees, the public prosecutor informs the victim or his/her legal representative on the issue. In cases where the victim decides to accept the settlement with the perpetrator of his/her own free will, the file will be frozen until the damage has been repaired or compensation paid in line with the terms of the mediation. If the damage cannot be repaired under the terms of the mediation, the public prosecutor shall arrange for a letter of indictment and open a public prosecution before the court without delay. If the damage has been repaired, the public prosecutor can decide not to prosecute.

In order to assist in the procedure, the public prosecutor appoints one or more mediators. The lawyer who has been appointed as a mediator submits a report to the public prosecutor within 10 days stating his/her actions taken so far and the results of them. If

necessary, this period can be extended by a one-off period of 30 days. Where the mediation process fails, the fact that the responsibility has been taken by the perpetrator or that he/she confessed that he/she committed the crime in question cannot be considered as evidence during the public prosecution.

6) After completing the investigation, public prosecutor has the discretion to decide to prosecute or not (Article 171,172). If the public prosecutor decides not to prosecute he/she shall inform both the victim and the suspect. In his/her decision he/she shall indicate the right of the victim to apply for remedies, the time limit and the authority to whom to apply. The obligation to indicate the time limit and the authority is also in the Constitution. According to Article 40/2 of Constitution, State organs shall indicate the remedies available, time limits and the authority to apply to.

When the public prosecutor launches a criminal prosecution with a letter of indictment, the victim can join as a party to the prosecution. In this case, he/she can apply for remedy against the decision of the court.

7) The aggrieved person can object within 15 days to the nearest Felony Court to any decision being served not to prosecute (Article 173/1). If the Chairman of the Felony Court considers that there is no need to prosecute, he/she shall reject the objection; sentence the applicant to the costs and forward the file to the public prosecutor concerned. Moreover, the public prosecutor shall inform the applicant and the suspect of this decision. Apart from this routine procedure, an inspector may ask the public prosecutor to consider his/her decision not to prosecute once more.

**UKRAINE****1.**

Under Article 49 of the Criminal Procedure Code of Ukraine the victim is defined as a person to whom crime caused moral, physical or property damages.

Persons recognized as victims of a crime or their representatives have right to:

- testify; file motions;
- study all case materials upon termination of the pre-trial investigation, and in cases, where there was no pre-trial investigation, after its setting up for court hearing;
- participate in a trial;
- file objections;
- file complaints against the person conducting inquiry, investigator, prosecutor and the court, as well as against judgments /verdicts, decisions of courts, and as applicable, for providing security,
- in court hearings prosecute in person or by proxy in a trial, participate in court debates.

In case a juvenile (under 18 years) is recognized a victim, his/her rights and interests guarded by law are protected by representatives-in-law of the victim; in this case, the victim's consent for participation of a representative-in-law in the case is not required. The list of persons, who are officially representatives-in-law, is named in a paragraph 10, Article 32 of the Code of Criminal Procedure of Ukraine – these are parents, custodians, guardians of the person, or representatives of institutions or organizations under the custody of which the victim is.

**2.**

In case to recognize a person as a victim the law (Article 49 of the Code of Criminal Procedure of Ukraine) does not require his/her application and a decision-taking does not depend on his/her personal will. Person is recognized a victim according to his/her own application (verbal or written), as well as initiated by the officer conducting inquiry, investigator, prosecutor), judge, the courts.

His/her procedural rights can be exercised personally and by proxy, or together with his/her representative.

In accordance with the Article 52 of the CCP of Ukraine lawyers, near of kin, legal representatives can be his/her representatives, as well as other persons appointed under the resolution of a person conducting inquiry, investigator, prosecutor, judge or imposed by court.

**3a**

Providing security of persons who participate in criminal proceedings, i.e. in revealing, preventing, suspending, solving or investigating crimes, as well as in court hearings is

regulated by the Law of Ukraine *On Providing security of persons participating in criminal proceedings* dated December 23, 1993, and by Articles 52-1, 52-2, 52-3, 52-4 of the CCP of Ukraine. Provisions of this law are indispensable on juvenile victims and witnesses.

With the aim to observe provisions of this law special militia divisions were organized in the structure of the Ministry of Internal Affairs of Ukraine, responsible for protection of court servants, officers of law enforcement agencies, persons participating in criminal proceedings, members of their families and near of kin.

#### **b and c**

Article 52-1 of the CCP of Ukraine prescribes that in case there are reasons for providing security of persons who participate in criminal proceedings, the investigator or **prosecutor**, as well as the inquiry authority are obliged to take over examination as appropriate within the period of time no longer than three days, and in urgent cases – immediately, by the way of carrying out necessary legal proceedings (interrogation, search, seizure, inspection, seizure of documents, filing instructions to the inquiry authority etc.) and take a decision on application or refusal in providing measures of security. According to their decision, they adopt a motivated resolution or prescription and forward it for execution to body authorized to provide security. This resolution or prescription is mandatory for the authorized body.

Having reasons for abolishment of above mentioned above measures, inquiry agency, investigator, prosecutor or the courts (judge) takes a motivated decision on its abolishment.

Decision on abolishment of security measures in written within 1 day is provided for information of the person, to whom these measures were applied.

Resolution of the inquiry agency or investigator on refusal or abolishment of security measures can be appealed to the prosecutor or regional courts at the place of the case investigation (Article 52-5 of the CCP of Ukraine).

#### **4**

In accordance with the Article 49 of the CCP of Ukraine the victim is given with a rather wide range of rights to protect his/her interests.

To perform his/her procedural functions, a victim has an important right to testify, which corresponds to the inquiry officer, investigator, prosecutor, judge or the courts obligation to hear and to take into account this testimony.

The right of a victim to give evidence means that he/she can give to inquiry officer, investigator (prosecutor), courts the information he/she owns on circumstances of crime as well as with the items, documents, in case they have any relevance to the case. One of the ways of giving evidence by a victim is his/her right to file motions as for taking some

investigative actions aimed at gaining evidence (on conducting search, inspection, examination, investigation etc.).

Thoughts and presumptions of a victim, informed by him/her while interrogating, make indispensable part of his/her testimony. They have to be fixed in the protocol of interrogation and are subject to mandatory examination in the process of proving.

Any kind of testimony of a victim before it is used in the conclusion of the case has to be examined. Examination is carried out by comparing testimony with the proofs, presented in the case.

With a view of all mentioned above, a prosecutor as well as an investigator, inquiry officer, the courts have to take into account all the testimony of a victim.

Along with that, one should bear in mind that in case of providing false testimony, a victim bears criminal responsibility prescribed by Article 34 of the Criminal Code of Ukraine.

## 5

In accordance with Ukrainian legislation of criminal procedure the prosecutor does not mediate in criminal cases, but supervises over the observance of laws by the agencies for inquiry and pre-trial investigation. Criminal compromise is not foreseen by the Ukrainian legislation.

In order to execute these tasks in accordance with the Article 227 of the CPC of Ukraine, a public prosecutor is given administrative (decision-making) and criminal procedural powers, which can be conditionally classified into three groups: defining possible law violations, responding to them and preventing them.

With the aim of defining possible law violations during investigation of a crime a prosecutor requires criminal files, necessary documents, materials for examination; takes part in the inquiry and pre-trial investigation; has a right to require additional explanations etc.

Having revealed a violation of norms of law, prosecutor abolishes illegal and inconsistent decisions and other resolutions, which have not been yet executed; gives written instructions, commissions on abolishment of violations of law; returns criminal cases for additional investigation; initiates criminal cases or refuses to initiate; dismisses an inquiry officer or investigator from further investigation, if they have committed any violations of law.

