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**CONSEIL CONSULTATIF DE PROCUREURS EUROPEENS
CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE)**

Questionnaire en vue de la préparation de l'Avis No. 12(2017) du CCPE :

« Les droits des victimes, des témoins et des personnes vulnérables »

Questionnaire for the preparation of the CCPE Opinion No. 12 (2017):

“The rights of victims, witnesses and vulnerable persons”

Compilation des réponses au questionnaire

Compilation of replies to the questionnaire

Table of Contents

Andorra / Andorre	3
Armenia / Arménie	11
Austria / Autriche	16
Belgium / Belgique.....	22
Bosnia and Herzegovina / Bosnie et Herzégovine	27
Bulgaria / Bulgarie	30
Croatia / Croatie	35
Czech Republic / République tchèque	39
Denmark / Danemark.....	50
Estonia / Estonie	54
Finland / Finlande	60
Germany / Allemagne	66
Greece / Grèce.....	72
Hungary / Hongrie	77
Ireland / Irlande	84
Italy / Italie.....	100
Latvia / Lettonie	105
Lithuania / Lituanie	115
Luxembourg	123
Republic of Moldova / République de Moldavie	126
Monaco	150
Montenegro / Monténégro.....	157
Poland / Pologne	163
Portugal.....	175
Romania / Roumanie	188
Slovak Republic / République slovaque	194
Slovenia / Slovénie	202
Sweden / Suède	210
Turkey / Turquie	217
Ukraine.....	224
United Kingdom / Royaume-Uni.....	233

Andorra / Andorre

1. Définitions

1.1 Existe-t-il dans votre pays **une définition** de la victime ou du témoin d'un crime? Si oui, est-elle inscrite dans la loi, dans d'autres instruments juridiques?

a. *Il n'existe pas de définition générale du terme « victime », cependant nous pouvons considérer que la victime est toute personne qui a souffert des dommages ou des préjudices comme conséquence de la commission d'un délit ou d'une contravention pénale, tenant compte des articles 14 à 18 du Code de Procédure Pénale qui permet l'exercice de l'action pénale (se constituer en accusation au même niveau que le Ministère Public) et/ou civile (formuler la réclamation des dommages et intérêts dérivés de l'infraction pénale) de ces personnes.*

Toutefois, la Loi 1/2015, du 15 janvier, pour l'éradication de la violence de genre et de la violence domestique définit dans son article 2 les victimes par rapport à cette loi, comme la personne objet de violences décrites dans la loi comme violence de genre, domestique ou sexuelle, indépendamment de leur âge, ainsi que leurs fils et filles mineurs.

b. *Notre législation considère comme témoin toute personne susceptible d'apporter des indications sur l'infraction objet d'investigation (article 26.1.a du Code de Procédure Pénale), ainsi que toute personne la déclaration de laquelle est estimée utile par la juge d'instruction, en particulier la personne qui a porté plainte (article 66 du même code), pour déterminer la nature de l'infraction pénale et en identifier les auteurs. Les témoins ont l'obligation de déclarer (sauf, les prêtres et les avocats qui connaissent les faits en raison de leur profession, les ascendants et les descendants en ligne directe, le conjoint ou la personne en situation de fait équivalent, et les frères et sœurs de la personne inculpé ou investiguée) et peuvent être conduits et obligés à comparaître, et en tout cas sont obligés de prêter serment de dire la vérité, sous peine de commettre le délit de faux témoignage.*

De la même manière, il faut signaler que toute personne qui est témoin de la commission d'un délit ou qui en a connaissance, a l'obligation de porter plainte devant la police ou l'autorité judiciaire (sauf, les prêtres et les avocats qui connaissent les faits en raison de leur profession, le conjoint ou la personne en situation de fait équivalent, et les autres parents jusqu'au troisième degrés de consanguinité, affinité ou adoption), ainsi que les médecins, les infirmières et toute personne du monde sanitaire que à connaissance d'une mort, blessure ou maladie suspecte d'être conséquence d'une infraction pénale ou d'un accident.

1.2 Existe-t-il dans votre pays **des régimes spéciaux** pour les victimes de certains types de crimes, par exemple la violence domestique, les abus sexuels, la traite d'êtres humains? Si oui, pouvez-vous les énumérer?

En effet, la loi détermine qui peuvent être les personnes victimes de violences domestiques (art. 114.1 du Code Pénal) : celui qui est ou a été, le conjoint ou la personne en situation de fait équivalent, les ascendants, les descendants, les frères et sœurs de l'agresseur ou du conjoint ou de la personne en situation de fait équivalent, ou toute autre

personne sujette à la garde de l'agresseur ou du conjoint ou de la personne en situation de fait équivalent, ou toute autre personne qui habite avec l'agresseur. Il faut noter sur ce point que si la victime de l'agression est un mineur ou l'agression s'est commise devant lui, l'auteur encourt la peine dans sa moitié supérieure.

En ce qui concerne les délits contre la liberté sexuelle, la protection spéciale de certaines victimes protégées de manière accrue (relation familiale ou d'autorité avec les auteurs ; victimes vulnérables définies selon ce qui sera exposé postérieurement (mineurs de 14 ans, maladie, incapacité ou situation); mise en danger de la victime) se fait à travers l'aggravation des peines encourues par les auteurs, et avec la prévision de circonstances aggravantes et de peines complémentaires spécifiques (de privations de droits de famille, ou même de privation de charges publiques ou professionnelles).

De la même façon sont protégées les victimes de trafic d'immigrants clandestins, de trafic d'êtres humains ayant comme fins l'extraction d'organes ou ayant comme fin l'exploitation sexuelle.