Prosecutor's instructions as for concrete cases are for mandatory execution for the agencies of inquiry and pre-trial investigation, and regulations on investigation issued by the Prosecutor General of Ukraine is mandatory for all the agencies of inquiry and pre-trial investigation irrespective of their official subordination (Article 15 of the Law of Ukraine *On Prosecution Service*).

As for the issue of participation of a prosecutor in court hearing of a *criminal* case, in accordance with the Article 264 of the CCP of Ukraine, his/her participation in court session is mandatory.

Being a representative of prosecution and one of the participants of the procedure, a prosecutor is empowered with equal opportunities comparing to other participants in presenting proofs, participating in examination of the proofs and arguing their credibility before the court, participating in the court debates and impugning court decisions and judgments etc.

## 6

Procedure of informing a victim by a public prosecutor as for actions taken in case is not foreseen by the acting legislation of Ukraine. Nevertheless, the decision on recognizing him/her a victim is announced to the person.

Together with that, Article 99 of the CCP of Ukraine prescribes that in case of refusal in initiating a criminal case, without any reasons for that, a prosecutor, investigator, inquiry authority or a judge should inform all interested parties, including the victim, about this.

## 7

Yes.

Part three of Article 49 of the CCP of Ukraine prescribes that a victim and his/her representative, besides other rights, have a right **to submit complaints to actions** taken by inquiry officer, investigator, **prosecutor**, or the courts, as well as to react to the court decisions or judgments etc.

In accordance with Article 236 of the CCP of Ukraine and Article 12 of the Law of Ukraine *On Prosecution Service* the actions taken by a public prosecutor and his decisions may be appealed to the prosecutor of higher level or to the court.

Code of Criminal Procedure of Ukraine (Articles 236-1, 236-2, 236-5) prescribes a separate procedure for appellation of some decisions of a prosecutor to courts, for example, resolutions on refusal in initiating a case or on its closing.

## UNITED KINGDOM

### **1. What position is accorded to the victim in criminal proceedings, particularly when the victim is a minor?**

#### **England and Wales**

Adult victims are basically treated as any other witness, but recently have benefited from Government initiatives such as the statutory Victims' Code covering victims' rights in the criminal justice system. They may also benefit from "special measures" (as may other witnesses) such as screens. Reporting restrictions are also available in certain circumstances as is anonymity in rare cases. All prosecution witnesses receive the advantage of Witness Care Units to give them a single point of contact and tailored needs assessment. Prosecutors, have their obligations to witnesses covered by a Prosecutors' Pledge.

Children are put in a special position – the personal details of those under 18 must not be reported in the media whereas those under 17 are given additional preferential treatment in court by the presumption that they will benefit from "special measures" – especially video evidence in chief and live link.

#### **Scotland**

The Vulnerable Witnesses (Scotland) Act 2004 recognises the importance of victims in the criminal justice system in Scotland and sets out a number of provisions designed to assist witnesses to give their best evidence.

The measures provided in this legislation are also designed to reduce, as far as possible, the stress and anxiety associated with giving evidence.

Phased implementation of the legislation was commenced in relation to children in April 2005 and will apply to adult vulnerable witnesses from April 2006.

In particular, child witnesses have the right to a number of special measures, namely the use of screens or CCTV when giving evidence, and the benefit of a supporter.

Upon application to the court the child may also be able to give their evidence in chief by way of a prior recorded statement or by having their evidence taken by a commissioner.

Additionally, in certain types of cases, the child will be expected to give their evidence away from the court building.



## **Northern Ireland**

The role of a victim in criminal proceedings is to provide information to the police during the investigation process, to consult with the prosecutor where appropriate, and to appear in person as a witness at trial if required. Victims are not represented by their own lawyer at court.

Legislation (the Criminal Evidence (Northern Ireland) Order 1999) exists to ensure that in appropriate cases children or other vulnerable and intimidated victims (and witnesses) have 'special measures' available to them to assist them in giving their evidence as effectively as they can. The range of special measures available includes screens in court; evidence by live video link; evidence in private; removal of formal court dress from lawyers and the judiciary; video recorded evidence in chief; and aids to communication. Prosecutors are trained in these 'special measures' so that applications are made in all cases where the victim (or witness) comes within the definitions of vulnerable or intimidated.

The Criminal Evidence (Northern Ireland) Order 1999 makes special provision for child witnesses. Child witnesses will have a video recorded statement admitted as their evidence in chief and will give further evidence or be cross-examined via a live TV link. Child witnesses under 18 years of age will not have their identity or personal details reported in the media.

Whilst our law does not require victims to be informed about the proceedings and the services available to them, the new Public Prosecution Service (PPS) in Northern Ireland is committed to ensuring that the interests of victims are considered at every stage of the criminal process. The PPS offers an enhanced range of services to victims (and witnesses). They are notified in more serious cases, when a file has been received from police and in all cases when a decision has been made in the case and what that decision is. Victims are also kept informed of the progress of the case at key milestones in the prosecution process. A dedicated team of specially trained staff, 'Community Liaison', provide an information line to assist with any queries a victim (or witness) may have or, if the victim requests, refer them to specialist support agencies, such as Victim Support or National Society for the Prevention of Cruelty to Children (NSPCC).

## **2. Are victims allowed to take part in, or to initiate proceedings? Does the public prosecutor have any responsibility for representing the victim?**

### **England and Wales**

Victims take part in proceedings as witnesses where the case is commenced by the State. They are able to initiate their own private prosecution, but this may be taken over by the State.

The prosecutor does have responsibilities to the victim as set out on the Code and Pledge, but represents the State, not the victim. If the victim makes a Victim's Personal Statement

outlining how the crime has affected them, the Prosecutor has a duty to put that to the court. He is also under a duty to claim compensation for them as appropriate.

### **Scotland**

Victims do not participate in criminal proceedings, other than in their capacity as witnesses. There is no right for victims to have a specific representative. The public prosecutor prosecutes in the public interest, which includes the interests of the victim.

### **Northern Ireland**

The victim is often the key witness in any criminal case. Accordingly the victim is normally required to give evidence for the prosecution. As outlined above, if the victim is 'vulnerable' or 'intimidated', legislative provisions exist to provide 'special measures' for that victim giving evidence, such as having their evidence in chief video recorded and used at trial, having their cross-examination being conducted via live link, from a room outside the court room, and/or screening from the defendant or the public gallery.

The law in Northern Ireland allows an individual to initiate a private prosecution against a person they suspect as having committed a crime against them. Such a prosecution may be taken over by the PPS and either continued or discontinued as he believes to be appropriate, applying the test for prosecution in the normal way. The test for prosecution requires that sufficient evidence is available to provide a reasonable prospect of conviction of the accused and the prosecution is in the public interest.

The PPS does not represent the victim. The PPS is independent and applies the test for prosecution objectively in every case.

### **3 a In your system are there any means of protecting victims or witnesses who are in danger (including minors)?**

#### **England and Wales**

Prior to trial, the police may take protective measures such as installing a panic alarm in the victim's home. In serious cases, the Police will put them into a Witness Protection Programme. As mentioned above, the prosecution can apply to the court for special measures such as screens, live link or clearing the public gallery of the court. Anonymity can be considered in appropriate cases (rare) and reporting restrictions. In some circumstances the victim's statement may be read out without them giving evidence if they are in fear of testifying, but again this is rare.

#### **b. What powers or responsibilities does the public prosecutor have in this area?**

The Prosecutor has a responsibility to consider witness protection issues and can apply to the court for the various measures and orders mentioned above as appropriate.

**c. Is the public prosecutor empowered to impose protection measures? At what stage? And what is the position when the proceedings are over?**

The prosecutor cannot impose measures. At the end of the day, the court has the final say.

**Scotland**

The public prosecutor does not have the power to impose “protection” measures, however, the police in Scotland are responsible for a “witness protection scheme” whereby, in exceptional cases where there is a genuine risk to the physical safety of the witness, certain measures can be put in place to ensure the security of the witness.

Further, witness anonymity can be granted by the court on application in exceptional circumstances, for example, highly sensitive, high profile or dangerous police undercover operations and/or genuinely life-threatening situations. While the prosecutor does not have the power to impose “protection” measures, there are a number of statutory and non-statutory measures which are intended to help vulnerable witnesses by providing appropriate support when they give their evidence, thus reducing the fear and distress which vulnerable witnesses may feel when giving evidence.

**Northern Ireland**

**a.** There is legislation providing measures to ensure that the quality of the evidence given by vulnerable and intimidated witness is maximised. The provisions of the Criminal Evidence (Northern Ireland) Order 1999 are outlined above. Referrals may also be made, at a victim’s request, to voluntary organisations such as Victim Support or NSPCC. Additionally the police operate personal protection schemes for persons assessed as being in danger. The appropriate Government Department on advice from police will fund personal protection schemes which may range from personal safety advice, home protection measures to assistance with relocating. With the leave of the court the witness may be screened from the defendant or the public gallery or may be permitted to give evidence anonymously.

**b.** The PPS must apply to the court for special measures to assist vulnerable or intimidated witnesses to give evidence as required. The PPS may consult with police and or the witness to assess which special measures are the most appropriate to that witness.

**c.** No, the PPS makes the application: the court imposes the decision. The PPS does not have any remit when proceedings are complete. The police and the appropriate Government Department operate personal protection schemes for persons where it is assessed that their safety is at risk.

#### **4 Is the public prosecutor required to take the victim's needs and wishes into account in any decision to prosecute? If so, how?**

##### **England and Wales**

Yes he is. The Code for Crown Prosecutors, Victims' Code, A-G's Guidelines on the Acceptance of Pleas & Prosecutor's Role in Sentencing Exercises (2005) and Prosecutors' Pledge govern this. The Police and Witness Care Units should relay these needs and wishes to him/her and in appropriate cases and before trial, the prosecutor should meet with the victim. If special measures are being applied for, the prosecutor may meet with the victim to discuss their needs and wishes in relation to the measures applied for

##### **Scotland**

In making the decision whether to prosecute a case the public prosecutor will take a number of factors into consideration.

- i. The prosecutor will determine whether there is a sufficient corroborative evidence to support a prosecution.
- ii. The prosecutor will then consider whether the prosecution is in the public interest. The prosecutor must give careful consideration to the whole circumstances of the case before deciding whether it is in the public interest to prosecute or to adopt an alternative disposal to prosecution.

The views of the victim and the likely impact of a prosecution upon the victim will be taken into account, but will not be binding on the prosecutor.

There will be instances where, in the wider public interest, the decision is taken to proceed with a prosecution where the victim does not wish to make a complaint.

##### **Northern Ireland**

The PPS is required to apply the test for prosecution (see earlier for an explanation of this test) objectively in the normal way. A witness's willingness or ability to give evidence is a relevant factor in determining whether there is sufficient evidence to prosecute. In addition to considering the sufficiency of evidence in making a prosecutorial decision, the PPS has also to decide whether prosecution is required in the public interest. In this regard, the proper interests of the victim will be taken into account along with other relevant factors to determine whether or not prosecution is required. The victim will be kept informed of all relevant decisions in the case to the extent possible.

If the test for prosecution is met, the PPS also has diversionary options available for disposing of the case other than by prosecution at court. These are informed warning,

cautioning and youth conferencing. This latter disposal involves a restorative conference and may involve a number of parties including the defendant, the victim and the police. A victim is asked if they wish to attend youth conferencing and thereby to become part of that process. A plan will be produced by this conference and must be approved by the prosecutor.

### **5 Is the public prosecutor empowered to mediate in criminal cases?**

#### **England and Wales**

No.

#### **Scotland**

No.

#### **Northern Ireland**

No. There is no process of mediation in the criminal justice system in Northern Ireland.

However, in cases where either circumstances have changed or information has become available which was not available at the time the prosecutorial decision was made, the PPS will have the flexibility to reconsider the decision in the light of that new or additional information.

A defendant's legal representative may seek an advance indication of sentence from the trial judge in the event of a guilty plea. A leading Court of Appeal decision in Northern Ireland (*R v Rooney*) lays down detailed guidance on how such discussions should take place including the fact that they must be in the presence of both prosecuting and defence lawyers and should be in open court in almost all cases.

### **6 Is the public prosecutor required to inform the victim of action taken in a case concerning him or her?**

#### **England and Wales**

Yes. Milestones in the case will be reported back to them and if a charge is lowered or discontinued, the prosecutor must explain this course of action to them. This is also governed by the Victims' Code.

#### **Scotland**

In certain categories of case the public prosecutor will notify the victim of decisions or actions taken in cases. This is mandatory in all cases involving deaths and is recommended as good practice in cases involving domestic abuse, racially motivated

offences, sexual offences, child victim cases and other cases involving particularly vulnerable victims.

### **Northern Ireland**

The substantive law of Northern Ireland does not require PPS to inform the victim of action taken in a case concerning them. However, the policy of the PPS is that when a prosecutorial decision has been taken, whether it is to prosecute or not prosecute, the PPS will write to the victim and advise them of that decision.

### **7. Does the victim have the right to react to the decision of the public prosecutor not to prosecute? If so, to what authority?**

#### **England and Wales**

Yes, they can take the matter to the prosecutor's line management and can follow the CPS complaints procedure. They will shortly be able to take it to the Victims' Commissioner or may complain to their MP.

#### **Scotland**

No. It has long been accepted that there is no right to challenge the decision of the Lord Advocate, as head of the public prosecution service, not to prosecute.

In terms of section 48 (5) of the Scotland Act "Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person."

#### **And**

As stated in the case of *McBain v Crichton* (1961 JC 26) "...the basic principle of our system of criminal administration in Scotland is to submit the question of whether there is to be a public prosecution to the impartial and skilled investigation of the Lord Advocate and his Department, and the decision whether or not to prosecute is exclusively within his discretion."

#### **Northern Ireland**

A victim may request a review by the PPS of a decision not to prosecute. This is a non-statutory process. The basis upon which such a review will be undertaken, if need be by a prosecutor other than the prosecutor who took the original decision, is published in the Code for Prosecutors.

The victim may also seek a judicial review of the decision before the High Court on the basis of one or more grounds, for example, that the decision was wrong in law, irrational, mal fides, incompatible with a stated PPS policy etc.

**APPENDIX**

**LES DEVOIRS DU MINISTÈRE PUBLIC DANS LE DOMAINE PENAL  
ENVERS LES VICTIMES ET LES TÉMOINS, ET EN PARTICULIER ENVERS  
CEUX QUI SONT MINEURS**

**QUESTIONNAIRE (IN FRENCH)**

1. Quelle est la position accordée aux victimes, en particulier les mineurs, dans une affaire pénale?
2. Les victimes peuvent-elles intervenir dans la procédure ou bien l'initier ? Le ministère public a-t-il des compétences de représentation des victimes?
3.
  - a. Dans votre système existe-t-il des moyens de protection pour les victimes et témoins, y compris les mineurs, en danger?
  - b. Quelles sont les compétences et les responsabilités du ministère public dans ce domaine?
  - c. Le ministère public dispose-t-il de compétences pour imposer des mesures de protection? A partir de quel moment? et après la conclusion du procès?
4. Le ministère public est-il obligé de tenir compte des besoins et des désirs de la victime lorsqu'il prend une décision sur la poursuite pénale? Si oui, comment?
5. Est-ce que le ministère public a des compétences en matière de médiation pénale?
6. Le ministère public est-il obligé d'informer la victime des suites données à une affaire le concernant?
7. La victime dispose-t-elle d'un droit de réagir à la décision du ministère public de ne pas poursuivre ? Si oui, auprès de quelle autorité?