Il convient de remarquer que de manière générale les victimes ou les témoins de tout type de délit peuvent bénéficier d'une mesure d'éloignement du présumé responsable pénal pendant la phase instruction, sous forme de condition à la liberté provisoire du prévenu ; de la même manière, et une fois le prévenu condamné, si le tribunal décide d'imposer une peine avec sursis, celle-ci peut être assortie de l'obligation de ne pas s'approcher à la victime, sous peine de révocation de la liberté conditionnelle : ce type de mesure en faveur de la victime peut aussi être imposée comme peine complémentaire.

De la même manière, il faut remarquer les prévisions de Code Pénal en matière de protection des témoins et des victimes, étant punible d'une peine d'emprisonnement, celui qui moyennant violence ou intimidation influence ou tente d'influencer une personne qui porte plainte, une partie au procès ou un témoin, à fin qu'il modifie son actuation procédurale.

Toutefois, sont en vigueur en Andorre les traités faits sous l'égide du Conseil de l'Europe, de Lanzarote sur la protection des enfants contre l'exploitation et l'abus sexuel, et d'Istanbul sur la prévention et la lutte contre la violence envers les femmes et la violence domestique, et leurs dispositions sont directement applicables.

- 1.3 Existe-t-il dans votre pays **une définition** des personnes vulnérables, en général ou notamment dans le cadre de la procédure pénale? Si oui, est-elle inscrite dans la loi, dans d'autres instruments juridiques?

Même si ni notre Code Pénal ni notre Code de Procédure Pénale ne prévoit pas en tant que telle une définition de « personne vulnérable », l'article 30 du Code Pénal dispose comme circonstance aggravante que la victime soit spécialement vulnérable tenant compte de son âge, sa condition physique ou psychique, son incapacité ou toute autre circonstance semblable, ce qui revient à définir en quelque sorte le terme personne vulnérable.

Par ailleurs, l'article 33 du même texte vient à compléter cette définition en explicitant ce qu'il convient d'entendre par personne incapable en raison d'une procédure pénale, définition qui va plus loin que la définition classique : sera considéré personne incapable, en droit pénal, toute personne qui souffre d'une maladie ou anomalie physique ou

psychique persistante qui l'impossibilite de s'autogouverner, ayant été ou pas déclarée son incapacité.

2. Les droits des victimes, des témoins et des personnes vulnérables

- 2.1 Existe-t-il dans votre pays des droits spécifiques pour les victimes, les témoins et les personnes vulnérables dans le cadre de la procédure pénale, en plus des droits de l'homme en général?

Il n'existe pas dans notre législation de prévisions spécifiques concernant les droits des victimes, des témoins ou des personnes vulnérables, outre la protection des droits de l'homme en général.

Cependant, il est nécessaire de noter certaines prévisions :

- *La victime a le droit de déposer plainte avec constitution de partie civile, ce qui lui confère le statut de partie au procès et d'accusation au même terme que le Ministère Public : elle peut donc solliciter une peine, et maintenir l'accusation même si le procureur n'en formule pas, le tout représenté par un avocat. En outre, la victime peut formuler réclamation en dommages et intérêts pour les préjudices soufferts en raison des infractions pénales dont elle a été victime soit en se constituant en accusation comme décrit ci-dessus, soit en se constituant en simple partie civile (dans ce cas, la victime sera considéré partie au procès que pour effectuer une réclamation en dommages et intérêts), soit réserver ses actions en réclamation et exercer ses droits par la voie civile : dans les deux premiers cas, la victime à travers de son avocat pourra demander que soit pratiqués les preuves nécessaires pour soutenir ses prétentions, limités toutefois à l'intérêt de l'instruction et à leur qualité de partie civile ou d'accusation. Cette qualité lui permet de participer activement aussi au jugement.*
- *Notre législation prévoit aussi que les victimes de violence domestique, ont droit à que leurs données personnelles n'apparaissent pas dans la procédure.*
- *Les témoins ne disposent non plus de droits spécifiques, sauf le droit qui les dispense de déclarer dans les cas cités ci-dessus, et la protection des agents de police et du corps pénitencier qui doivent s'identifier que par leur numéro de matricule, sauf cause justifiée ou intérêt légitime.*

- 2.2 Si oui, sont-ils inscrits dans la loi ou dans d'autres instruments juridiques?

Les prévisions législatives énoncées ci-dessus sont contenues dans le Code de Procédure Pénale.

- 2.3 Veuillez énumérer brièvement ces droits spécifiques (ex. le droit à la protection, à être traité équitablement et avec dignité, à être informé, à être présent et entendu lors des procédures judiciaires, à demander réparation, le droit au respect de la vie privée, à porter plainte contre la violation ou le déni de leurs droits).

La réponse au point 2.1 contient les informations requises : il convient cependant de préciser que quand la victime est entendue pendant l'instruction elle est obligatoirement informée des dispositions de l'article 18 du Code de Procédure Pénale, c'est-à-dire de son droit à réparation. C'est à ce moment que lui sont offertes les différentes possibilités pour formuler sa réclamation (en se constituant en partie civile ou en accusation, en

demandant que soit le Ministère Public qui réclame en son nom, ou en réservant ses actions pour la voie civile) ou pour renoncer à rien réclamer.

Il est évident que le témoin ou la victime, avant sa déclaration, est informée de son droit à ne pas déclarer quand les conditions prévues (et spécifiés ci-dessus) sont remplies, mais s'ils conviennent à déclarer, ils sont obligés de dire la vérité.

Les victimes, de nationalité andorrane ou les étrangers disposant d'un permis de résidence en Andorre, en situation économiquement difficile, peuvent bénéficier d'aides sociales.

De la même façon, les victimes de violence domestique peuvent aussi bénéficier de logement d'accueil ou d'un logement de protection.

En outre, à fin de protéger la vie privée, il faut remarquer que notre législation prévoit que les audiences concernant les mineurs auteurs d'infraction soient tenues à huis clos ; de la même manière, un Tribunal pénal peut convenir qu'une audience quel que soit la matière soit tenue aussi à huis clos, notamment dans les cas où la victime soit mineur, ou dans des cas de délits sexuels.

- 2.4 Comment les victimes, les témoins et les personnes vulnérables sont-ils informés de leurs droits? Existe-t-il des mécanismes formels ou informels, un accès gratuit aux informations et bases de données pertinentes, etc.?

La réponse est contenue au paragraphe précédent. L'accès des victimes, témoins ou personnes vulnérables à ces droits est l'accès à la loi qui peut se faire de manière gratuite à travers internet.

Toutefois, il existe un service d'Attention et de médiation près de l'Administration de Justice, composé par un juriste, un psychologue et un travailleur social, qui a -entre autre- comme mission l'attention personnalisée des victimes d'infraction pénale en les informant et les accompagnant en relation aux moyens et les mécanismes institutionnels, professionnels et législatifs qui existent pour leur permettre l'exercice et la défense de ses droits et intérêts, et aussi en relation avec les moyens sociaux qu'elles peuvent bénéficier. En outre, ce service peut reconduire les victimes vers les administrations, les institutions ou les professionnels adéquats, et les informer des mesures de protection prévues par la loi à leur égard.

- 2.5 Quelles sont les sanctions prévues pour la violation de ces droits?

Il n'y a pas de sanctions spécifiques prévues dans notre législation : cependant, en pratique le Ministère Public veille et insiste dans toutes les procédures pénales aux fins que le Juge d'Instruction notifie formellement à la victime son droit à réclamer.

Il ne faut pas oublier que tout acteur judiciaire encourt une éventuelle sanction disciplinaire en cas de non respect des droits de la victime.

- 2.6 Existe-t-il dans votre pays des droits spécifiques pour les personnes vulnérables en raison de leur âge (enfants, personnes âgées) ou d'un handicap (physique ou mental), en tant que victimes ou témoins?

Outre les droits antérieurement cités, il faut noter que les mineurs ou les personnes incapables sont amenées à déclarer avec leur représentant légal.

De la même manière et en cas d'impossibilité, le juge d'instruction ou le tribunal peut se déplacer auprès du témoin ou de la victime pour lui prendre déclaration.

Il faut noter en tout cas que les victimes vulnérables sont protégées indirectement par les peines encourues par les auteurs, non seulement par le fait de l'existence d'une circonstance aggravante générale, mais aussi dans certains délits par l'existence de peines aggravées quand la victime est spécialement vulnérable.

Au point de vue procédural et dans la pratique, cette situation spécifique de la victime est tenue en compte en procurant les assistances nécessaires (ex. interrogatoires moyennant l'assistance de psychologues ou travailleurs sociaux ; éviter la confrontation visuelle directe avec l'auteur...).

- 2.7 Lorsqu'une décision, rendue en matière pénale, est susceptible d'affecter les droits ou la situation d'une personne vulnérable, celle-ci est-elle portée à la connaissance des autres instances traitant des droits de cette personne (par ex. une mesure d'interdiction de contact avec sa femme pour un mari en cas de violence domestique à l'instance chargée de statuer sur la garde des enfants)?

Dans tous les cas où cela est nécessaire, la décision judiciaire est communiquée à la victime, aux autres instances judiciaires ayant intérêt, au registre civil, ou au cas échéant aux services sociaux, ainsi qu'à la police qui devra contrôler le respect des mesures fixées. La communication au juge des mineurs se fait dans tous les cas où un mineur est mis en cause ou en cas d'un mineur victime, à fin de déterminer si il existe un risque pour le mineur qui nécessite d'une protection spécifique.

- 2.8 Ces personnes vulnérables peuvent-elles témoigner seules ou uniquement après avoir été autorisées par leurs représentants légaux et, dans ce dernier cas, dans quelles conditions?

Seules les personnes déclarées incapables ou les mineurs sont amenés à déclarer avec leur représentant légal, sans que soit nécessaire ni le consentement, ni l'autorisation de ce dernier.

- 2.9 Le refus de témoigner est-il possible, par exemple en ce qui concerne les enfants ou les handicapés mentaux? Dans quelles conditions?

Comme nous avons fait mentions ci-dessus, tout personne témoin ou victime est obligé de déclarer, sauf les prêtres et les avocats qui connaissent les faits en raison de leur profession, les ascendants et les descendants en ligne directe, le conjoint ou la personne en situation de fait équivalent, et les frères et sœurs de la personne inculpé ou investiguée).

En cas de doute sur les facultés des handicapés et des enfants, un médecin va examiner le témoin, et le Juge d'Instruction ou le Tribunal décidera sur leur possibilité de déclarer ou pas, et sont prises les mesures procédurales adéquates à cette fin (assistance d'un psychologue dans les interrogatoires ...).

- 2.10 Qui procède à l'évaluation des personnes vulnérables et comment le risque est-il évalué? La personne vulnérable peut-elle avoir un rôle dans l'évaluation de ce risque? Quelles sont les mesures de protection qui peuvent être adoptées et par qui?

Comme il en ressort des réponses précédentes et surtout de notre définition de personne vulnérable, leur évaluation est toujours effectuée par un médecin légiste, à fin de pouvoir appliquer les peines aggravées.