**REPLIES RECEIVED IN FRENCH****ANDORRA****1) Quelle est la position accordée aux victimes, en particulier les mineurs, dans une affaire pénale ?**

Pour des raisons de simplification des procédures et de politique criminelle, adoptées avec le souci de rendre plus effective la protection de la victime dans le procès pénal, notre système répressif donne aux tribunaux statuant en matière pénale compétence pour statuer aussi sur la responsabilité civile résultant du fait illicite et ordonner l'indemnisation de la victime.

C'est ainsi que l'article 18-1 du code de procédure pénale permet aux victimes ou sujets passifs d'un fait illicite pénal, ainsi qu'aux personnes qui souffrent d'un dommage ou d'un préjudice dérivé d'un fait délictueux. D'exercer dans le procès pénal l'action civile (seule ou conjointement avec l'action pénale), et impose du ministère public l'obligation de l'exercer dans les cas d'inaction de son titulaire, sauf si l'intéressé renonce expressément ou se réserve d'exercer l'action civile postérieurement par la voie de la juridiction civile ordinaire.

De même, l'article 118 du code de procédure pénale prévoit qu'à tout moment de la procédure suivie pour des infractions volontaires ou involontaires contre l'intégrité physique des personnes, ou des dommages ou des incendies, le batlle (juge) ou le tribunal s'il y a lieu, peut, à la demande d'une partie, accorder par ordonnance motivée, après avoir entendu les autres parties et le ministère public, le paiement d'une indemnité provisionnelle au profit de la victime ou des personnes qui en dépendent économiquement, à la charge des personnes poursuivies et des civilement responsables.

En ce qui concerne les victimes mineures, la minorité étant fixée à 18 ans par la législation nationale, le code pénal andorran prévoit diverses circonstances aggravantes lorsque la victime est un mineur.

De plus, le code pénal prévoit dans sa liste générale de peines la déchéance et la suspension des droits d'autorité familiale des ascendants sur leurs descendants ou les personnes soumises à tutelle.

Le code de procédure pénale prévoit également, dans le cas où la victime serait un mineur, la possibilité de tenir l'audience à huis clos, ainsi que l'utilisation de procédés qui empêchent le contact visuel entre le présumé délinquant et la victime mineure, de manière, à ce que soit assurée la protection de la victime et que soient en même temps garantis les droits de la défense de l'auteur présumé de l'infraction.

Enfin, le code de procédure pénale permet à l'organe juridictionnel compétent, à chaque stade du procès, d'apprécier la situation personnelle du mis en cause, afin de conditionner

l'effectivité de sa liberté provisoire à l'obligation de s'abstenir de s'approcher de la victime ou d'entrer en contact avec elle, ainsi que de circuler ou de résider trop près du domicile ou du lieu de travail de la victime. Les mêmes obligations peuvent être imposées postérieurement au condamné en période d'exécution de la sentence et conditionner la suspension des peines privatives de liberté prononcées.

## **2. Les victimes peuvent-elles intervenir dans la procédure ou bien l'initier? Le ministère public a-t-il des compétences de représentation des victimes ?**

Le code de procédure pénale en vigueur du 10 décembre 1998 organise un système procédural de caractère accusatoire formel ou mixte, c'est à dire que dans le procès pénal andorran, le pouvoir de juger dépend toujours de l'activité d'un accusateur qui déclenche l'action de la justice et qui est soit un organe public soit un particulier, mais qui est toujours indépendant de l'organe qui juge. L'actuel article 14 du code de procédure pénale prévoit que l'action pénale peut être publique, dans le cas où elle serait engagée par le ministère public, ou privée, dans le cas où elle serait exercée par un particulier lésé. Quant à l'exercice de l'action pénale par le ministère public, l'article 14 du code de procédure pénale en vigueur dispose que l'action pénale dérivée d'un délit ou d'une contravention est publique et que le ministère public l'exerce dans les cas où la requête de la partie lésée ou offensée n'est pas nécessaire.

Toutefois, le même article 14 du code de procédure pénale considère que ne sont pas parties à la procédure les dénonciateurs ou les personnes lésées qui ne se sont pas constitués formellement en accusation particulière ou privée ou en demandeur civil. Il exige, pour l'exercice de l'action pénale par les personnes lésées ou offensées par l'infraction, le dépôt d'une plainte en due forme, la constitution en accusation particulière, la désignation d'un avocat, une élection de domicile dans la Principauté et postérieurement, au moment de la qualification juridique de la cause, la demande d'une peine concrète contre l'auteur de l'infraction et les autres participants.

La constitution en accusation particulière par la personne lésée ou offensée par l'infraction peut intervenir à n'importe quel stade de l'instruction de la cause.

## **3. a) Dans votre système existe-t-il des moyens de protection pour les victimes et témoins, y compris les mineurs en danger ?**

Il n'existe pas dans notre système pénal de disposition spécifique relative à la protection des victimes et témoins en danger; mais le service de police qui assure l'ordre public et la sécurité peut à tout moment être requis par les organes juridictionnels afin que, dans le cadre de ses fonctions de police judiciaire, il dote de moyens suffisants de protection les victimes et les témoins dans des cas concrets et selon les nécessités du moment.

**b) Quelles sont les compétences et les responsabilités du ministère public dans ce domaine?**

Le ministère public dirige l'action du service de police dans toutes les investigations préalables à l'ouverture des informations par les batlles instructeurs. Quand un batlle instructeur ouvre une information, le ministère public est compétent pour faire établir des mesures de protection devant les organes juridictionnels.

**c) Le ministère public dispose-t-il de compétences pour imposer des mesures de protection ? A partir de quel moment ? Et après la conclusion de procès ?**

Bien que le ministère public ne soit pas compétent pour imposer des mesures de protection, il dirige l'action du service de police et peut faire assurer la mise en place devant les organes juridictionnels des mesures de protection qu'il considère nécessaires pour garantir la sécurité des victimes.

**4) Le ministère public est-il obligé de tenir compte des besoins et des désirs de la victime lorsqu'il prend une décision sur la poursuite pénale ? Si ou, comment ?**

Non

**5) Est-ce que le ministère public a des compétences en matière de médiation pénale ?**

Non

**6) Le ministère public est-il obligé d'informer la victime des suites données à une affaire le concernant ?**

Il n'existe aucune disposition particulière en ce sens. Toutefois, en pratique, quand une victime s'adresse au ministère public pour avoir des renseignements sur le procès qui l'intéresse, elle est informée de l'état de la procédure.

**7) La victime dispose-t-elle d'un droit de réagir à la décision du ministère public de ne pas poursuivre ? Si oui, auprès de quelle autorité ?**

Bien que les décisions du ministère public adoptées dans le cadre de ses compétences ne soient pas susceptibles de recours, les plaintes qui ont été déposées directement auprès du parquet et ont fait l'objet de décision de classement, peuvent être à nouveau portées par les particuliers devant les organes judiciaires d'instruction.

De plus, quand dans le cadre d'une procédure instruite par un batlle instructeur, le ministère public estime qu'il n'y a pas d'instruction pénale, l'action peut être portée et maintenue devant les organes juridictionnels par le particulier, après constitution en accusation privée moyennant l'intervention de la plainte régulière.

## FRANCE

### **1. Quelle est la position accordée aux victimes, en particulier les mineurs, dans une affaire pénale ?**

La victime est une partie au procès, dès lors qu'elle a déposé plainte et demandé réparation de son préjudice. Ce droit s'applique au mineur, représenté par ses parents ou par un tiers spécialement désigné à cet effet.