Il n'existe aucune autre disposition concernant la protection du témoin ou de la victime en général; toutefois, dans la pratique peuvent être instaurées (et cela a été le cas) -au cas par cas- des mesures de protection pour la protection d'un témoin ou d'une victime, quel que soit sa circonstance personnelle, et aussi bien dans la phase d'investigation policière que dans la phase du jugement ou après celle-ci.

- 2.11 Existe-t-il dans votre pays des procédures spéciales permettant les témoignages filmés, enregistrés et/ou cachés derrière un écran? Si oui, dans quelles circonstances?

Même si la législation ne prévoit pas expressément de telles procédures, dans la pratique le témoignage de la victime ou du témoin derrière d'un écran pour éviter le contact visuel avec l'inculpé peut être assurée sous demande des personnes amenés à témoigner.

De la même façon, dans certains types de délits, notamment dans les cas d'infractions contre les mineurs (agressions, atteintes sexuelles...), le recours à la filmations des victimes est de plus en plus fréquent à fin d'éviter que celles-ci soit amenés à déclarer de façon répétitive devant la police, pendant la procédure d'instruction et devant l'organe de Jugement : cependant, et même si le respect du contradictoire a eu lieu en phase d'instruction, la jurisprudence veut que si la défense le requiert, la répétition de l'interrogatoire à l'audience soit nécessaire pour que le respect des droits de la défense soit assuré. Tout de même, il faut noter en ce sens que tant la jurisprudence constitutionnelle, comme celle des tribunaux d'instance ou de recours, a cautionnée que la confrontation de la victime et de l'auteur n'est cependant pas nécessaire, ce qui prévient la victimisation de la victime.

- 2.12 Comment la prévention de la victimisation répétée est-elle assurée?

La réponse est contenue au paragraphe précédent.

- 2.13 Les droits des victimes, des témoins et des personnes vulnérables sont-ils prévus uniquement pour les citoyens ou aussi pour les étrangers? Dans quelles circonstances?

Dans tous les cas, et sous les conditions explicitées ci-dessus, les droits des victimes, des témoins et des personnes vulnérables sont assurés aussi bien aux citoyens qu'aux étrangers, sans distinction : dans le cas où une victime est entendue par Commission Rogatoire Internationale, le Juge d'Instruction sollicite dans sa demande d'entraide judiciaire, que soit notifié son droit à réclamation.

3. Rôle des procureurs dans la protection des droits des victimes, des témoins et des personnes vulnérables

- 3.1 Comment les droits des victimes, des témoins et des personnes vulnérables sont-ils appliqués et garantis dans le cadre de la procédure pénale? Quel est le rôle des procureurs en la matière?

Considérant qu'une des missions du Ministère Public décrite par la Loi est d'exercer la réclamation civile au nom de la victime, dans la procédure pénale, à chaque fois que celle-ci n'a pas renoncé, ou ne l'a pas exercé, ou n'a pas choisi la voie civile pour l'exercer, les procureurs sont tenus de veiller à ce que soit notifié le droit à la réclamation de la victime, ce que comporte à solliciter cette notification à la victime si cela n'a pas été fait.

De la même manière, le Ministère Public veille sur les intérêts des mineurs, des personnes absentes et des incapables, et participe dans toutes les procédures civiles où elles ont un intérêt, et donc est un garant de leurs droits.

- 3.2 Ce rôle des procureurs est-il inscrit dans la loi ou dans d'autres instruments juridiques? Ce rôle est-il inscrit dans les règles de déontologie des procureurs?

C'est la Loi du Ministère Public du 12 décembre de 1996 qui prévoit ses obligations. Le recueil de règles déontologiques des procureurs ne fait pas d'allusion directe aux droits des victimes, témoins ou personnes vulnérables : toutefois ces règles mettent en avant le respect des droits de toutes les parties au procès, ainsi que la nécessité d'écoute.

- 3.3 Comment ce rôle est-il exercé dans la pratique? Comment les procureurs collaborent-ils avec d'autres organes de l'État pour remplir ce rôle? Les procureurs ont-ils des fonctions de supervision ou de surveillance?

La réponse est contenue au paragraphe 3.1.

Toutefois, les procureurs veillent au respect des droits de la victime dès le début de l'enquête en assurant une collaboration permanente avec la police à fin que soit assurée la protection de la victime dans les cas nécessaires, que celle-ci soit informé de ses droits, que la victime soit visitée par un médecin légiste quand cela est nécessaire...

- 3.4 Les victimes, les témoins et les personnes vulnérables peuvent-ils saisir directement le procureur pour la protection de leurs droits?

Les victimes peuvent dans tous les cas porter plainte simple devant le Ministère Public, aussi bien que devant la police ou directement devant le juge de permanence: cependant aucune disposition légale ne prévoit une interaction directe avec la victime ; pourtant, rien n'interdit que la victime puisse apporter la documentation nécessaire à fin que le procureur puisse effectuer la réclamation nécessaire en son nom, ce qui en pratique c'est déjà fait.

Toute personne, y compris les victimes, les personnes vulnérables et les témoins, peuvent se présenter devant le Ministère Public pour faire part de leurs inquiétudes qui seront résolues en fonction des nécessités de la procédure, ou ces personnes seront redirigées vers l'organe ou l'institution compétent.

Les témoins qui saisiraient directement le Ministère Public dans une affaire en cours d'instruction seraient reconduits devant le Juge d'Instruction pour qu'il soit écouté ; un témoin que saisit le Ministère Public dans une affaire dont aucun juge d'instruction n'ai connaissance, provoquera l'ouverture d'une enquête dirigée par le procureur.

Cependant, il faut rappeler que notre législation n'attribue aucun droit particulier aux témoins.

- 3.5 Les procureurs peuvent-ils agir de leur propre initiative pour protéger les droits des victimes, des témoins et des personnes vulnérables?

Le Ministère Public doit veiller pour le respect des institutions constitutionnelles i des droits fondamentaux et les libertés publiques, et pour ce faire doit intervenir dans toutes les procédures pénales pour faire respecter la loi, et donc pour protéger les droits de tous les personnes intervenantes dans une procédure pénale.

- 3.6 Pour l'assistance aux victimes, aux témoins et aux personnes vulnérables, les procureurs coopèrent-ils avec d'autres organes de l'État, des instances privées ou des ONG?

La collaboration des procureurs et de la police dans ce domaine est continue, ainsi qu'avec les services sociaux quand ceci s'avère nécessaire, devant être signalé que la loi du Ministère Public prévoit que le Procureur peut demander dans tous les cas la coopération des autorités et tout organisme officiel, des fonctionnaires et des agents de l'administration, pour accomplir les missions qui lui sont propres, ce qui peut inclure la protection des témoins et des témoins.

- 3.7 Les procureurs bénéficient-ils d'une formation spécifique concernant la protection des droits des victimes, des témoins et des personnes vulnérables? Cette formation implique-t-elle également le personnel du Parquet et les services de police? Les procureurs jouent-ils un rôle dans la mise en œuvre de cette formation?

À ce jour aucune formation spécifique concernant la protection des droits des victimes, des témoins et des personnes vulnérables, n'a été effectuée auprès du Parquet ni des Services de Police.

Cependant, dans le cadre de la formation continue, les procureurs et la police ont assisté à de nombreuses et diverses formations, sur de différents domaines, où est traitée la problématique concernant le droit des victimes en ce qui concerne le domaine spécifique de la formation concrète.

- 3.8 Tout autre point que vous voulez soulever.

Armenia / Arménie

1. Definitions

- 1.1. The definitions of a victim and a witness are set forth in the Criminal Procedure Code (CPC) of the Republic of Armenia (RA). Under Article 58 § 1 of the CPC a person is recognized as a victim whom moral, physical or pecuniary damage has been directly caused through an act prohibited by the Criminal Code (CC). Also a person is recognized as a victim whom moral, physical or pecuniary damages might be caused had the act been committed completely.

Article 86 § 1 of the CPC provides that witness is a person who has been called to testify by a party or the authority dealing with the criminal case and who may be aware of any circumstance related to the case which needs to be clarified.

- 1.2. RA legislation does not stipulate any specific regime for the persons suffered from certain types of crime.
- 1.3. Neither RA legislation generally nor the CPC specifically envisage a definition of vulnerable persons.

2. The rights of victims, witnesses and vulnerable persons

- 2.1. RA legislation sets forth specific rights for a victim and a witness, in addition to human rights in general.

- 2.2. Those rights are stipulated in Articles 59 and 86 of the CPC respectively.

- 2.3. Some rights for the victim may be stated below, as such:

- Right to lodge appeals against the actions and decisions of the body of inquiry, the investigator, the prosecutor and the court, including the verdicts and other final judicial decisions;

- Right to receive compensation, in a procedure prescribed by law, for the damage caused as a result of the acts prohibited by the CC;

- Right to compensation for the expenses incurred during the criminal proceedings;

- Right to protection;

- Right to be present at the court hearing;

- Right to testify;

- Right to give explanations;

- Right to provide materials to be attached to the criminal case and later to be examined;

Some rights for the witnesses are as follows:

- Right to be exempted from the duty to testify about himself, his spouse, or his close relatives, the duty to provide materials and information, if it can be reasonably presumed that it may subsequently be used against him, his spouse, or his close relatives;

- Right to familiarize him(her)self with the records of the investigative or procedural measures exercised with his participation.
- Right to familiarize with the relevant part of the record of the court hearing, and make remarks in respect of fullness and correctness of his/her testimony which should be included in the record;
- Right to come the authority dealing with the case with his/her attorney;
- Right to write down his/her testimony personally at the pre-trial stage;
- Right to compensation for the expenses incurred during the criminal proceedings;
- Right to be aware of which criminal case he/she is summoned.

2.4. The procedure for clarifying the above stated persons their rights is set forth under Article 101 of CPC. Namely, Article 101 § 2 states that the authority dealing with the criminal case has the duty to clarify every person, participating in the proceeding, his / her rights and obligations, and provide with the opportunity to exercise them in the procedure prescribed by the CPC.

2.5. According to the law, violation of the rights of the above-stated persons by the authority dealing with the criminal case entails disciplinary liability. The procedure and the grounds for imposing disciplinary liability are envisaged respectively by the Law on Prosecution Office Articles 46 and 47, the Law on Investigative Committee Articles 29 and 30, and the Judicial Code Article 153. Moreover, the violation of their rights entails inadmissibility of the evidence.

2.6. The CPC sets forth certain features for some investigative measures in participation with the above-stated persons. Namely, Article 207 of CPC prescribes specific procedure for interrogation of a minor witness or victim, according to which, the latter is questioned in presence of a pedagogue, also, the legal representative is entitled with the right to be present during the interrogation and ask questions. It is explained to the witness or the victim under the age of 16 his/her obligation to tell truthfully about everything related to the case, yet they are not warned about the liability for the refusal to testify, or avoidance testifying or for obviously false testimonies. Article 208 of the CPC sets forth the procedure for interrogation of a deaf or other severely ill person as witness, according to which the interrogation of a deaf witness is conducted with participation of a translator understanding the language of his signs. It should be mentioned in the record that the interrogation is conducted in the presence of translator. In case the witness suffers from a mental or other serious illness the interrogation is conducted with the permission of a physician and in his presence.