### **2. Les victimes peuvent-elles intervenir dans la procédure ou bien l'initier ? Le ministère public a-t-il des compétences de représentation des victimes ?**

En tant que plaignant, la victime peut intervenir en cours de procédure, voire initier la procédure en cas d'inaction du ministère public. Ce dernier n'a pas en revanche compétence pour représenter directement la victime ; il s'exprime et intervient en effet "au nom de la Société".

### **3. a. Dans notre système existe-t-il des moyens de protection pour les victimes et témoins, y compris les mineurs, en danger ?**

Oui

En ce sens que victimes ou témoins peuvent solliciter une protection policière et saisir à cette fin le ministère public.

### **b. Quelles sont les compétences et les responsabilités du ministère public dans ce domaine ?**

Le ministère public a le devoir de faire assurer la protection des victimes ou témoins, sachant que toute menace ou acte d'intimidation à leur égard expose son auteur à une poursuite pénale (cf. articles 434-5 et 434-15 du Code Pénal - Peine encourue : 3 ans de prison et/ou 45000 \_ d'amende).

### **c. Le ministère public dispose-t-il de compétences pour imposer des mesures de protection ? A partir de quel moment ? et après la conclusion du procès ?**

c. La compétence du ministère public relève de son devoir général de prêter assistance aux victimes et témoins mais il ne peut directement imposer de prendre des mesures de protection spécifiques, de telles mesures relevant de l'autorité administrative (Préfet) en charge de l'ordre public.

### **4. Le ministère public est-il obligé de tenir compte des besoins et des désirs de la victime lorsqu'il prend une décision sur la poursuite pénale ? Si oui, comment ?**

Non, le ministère public est seulement tenu de l'aviser du jour de l'audience quand il engage des poursuites. Il appartient ensuite à la victime de faire valoir ses réclamations, résultant du préjudice allégué.

**5. Est-ce que le ministère public a des compétences en matière de médiation pénale?**

Oui, le ministère public dispose du droit d'engager une procédure de médiation pénale, laquelle fait partie des "modes alternatifs à la poursuite".

**6. Le ministère public est-il obligé d'informer la victime des suites données à une affaire le concernant ?**

Oui (Art.40-2 du Code Pénal).

**7. La victime dispose-t-elle d'un droit de réagir à la décision du ministère public de ne pas poursuivre ? Si oui, auprès de quelles autorités?**

Oui, soit en formant un recours auprès du Procureur Général (art.40-3 du Code de Procédure Pénale) soit en se constituant partie civile auprès du juge d'instruction (art.85 du Code de Procédure Pénale).

## ITALY

### 1) Phase de l'enquête:

en principe, l'intervention des victimes est limitée et consiste à la seule possibilité de nommer un avocat qui peut présenter des mémoires. Il est prévu aussi la possibilité d'une intervention d'entités ou associations représentatives des intérêts lésés par le crime, mais à la condition qu'il existe un accord de la victime ;

en cas de preuve « à risque de dispersion », il existe des instituts tout à fait pareils à ce que le Statut de la Cour pénale internationale définit comme « unique opportunity » : la preuve est recueillie avec la participation des parties à la procédure et, par conséquent, destinée à être utilisée par le juge du fond. Que la collecte de cette preuve soit faite par le m.p. ou par le juge de l'enquête préliminaire, en tous cas la victime est légitimée à faire participer son avocat à l'audience (huis clos) au cours de laquelle cette preuve est recueillie.

2) Une participation pleine se réalise dans les phases successives : à partir de *l'audience préliminaire*, qui se déroule devant un juge chargé d'évaluer si les éléments d'accusation réunis sont suffisants pour le renvoi devant le juge du fond.

Dès ce moment et pendant les phases de la première instance, de l'appel et devant la Cour de cassation, la victime est présente par l'intermédiaire de son avocat, indique ses témoins, participe à la collecte des preuves (selon le système de la *cross examination*), est légitimée à introduire un appel ou recours par cassation : à fin du dédommagement.

3) L'expérience des procès de mafia a conduit à l'élaboration d'un système très articulé de normes visant à la protection de victimes et témoins à risque, y compris les mineurs.

Pour ce qui est des compétences du m.p. à ce sujet, il faut tenir compte de sa position de « partie » au procès pénal. Ceci implique qu'il a un devoir d'initiative vis-à-vis du juge pour lui solliciter l'adoption des mesures de protection les plus opportunes, mais pas des compétences directes.

En tous cas, les mesures de protection durent jusqu'au moment où une Commission publique estime que la situation de danger a cessé d'exister.

4) En principe, non.

5) Non, en particulier. Il faut rappeler le rôle de « partie » au procès, déjà évoqué.

6-7) Le m.p. n'a pas de pouvoirs de classement sans suite ; à cette fin il doit toujours saisir le juge de l'enquête préliminaire à qui appartient la décision sur la poursuite ou le classement. Si la victime le demande, le m.p. doit l'informer à l'égard de sa requête

visant au classement, la seule réaction offerte à la victime est de présenter un recours par cassation si le m.p. ne l'informe pas.

## MONACO

### **1. Quelle est la position accordée aux victimes, en particulier les mineurs, dans une affaire pénale ?**

L'article 73 du code de procédure pénale dispose que « *toute personne lésée par un crime, un délit ou une contravention, ou admise en vertu de l'article 68 à porter plainte pour autrui, peut se porter partie civile devant le tribunal compétent, en tout état de cause, jusqu'à la clôture des débats* ».

Le deuxième alinéa de l'article 75 du code de procédure pénale monégasque précise que dans le cas d'une citation directe, c'est-à-dire lorsque la victime prend l'initiative de déclencher l'action publique, en matière de délit et de contravention, « *la partie poursuivante est réputée partie civile par le seul fait de la citation* » de l'auteur de l'infraction devant le tribunal compétent. Dans ce type de saisine, l'expression formelle de la volonté de se constituer partie civile n'est donc pas exigée.

Les mineurs étant juridiquement irresponsables, seuls leurs représentants légaux peuvent se constituer partie civile pour leur compte. En cas de conflit d'intérêts (violences des parents contre leur enfant), un administrateur *ad hoc* peut être désigné.

De même, un dépôt de plainte avec constitution de partie civile ne peut être effectué que par le truchement des représentants légaux du mineur victime.

Les affaires pénales dans lesquelles des mineurs sont prévenus sont évoquées systématiquement à huis clos.

### **2. Les victimes peuvent-elles intervenir dans la procédure ou bien l'initier ? Le ministère public a-t-il des compétences de représentation des victimes ?**

Toute personne qui s'estime lésé par un délit peut initier une procédure pénale soit en se constituant partie civile devant le juge d'instruction, soit en faisant procéder à une citation directe devant le tribunal correctionnel (article 74 et 75 du code de procédure pénale).

Toute personne qui s'estime lésée par une contravention peut initier une procédure pénale en faisant procéder à une citation directe de l'auteur devant le tribunal de simple police (article 75 du code de procédure pénale.)

Le ministère public n'a aucun rôle de représentation des victimes. Toutefois, l'un des représentants du ministère public préside le Bureau d'Aide judiciaire (B.A.J.) lequel composé de trois membres statue sur la désignation d'un avocat gratuit, pour assister et représenter, notamment les victimes, y compris mineurs d'infractions pénales.



### **3. a. Dans votre système existe-t-il des moyens de protection pour les victimes et témoins, y compris les mineurs, en danger ?**

Compte tenu de son statut de "micro- Etat" et de ses spécificités notamment démographiques et en dehors de certaines dispositions légales visant à protéger les déclarations des témoins au cours de la phase de l'instruction<sup>6</sup> et lors du procès<sup>7</sup>, il n'existe pas encore de cadre normatif et pratique particulier régissant les mesures de protection des témoins dans la Principauté de Monaco.