2.7. Under Article 76, § 1 the legal representative of the victim, plaintiff, suspect, accused is his/her parent, adoptive parent, guardian and trustee, who represents the lawful interests of minor or incapable participant in the criminal proceeding. In case not having a legal representative the authority dealing with the criminal case appoints the body of guardianship and trusteeship as legal representative of the victim, suspect or accused.

Article 207 § 2 stipulates that witnesses and victims under the age of 16 are questioned in the presence of a pedagogue, and Article 208 § 2 states that in case the witness suffers from a mental or other serious illness interrogation of the latter should be conducted in the presence of a physician (the pedagogue mostly supports the authority dealing with the case rather than the minor witness or the minor victim).

2.8. The physician and the legal representative of a minor witness or victim participate in the interrogation, yet they cannot prohibit questioning. However, in case the witness suffers from mental or other serious illnesses he is interrogated only with the permission of a physician.

2.9. Article 208 of the CPC states that the duty to tell truthfully everything related to the case is explained to the witness or victim under the age of 16, yet they are not warned about the liability for the refusal to testify, or avoidance testifying, or obviously false testimonies. Hence it can be concluded that in case of refusal to testify no legal impact may incur. And based on Article 208, § 2 it can be concluded that a physician, by taking into consideration the level of seriousness of mental or other illness, may prohibit conducting interrogation.

2.10. Despite the absence of the definition and the scope of vulnerable persons in the legislation of RA, Article 98 of the CPC states that

1) Any person participating in criminal proceedings, who may be able to provide information important for the disclosure of the crime and identification of the perpetrator, as a result of which his life, health, property or rights and lawful interests, or those of his family members, close relatives or other close persons may be endangered, is entitled to protection.

2) Protection of the person participating in criminal proceedings, his family members, close relatives or other close persons shall be provided by the authority dealing with the case.

3) The authority dealing with the case, having discovered that a person needs protection, on the basis of that person's written application or of its own motion shall adopt a decision to take a protective measure which is subject to immediate implementation.

2.11. Under Article 98.13, §§ 2 and 3, upon necessity the interrogation of a protected person may be conducted in a way to exclude his identification. For this reason a mask, grim, a device transforming his voice and other means not contradicting the law. The interrogation of the protected person can be conducted through audio/video tapes or other technical means (veil, protective screen, layer) in participation of limited participants and by warning about keeping the secrecy. In case of necessity the identification can be conducted through the photographs of other persons similar in appearance and clothing (Article 221, § 7).

2.12. To solve this problem the CPC stipulates no specific means. Yet, the systematic analysis of RA legislation allows us to say that some articles are aimed at ensuring prevention of repeated victimisation. Specifically, as a general means, Article 200 of CPC states that 1) prosecutor, investigator, body of inquiry are obliged to find out the circumstances fostering the commission of crime and if necessary, file a motion to the relevant legal entity or official to take steps to abolish such circumstances.

2) The motions should be examined, and the author of the petition (body or official) should be informed in writing about the results.

Then, Article 134 of the CPC sets forth the types of preventive measures imposed on the suspect or accused in order to prevent their inappropriate behavior, and Article 135 provides the grounds for preventive measures, i.e. if the materials of the criminal case give sufficient grounds to believe that, *inter alia*, the suspect or accused may have illegal pressure on the participants in the criminal proceedings, preventive measures can be imposed.

In addition, the regulations under CC are also aimed at such protection. Namely, Article 63 of CC states repeated committal of crime as an aggravating circumstance for criminal liability or punishment. And Article 67.1 states that recidivism is considered while imposing punishment.

2.13. If the case falls under the jurisdiction of RA, the discrimination based on nationality or other facts is prohibited and those rights are guaranteed both for RA citizens and foreigners. Besides, Article 15 § 2 of the CPC provides that based on the decision of the authority dealing with the case those participants in the criminal proceedings who do not know the language of the criminal proceedings, are granted with the opportunity to exercise their rights, prescribed by the CPC, with the help of translator. The expenses for translator are covered by the state budget. Moreover, according to Article 15, § 3, the authorized copies of the documents, which should be given to the participants, are provided in the language they know.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1. Under Article 58, § 1 (12) of the CPC the victim is entitled the right to lodge appeals against the actions and decision of the body of inquiry, the investigator, the prosecutor and the court. Article 263, § 1 of the CPC states that beside the suspect, accused and other persons, the victim also is entitled to lodge appeals against the decision on termination of criminal prosecution or that of criminal proceedings within 7 days after receiving its copy. Under Article 53 of the CPC the prosecutor is entitled to institute and carry out criminal prosecution, cancel the decision of the of the body of inquiry and the investigator on termination of the criminal proceedings, cancel the decision on reject the institution of criminal proceedings and institute criminal proceedings, as well as cancel other decision of the latters in cases prescribed by the CPC, and institute criminal proceedings *proprio motu*.

3.2. The stated rights of the prosecutors are enshrined both under the CPC and the Law on Prosecution Office. In addition, the order of the Prosecutor General of RA sets the Code of Conduct for prosecutors.