Cette situation devrait évoluer, puisque son entrée dans le Conseil de l'Europe a conduit la Principauté à se doter d'un Nouveau Code de Procédure Pénale qui est, en l'état, au stade de projet mais qui devrait être soumis au Parlement dans les prochains mois. Ce texte prévoit "le cas particulier du témoignage anonyme" (article 186 du projet de Nouveau code de procédure pénale) qui constitue une mesure de protection importante. Celui-ci est prévu dans deux cas:

- lorsque " l'audition est susceptible de mettre gravement en danger le vie ou la sécurité physique du témoin ou celle des membres de sa famille ou de ses proches";
- "si le témoin est un officier ou un agent de police judiciaire infiltré".

Depuis 2003, la Principauté de Monaco est partie à la Convention des Nations Unies contre la criminalité transnationale organisée du 15 décembre 2000 dite Convention de Palerme. L'adhésion à cette convention, en 2003, a entraîné la rédaction d'un texte d'application en droit interne. Ce texte, qui est encore en cours d'élaboration, prévoit également des sanctions à l'encontre de personnes qui auraient recours à la force physique, à la menace ou l'intimidation à l'encontre de témoins.

Aucun texte ne prévoit une protection particulière des mineurs témoins dans une affaire pénale ou civile pour les protéger d'éventuelles représailles ou pressions. En revanche, les affaires pénales dans lesquelles des mineurs sont prévenus sont évoquées systématiquement à huis clos.

### **b. Quelles sont les compétences et les responsabilités du ministère public dans ce domaine ?**

### **c. Le ministère public dispose-t-il de compétences pour imposer des mesures de protection ? A partir de quel moment ? et après la conclusion du procès ?**

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<sup>6</sup> Notamment l'article 130 du Code de Procédure pénale qui prévoit, qu'en cas de maladie dûment constatée du témoin ou d'un empêchement de tout autre nature, le juge d'instruction, s'il y a urgence, se transporte auprès de lui.

<sup>7</sup> Voir l'article 317 du Code de procédure pénale qui dispose que « Le président peut, avant, pendant ou après la déposition d'un témoin, faire retirer un ou plusieurs accusés. »

Réponses b et c : Dès que le ministère public est saisi d'un signalement faisant état d'un mineur dont la sécurité, la santé, est en danger, le Ministère public saisi d'une requête en assistance éducative aux fins de prendre toute mesure de protection nécessaire. Le sort du mineur est dès lors uniquement entre les mains du le juge tutélaire.

Lorsqu'il y a urgence, le Procureur général peut ordonner que soit placé dans le foyer d'accueil local l'enfant ou l'adolescent dont la sécurité est compromise. Cette décision d'urgence est régularisée dans les plus brefs délais par une requête saisissant le juge tutélaire.

Il est à noter que les policiers de la Sûreté Publique peuvent, sur réquisition du ministère public, assurer une protection policière d'une personne si le contexte de l'affaire l'exige ou si l'intéressé a fait l'objet de menaces.

Les mineurs détenus à la maison d'arrêt sont affectés à un secteur qui leur est réservé. Ils sont soumis à l'isolement de nuit et soustrait à tout contact avec des détenus majeurs (article 9 de la l'ordonnance n°3031 du 12 août 1963).

#### **4. Le ministère public est-il obligé de tenir compte des besoins et des désirs de la victime lorsqu'il prend une décision sur la poursuite pénale ? Si oui, comment ?**

Le dépôt et le retrait de plainte de la victime n'est pas un élément qui lie le ministère public dans sa décision de poursuites ou de classement.

En revanche, dans une affaire dans laquelle un mineur est inculpé, le ministère public ne peut requérir un non lieu que dans l'hypothèse où la victime a explicitement fait état de sa volonté de ne pas se constituer partie civile.

#### **5. Est-ce que le ministère public a des compétences en matière de médiation pénale ?**

Aucun texte ne met en place, ni n'interdit la médiation pénale. Elle est toutefois instaurée dans la pratique par le biais des instructions écrites transmises par le Procureur Général aux services de police (régularisation pécuniaire pour les chèques sans provision, abandon de famille, grivèlerie ...).

#### **6. Le ministère public est-il obligé d'informer la victime des suites données à une affaire le concernant ?**

Le ministère public informe la victime des suites données à une affaire la concernant. Il n'y est toutefois pas légalement tenu.

#### **7. La victime dispose-t-elle d'un droit de réagir à la décision du ministère public de ne pas poursuivre ? Si oui, auprès de quelle autorité ?**

Une décision de classement du Parquet général n'étant pas irrévocable, la victime peut adresser un nouveau courrier au Procureur général, dans les délais de la prescription, et l'affaire peut faire l'objet d'un nouvel examen.

La victime peut aussi mettre en mouvement l'action publique par la voie d'une plainte avec constitution de partie civile devant un juge d'instruction (article 74 du Code de procédure pénale) mais ce magistrat n'est tenu d'informer que sur les réquisitions en ce sens du Procureur général. Enfin, la victime peut encore procéder selon la voie de la citation directe (article 75 précité).

## PORTUGAL

### **1. Quelle est la position accordée aux victimes, en particulier les mineurs, dans une affaire pénale?**

D'après la procédure pénale portugaise, la victime, c'est-à-dire la personne titulaire du droit que la loi envisageait de protéger en particulier à travers l'incrimination, peut se constituer accusateur privé dès qu'elle soit âgée de plus de 16 ans [article 68-1-a du Code de procédure pénale].

Lorsque la victime est âgée de moins de 16 ans ou est frappée d'une incapacité, la possibilité de se constituer accusateur privé est octroyée à son représentant légal sauf s'il a pris part dans la commission de l'infraction en cause [article 68-1-d du Code de procédure pénale].

Les accusateurs privés peuvent intervenir à toute phase de l'affaire pénale préalable aux séances de plaidoiries et jugement, en y se conformant, pourvu qu'ils manifestent leur intention à travers une requête en ce sens adressée au juge.(article 68-3 du Code de procédure pénale).

Les accusateurs privés acquièrent la position de collaborateurs du ministère public, à l'activité duquel ils subordonnent leur intervention dans l'affaire pénale. Ils leur incombent en particulier:

- a) D'intervenir dans les phases d'enquête et d'instruction en produisant des éléments de preuve et en demandant que des démarches trouvées utiles soient diligentées;
- b) De déduire accusation en séparé même si, la poursuite reposant sur accusation privée, le ministère public ne déduit aucune accusation;
- c) D'interjeter appel contre des décisions qui les concernent directement, même si le ministère public en ait décidé autrement.

D'habitude les mineurs ne font pas l'objet de traitement spécial au sein de la procédure pénale portugaise. Par ailleurs, au regard des infractions dont ils se prétendent victimes et à l'égard desquelles le droit de plainte ne peut pas être exercé puisque sa titularité incomberait à l'auteur de l'infraction, le ministère public peut initier la poursuite lorsque raisons spéciales d'intérêt public le déterminent (article 113-5 du Code pénal).

Si la poursuite pénale repose sur plainte, le ministère public peut aussi, aux cas prévus par la loi, initier la poursuite lorsque l'intérêt de la victime le détermine. Y comprises sont les infractions portant atteinte à la liberté et à l'autodétermination sexuelle commises contre un enfant au-dessous de l'âge de seize ans (articles 113-6 et 178-4 du Code pénal).