3.3. Article 4 of the Law on Prosecution Office states that the Prosecution Office exercise supervision over the legality of the inquiry and preliminary investigation in accordance with Article 103 of RA Constitution. As stated in Article 53 of the CPC, while exercising procedural ruling over the inquiry and preliminary investigation the prosecutor is exclusively entitled 1) to check the observance of the law requirements for the receipt, registration and solution of the information about committed or preparing crime and other cases; 4) if necessary to order the head of the investigation body in writing to conduct the investigation by the group of investigators, as well as order the heads of investigative bodies of various bodies conducting preliminary investigation to involve in the groups of their investigators; 6) to make orders to the body of inquiry, investigator in writing to take investigative or procedural measures, to adopt decisions; 9) deal with the appeals against the actions and decisions of the body of inquiry and investigator, except those appeals that fall under the jurisdiction of the court. Moreover, according to article 55, § 5, the investigator is obliged to implement the lawful orders of the prosecutor.

In addition, Article 53, § 3 (8) entitles the prosecutor, exercising procedural ruling over the legality of inquiry and preliminary investigation, the right to take appropriate measures to protect

the victim, witness and other participants in the proceedings. Then a whole chapter of CPC (Chapter 12) provides the mechanism for protection of the participants in criminal proceedings.

3.4. According to Article 6, § 33, applicant is any person who applies to the court, body of inquiry for having protected his rights against violations through criminal procedure. It can be concluded based on this Article that witnesses and victims may also be considered as applicants. Besides, according to Article 6, § 22, in addition to the body of inquiry and investigator, prosecutor is also considered as a body of criminal prosecution to whom the applicant may apply.

Article 263, § 1 of the CPC states that beside the suspect, accused and other persons, the victim also is entitled to lodge appeals against the decision on termination of criminal prosecution or that of criminal proceeding within 7 days after receiving its copy.

3.5. Under Article 53, § 3 (8) while exercising procedural ruling over the legality of inquiry and preliminary investigation the prosecutor is entitled to take measures to protect the victim, witness and other participants of the criminal proceedings.

3.6. Under Article 76, § 1 the legal representative of the victim, plaintiff, suspect, accused is his/her parent, adoptive parent, guardian and trustee, who represent the lawful interests of minor or incapable participant in the criminal proceeding. In case not having a legal representative the authority dealing with the criminal case appoints the body of guardianship and trusteeship as legal representative of the victim, suspect or accused. In order to find out the circumstances fostering the commission of a crime the prosecutor files a motion, if necessary, to the relevant legal entity or official to take steps abolishing such circumstances. These motions are subject to immediate examination, and about the results of which the body of official should be informed. Besides, the prosecutor is entitled the right to have meetings and discussions on certain matters with the representatives of the Government of RA.

3.7. Article 19 of The Law on Justice Academy of RA sets forth that the process of education is conducted based on the educational projects which are drafted according to the standards of education established by the Council of the Academy and confirmed as prescribed by law.

2. The educational projects of the Justice Academy are as follows:

2) trainings for judges, investigators, prosecutors etc. as set forth under Article 14, § 1(3). According to Article 18 training is a mandatory educational process aimed at developing professional knowledge and practical skills of the stated subjects through examination of certain spheres.

And a separate course on the peculiarities of the examination of the cases involving vulnerable persons is included in the schedule of the trainings at the Justice Academy of RA.

Austria / Autriche

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

Yes, the status of victims and witnesses is defined in the law (section 65 fig 1 and section 154 para 1 CCP (Code of Criminal Procedure–Strafprozessordnung [StPO])).

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

Basically the CCP does not distinguish between certain categories of victims (such as victims of trafficking, domestic violence etc), but in some provisions special rights are foreseen for victims of domestic violence and sexual abuse, who are regarded as vulnerable victims in a special need (see 2.1. and 2.3.).

- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

The status of vulnerable persons under the understanding as victims in a special need is defined in the law, within the framework of criminal procedure. By virtue of section 66a para 1 CCP such persons are victims of sexual offences, persons exposed to domestic violence or victims under age (below the age of 18 years).

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Yes. Please see 2.3.

- 2.2 If yes, are they established in the law or other legal instruments?

These specific rights are established in the law, within the framework of the CCP (especially section 65 [victims], section 66a [vulnerable victims], sections 156, 157 and 158 [witnesses]).

- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Victims:

Right to participate actively in criminal proceedings (e.g. to be present at hearings or crime scene reconstruction-meetings, to pose questions, to apply for additional investigations etc.; section 10 para 1, section 66 para 1 fig 6 and 7, section 150 para 1 CCP);

Right to be treated with dignity and to be respected in their highly-personal sphere (section 10 para 3 CCP):

Right to be represented by a confidant (e.g. attorney, victims support service; section 66 para 1 fig 1 CCP);

Right to be informed about the development of the proceedings (interruption, ending, continuation or outcomming; section 66 para 1 fig 4 CCP);

Right to get access to the files (section 66 para 1 fig 2 and section 68 para 2 CCP);

Right to apply for the continuation of the proceedings (section 66 para 1 fig 8)

Right to psycho-social and legal assistance (section 66 para 2 CCP)

Right to get informed about the (temporally) release of the defendant from prison (sections 70 para 1, 172 para 4, 177 para 5 and 181a CCP)

Right to join criminal proceedings as a private party and seek restitution (section 67 CCP);

Vulnerable victims:

Right to be interrogated by a person of the same sex (section 66a para 2 fig 1 CCP);

Right to refuse the answer of particular questions in view of highly-personal details of a sexual offence (section 66a para 2 fig 2; section 158 para 1 fig 2 CCP);

Right to be interrogated in a gentle manner (behind the screen or in absence of the defendant (section 66a para 2 fig 3, section 165, section 250 para 3 CCP);

Right to refuse to give evidence again, if an adversarial interrogation has already taken place (section 156 para 1 fig 2 CCP);

Right to exclude the public from trial (section 66a para 2 fig 4 CCP);