### **2. Les victimes peuvent-elles intervenir dans la procédure ou bien l'initier ? Le ministère public a-t-il des compétences de représentation des victimes?**

La victime peut intervenir dans la procédure pénale tel que mentionné ci-avant. Ayant décidé de n'y pas intervenir comme accusateur privé, la victime acquiert la position procédurale de témoin.

Les victimes peuvent toujours initier la poursuite pénale à travers plainte ou dénonciation.

Y il a des infractions dites privées et semi-publiques contre lesquelles la poursuite pénale ne peut être initiée que moyennant plainte portée par la victime (article 49-1 et 50-1 du Code de procédure pénale).

Le ministère public ne représente les victimes qu'en ce qui concerne la compétence pour, en leur nom, déduire une action en indemnité civile, et cela à l'égard exclusif des personnes et intérêts dont la représentation lui est octroyée par la loi, notamment en cas de personnes incapables, absentes et élisant domicile inconnu.

### **3. a. Dans votre système existe-t-il des moyens de protection pour les victimes et témoins, y compris les mineurs, en danger?**

Le système pénal portugais prévoit l'application de mesures de protection pour les témoins en procédure pénale lorsque leur vie, leur intégrité physique ou psychique, leur liberté et leurs biens à valeur particulièrement significative soient mis en danger en raison de leur contribution pour la preuve des faits faisant l'objet d'incrimination (article 1-1 de la Loi n° 93/99, du 14 juillet).

Les mesures de protection des témoins peuvent se traduire dans la non révélation de leur identité au cours de n'importe quelle phase de la procédure lorsqu'il se vérifient cumulativement les conditions suivantes (article 16 de la Loi n.° 93/99, du 14 juillet):

- a) Le témoignage ou les dépositions portent sur des infractions de traite d'être humains et d'association de malfaiteurs ou une infraction punie de peine privative de liberté à limite maximale égale ou supérieure à huit ans, dès que commises par une personne appartenant à une association de malfaiteurs, dans le cadre du but ou des activités de celle-ci;
- b) Le témoin, les membres de sa famille ou ses proches puissent faire l'objet d'atteinte sérieuse à leur vie, intégrité physique, liberté ou biens à significative valeur;
- c) La crédibilité du témoin n'est pas attaquée de manière motivée;
- d) Le témoignage ou les dépositions apportent des éléments de preuve intéressant la procédure.

Les dépositions ou le témoignage inscrits en acte procédural public ou soumis à la confrontation du témoin ou de l'accusateur privé peuvent avoir lieu moyennant l'altération de l'image et de la voix, ou des deux en simultané, afin d'échapper à la

reconnaissance de l'identité du témoin, étant admissible le recours à la téléconférence (articles 4 et 5 de la Loi n.° 93/99, du 14 juillet).

On peut d'ailleurs prendre des mesures sporadiques face à des raisons de sécurité motivées, notamment (article 22 de la Loi n.° 92/99, du 14 juillet):

- a) Mention au dossier de la procédure de domicile autre que l'adresse habituelle ou non coïncidente avec les lieux d'élection de domicile de la loi civile;
- b) Assurer le transport en voiture étatique, afin d'assurer l'intervention en acte procédural;
- c) Disposer d'un espace clos, éventuellement surveillé et assujéti à des mesures de sécurité, aux installations judiciaires ou policières;
- d) Bénéficier de protection policière, étendue aux membres de la famille ou aux proches;
- e) Jouir, aux installations pénitentiaires, d'un régime lui permettant de rester isolé des autres détenus, ainsi que d'être transporté en voiture séparée.

Pendant la suite de la procédure ou même après sa clôture, le témoin, son époux, les ascendants, descendants, frères et sœurs ou des proches peuvent bénéficier d'un programme spécial de sécurité pourvu qu'il se vérifie, cumulativement, les conditions suivantes (article 21 de la Loi n.° 92/99, du 14 juillet):

- a) Le témoignage ou les dépositions portent sur des infractions de traite des êtres humains, associations de malfaiteurs ou une infraction punie de peine privative de liberté à limite maximale égale ou supérieure à huit ans, dès que commises par une personne appartenant à une association de malfaiteurs, dans le cadre du but ou des activités de celle-ci;
- b) Il existe un péril sérieux pour la vie, l'intégrité physique ou psychique ou la liberté;
- c) Le témoignage ou les dépositions ont prouvés être ou sont présumés d'être essentiels pour la manifestation de la vérité;

Le programme spécial de sécurité comprend l'application d'une ou de plusieurs mesures administratives de protection et d'appui, notamment (article 22 de la Loi n.° 92/99, du 14 juillet):

- a) Disponibilité de documents émis officiellement portant des éléments d'identification autres que ceux insérés aux documents remplacés;
- b) Altération de la physionomie ou de l'aspect du corps du bénéficiaire;
- c) Voir assuré un moyen de transport en voiture étatique, pour que les personnes concernées puissent intervenir en acte procédural;
- d) Disposer d'un espace clos, éventuellement surveillé et assujéti à des mesures de sécurité, aux installations judiciaires ou policières;
- e) Bénéficier de protection policière, étendue aux membres de la famille ou aux proches;
- f) Jouir, aux installations pénitentiaires, d'un régime lui permettant de rester isolé

des autres détenus, ainsi que d'être transporté en voiture séparée.

En ce qui concerne la participation à tout acte procédural d'un témoin particulièrement vulnérable, en particulier en fonction de son âge réduite ou avancée, de son état de santé ou du fait d'être tenu de déposer contre membre de sa famille ou d'un groupe social fermé auquel il soit inséré en état de dépendance ou subordination, indépendamment de l'application des mesures susvisées, il peut être désigné un fonctionnaire des services sociaux ou toute autre personne particulièrement habilitée à disponibiliser de l'appui au témoin en vue de garantir des réponses spontanées et sincères (articles 4-1 et 6-1 de la Loi n.º 92/99, du 14 juillet).

**b. Quelles sont les compétences et les responsabilités du ministère public dans ce domaine?**

Les conditions prévues à la réponse 3.a étant observées, le ministère public est tenu de requérir que le témoignage ait lieu à l'aide d'altération de l'image et de la voix, ou des deux, de façon à entraver la reconnaissance du témoin, en requérant, s'il en est le cas, que la preuve soit produite par téléconférence (articles 4-1 et 6-1 de la Loi n.º 93/99, du 14 juillet).

La non-révélation de l'identité du témoin au cours d'une ou plusieurs phases de la procédure doit aussi être requise par le ministère public lorsque les conditions visées à la réponse 3.a se vérifient et suivant confirmation préalable de tels présupposés dans le cadre d'une procédure à caractère secret (article 17-1 de la Loi n.º 93/99, du 14 juillet et article 2 du décret-loi n.º 190/2003, du 22 août).

Les mesures sporadiques de sécurité visées à la réponse 3.a sont ordonnées par le ministère public au cours de la phase d'enquête, d'office ou sur requête du témoins ou de son représentant légal ou bien sur proposition des autorités de police criminelle, et en phase postérieure à l'enquête, par le juge saisi, sur réquisitoire du ministère public (article 20-2 de la Loi n.º 93/99, du 14 juillet).

En ce qui touche l'appui donné aux témoins particulièrement vulnérables, le ministère public devra, en phase d'enquête, prendre les mesures estimées nécessaires pour garantir des réponses spontanées et sincères, en désignant à cet effet un fonctionnaire des services sociaux ou toute autre personne particulièrement habilitée à disponibiliser de l'appui au témoin; en phase postérieure à l'enquête, le ministère public peut faire réquisitoire au juge saisi au sens de l'adoption de telles mesures (articles 26 et 27 de la Loi n.º 93/99, du 14 juillet).

**c. Le ministère public dispose-t-il de compétences pour imposer des mesures de protection? A partir de quel moment? Et après la conclusion du procès?**

Selon les réponses données à 3.a et 3.b, le ministère public n'est compétent que pour ordonner les mesures sporadiques de sécurité et celles à l'égard de l'appui à disponibiliser aux témoins particulièrement vulnérables au cours de la phase d'enquête.

**4. Le ministère public est-il obligé de tenir compte des besoins et des désirs de la victime lorsqu'il prend une décision sur la poursuite pénale? Si oui, comment?**

En ce qui concerne les infractions punies de peine privative de liberté jusqu'à cinq ans, il faut que le ministère public obtient l'accord de la victime s'ayant constitué accusateur privé pour décider de la suspension provisoire de la procédure [article 281-1-a du Code de procédure pénale].

S'agissant de procédures pénales en raison de mauvais traitements entre époux ou entre personnes cohabitant en conditions analogues à celles des époux, ou d'un parent de descendant commun en premier degré, le Ministère Public peut encore décider de la suspension provisoire de la procédure, selon assentiment du juge d'instruction, sur requête de la victime, compte tenu de sa situation et pourvu qu'une mesure similaire ne soit imposée à l'encontre du prévenu en raison d'une infraction de la même nature (article 281-6)

**5. Est-ce que le ministère public a des compétences en matière de médiation pénale?**

Le système juridique portugais ne prévoit pas la médiation pénale en tant que forme de composition de litiges portant une telle nature.

Pour ce qui est des infractions pénales punies de peine privative de liberté jusqu'à cinq ans il y a la possibilité pour le ministère public de, suivant assentiment du juge d'instruction, du prévenu et de l'accusateur public et vérifiées toutes les autres conditions légales, suspendre provisoirement la procédure pour une période qui ne peut dépasser deux ans, moyennant l'imposition d'injonctions et règles de conduite au prévenu (articles 281 et 282 du Code de procédure pénale).

**6. Le ministère public est-il obligé d'informer la victime des suites données à une affaire le concernant?**

Lorsque l'enquête est close, c'est-à-dire les enquêtes préliminaires étant terminées, la victime dans une affaire pénale est toujours signifiée de la teneur de la décision prise par le ministère public (articles 277-3 et 283-5 du Code de procédure pénale).

**7. La victime dispose-t-elle d'un droit de réagir à la décision du ministère public de ne pas poursuivre ? Si oui, auprès de quelle autorité?**

La victime ayant déjà demandé de se constituer accusateur privé ou le demandant dans le délai établi pour requérir l'ouverture de la phase d'instruction, peut demander que cette nouvelle phase procédurale soit initiée.

L'instruction préparatoire est dirigée par un juge et elle vise, au cas en espèce, à faire comprover par un juge la décision de ne pas poursuivre prise par le ministère public à



l'égard de la poursuite pénale, en vue de saisir ou de ne pas saisir la juridiction de jugement [articles 286-1, 287-1-b du Code de procédure pénale].

À l'issue d'un délai de 30 jours à compter de la date de la décision de ne pas poursuivre ou de sa signification à l'accusateur privé ou au dénonçant pouvant se constituer accusateur privé, et lorsque l'ouverture de l'instruction préparatoire n'ait pas été demandée, le supérieur hiérarchique au sein du ministère public peut déterminer que l'accusation soit déduite ou que suite soit donnée à des enquêtes préliminaires supplémentaires, en faisant mention, au cas en espèce, des démarches à être diligentées et le délai prévu pour leur exécution (article 278 du Code de procédure pénale).

## SWITZERLAND

**Remarque liminaire:** il y a en Suisse 26 codes cantonaux de procédure pénale, un code de procédure pénale fédérale et un code de procédure pénale militaire. Un projet de code de procédure pénale suisse unifiant la procédure pénale des cantons et la procédure pénale fédérale sera soumis au Parlement fédéral en 2006; ce code devrait entrer en vigueur en 2010. Les réponses aux questions se fondent essentiellement sur la procédure pénale fédérale actuellement en vigueur.

### **1. Quelle est la position accordée aux victimes, en particulier les mineurs, dans une affaire pénale?**

La loi fédérale du 4 octobre 1991 sur l'aide aux victimes d'infractions (LAVI) permet de fournir une aide efficace aux victimes d'infractions et renforce leurs droits, en particulier en ce qui concerne les mineurs.

La loi fédérale sur la procédure pénale du 15 juin 1934 (PPF) tient aussi compte de la position des victimes (qualité de partie accordée à la victime qui se constitue partie civile, droit de recours contre les décisions de ne pas donner suite à une plainte pénale ou de suspendre les recherches de la police judiciaire).

Les cantons désignent les autorités chargées de poursuivre les mineurs. Ils ont institué des autorités spéciales de poursuite pénale (juges et tribunaux des mineurs). Un projet de loi fédérale sur la procédure pénale applicable aux mineurs (PPMin) sera prochainement soumis au Parlement fédéral.

### **2. Les victimes peuvent-elles intervenir dans la procédure ou bien l'initier ? Le ministère public a-t-il des compétences de représentation des victimes?**

Chacun (simple dénonciateur, lésé, victime) a qualité pour dénoncer les infractions poursuivies d'office en vertu de la législation fédérale (art. 100, al. 1 PPF). La victime qui se constitue partie civile a la qualité de partie. Le ministère public ne représente pas les victimes.

### **3. a. Dans votre système existe-t-il des moyens de protection pour les victimes et témoins, y compris les mineurs, en danger?**

Actuellement, la procédure pénale militaire prévoit des mesures de protection des témoins, des personnes appelées à fournir des renseignements, des inculpés, des experts, des interprètes et des traducteurs. Le projet de code de procédure pénale suisse prévoit des mesures de protection des témoins et des victimes (art. 148 ss).

La LAVI contient des dispositions de protection des victimes et des mineurs (anonymat, huis clos, pas de confrontation avec l'auteur de l'infraction, limitation à deux auditions

pour les enfants, enquêteur formé pour les mineurs). Il en est de même du projet de PPMIn (participation des représentants légaux, recours à une personne de confiance, huis clos).

Si nécessaire, la police, dans le cadre de sa mission de protection des citoyens, peut être chargée de prendre des mesures de protection des victimes ou témoins.

**b. Quelles sont les compétences et les responsabilités du ministère public dans ce domaine?**

La police informe la victime, lors de sa première audition, de l'existence de ces mesures de protection (LAVI) et le ministère public veille au respect de celles-ci.

**c. Le ministère public dispose-t-il de compétences pour imposer des mesures de protection? A partir de quel moment? et après la conclusion du procès?**

Selon le projet de code de procédure pénale suisse, le ministère public agit sur requête ou d'office, à tous les stades de la procédure, mais en principe pas après la fin du procès. Toutefois, la Confédération et les cantons ont la faculté de prévoir des mesures de protection après la clôture de la procédure.

**4. Le ministère public est-il obligé de tenir compte des besoins et des désirs de la victime lorsqu'il prend une décision sur la poursuite pénale? Si oui, comment?**

Oui, en lui notifiant certaines décisions (refus de donner suite à la plainte pénale ou suspension des recherches de la police judiciaire) qui peuvent être contestées devant une autorité judiciaire (cour des plaintes du Tribunal pénal fédéral).

**5. Est-ce que le ministère public a des compétences en matière de médiation pénale?**

Non.

**6. Le ministère public est-il obligé d'informer la victime des suites données à une affaire le concernant?**

Oui, voir ci-dessus réponses aux questions 1 et 4. Il communique en outre à la victime l'acte d'accusation.

**7. La victime dispose-t-elle d'un droit de réagir à la décision du ministère public de ne pas poursuivre ? Si oui, auprès de quelle autorité?**

Oui, voir ci-dessus réponse à la question 4.