Right to be accompanied by a confidant (section 66a para 2 fig 6 CCP);

Victims of sexual offences or domestic violence have the right to give a statement before the withdrawal from prosecution (Diversion; section 206 para 1 CCP);

Witnesses:

Right to be released from giving evidence in proceedings against a relative (section 156 para 1 fig 1 CCP);

Right to refuse to give evidence in danger of self-incrimination or incrimination of a relative or if the witness would have to disclose knowledge originating from his function as attorney, psychologist, media proprietor etc.; section 157 para 1 fig 1-4 CCP);

Right to refuse the answer of particular questions in view of the their highly-personal sphere or the danger of disgrace or immediate and significant pecuniary disadvantage (section 158 para 1 fig 1 and 3 CCP);

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

The police, prosecution services and courts are obliged to inform victims about their specific rights already at the beginning of the preliminary proceedings, at the latest on the occasion of their interrogation (section 10 para 2; section 70 para 1 and section 153 para 2 CCP). These informations are also to be provided in a case of a withdrawal from prosecution (diversion; section 206 para 1 CCP)

Beside that these informations are also provided by a significant number of support services, which are organised as NGOs.

2.5 What kind of penalties and sanctions are established for violation of these rights?

During the preliminary proceedings victims only can use a general remedy, foreseen to claim alleged violation of rights by the public prosecution service (section 106 CCP). But this only can lead to a demonstrative court decision, stating that a violation of rights occurred, which obliges the public prosecutor to establish a status in conformity with the law.

In the trial phase the statement of a witness is invalid, if a witness was not informed about its right to refuse to give evidence or if a witness did not explicitly abandon its right to be released from giving evidence (section 159 para 3 CCP).

2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

By virtue of section 66a para 2 CCP special rights are foreseen for victims under age (section 66a para 1 fig 3; e.g. the right to give a statement in presence of a confidant, the right to be interrogated without the immediate presence of the defendant [video transmission], the right to exclude the public from trial). Victims under the age of 14 also have the right to psycho-social and legal victim assistance (section 66 para 2 CCP)

Mentally aggrieved witnesses and witnesses under the age of 14 should give a statement only in presence of a confidant (section 160 para 3 CCP).

2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

An information about relevant decisions of the prosecution service or of the court in criminal matters is only foreseen for the victim itself (e.g. decisions about the interruption, ending, continuation or outcomming of the proceedings and about the [temporarily] release of the defendant from prison [sections 194 para 1, 197 para 3, 70 para 1, 172 para 4, 177 para 5 and 181a CCP]). Other bodies dealing with the right of these persons are not informed automatically.

2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

Vulnerable persons can give testimony alone; but they have the right to bring in a confidant (section 66a para 2 fit 6 CCP).

2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

By virtue of section 156 para 1 CCP vulnerable victims (section 66a CCP) are released from giving evidence, if all parties had the possibility to take part in an adversarial interrogation (by using technical equipment for video and audio transmission) during the

preliminary phase. Further rights to refuse testimony only in regard of age or mental disability do not exist.

However it is inadmissible to interrogate a person as a witness, who is – due to mental disability or for other reasons – incapable to tell the truth (section 155 para 1 fig 4 CCP).

- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

The status of vulnerable victims is defined by law (section 66a CCP). These victims have the right to be evaluated as soon as possible (para 1 leg. cit.); such an evaluation has to be carried out by the police as well as the prosecution service and the court.

A person, who asserts the rights as a vulnerable victim without success, has the right to get informed about the reasons for this refusal (section 66a para 4 CCP).

During the preliminary proceedings these persons can apply a general remedy addressed to the court to claim an alleged violation of rights by the police or the public prosecution service (section 106 CCP; see 2.5.).

- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

Yes. In trial as well as during the preliminary procedure vulnerable victims, witnesses under age and witnesses, who have to give testimony against certain relatives can be interrogated behind a screen, using technical equipment for audio and video transmission or recording (section 165 CCP).

This procedure is mandatory in case of an interrogation of a person under age, who is a victim of a sexual offence. For other witnesses this procedure could occur upon request or by order of the court.

- 2.12 How is the prevention of repeated victimisation ensured?

During the preliminary proceedings the danger of recurrence may be a reason for detaining the suspect in custody (section 173 para 2 lit 3 CCP).

The danger of recurrence respectively the danger of committing further crimes has also to be taken into consideration for the court's decision about a conditional sentence, conditional preventive measures or a conditional release from prison (section 43, section 43a, section 45, section 46 CC [Criminal Code]).

To prevent repeated victimisation, victims – in some cases upon prior request – have to be informed immediately, if the perpetrator is (temporarily) released from custody/prison or if he escaped (section 70 para 1, section 172 para 4, section 177 para 5 and section 181a CCP).

In cases of domestic violence, the police can enact a barring order, which is valid for two weeks (section 38a Security Police Act [Sicherheitspolizeigesetz-SPG]); for a long-term-protection the endangered person may apply at court for a temporary injunction/restraining order (sections 382b and 382e Act on Enforcement Procedures [Exekutionsordnung-EO]).

- 2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

The Austrian CCP does not distinguish between Austrian citizens (respectively citizens of the EU) and foreigners.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

- 3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

By virtue of section 10 para 2 CCP the Police, as well as the public prosecutors and the court are always obliged to pay attention to the rights, interests and special needs of victims adequately (see also sections 70 para 1, 153 para 2 and 206 para 1 CCP).

During the preliminary proceedings victims, witnesses and vulnerable victims (as well as any other person) can use a general remedy to claim an alleged violation of rights by the public prosecution service or the police (section 106 CCP; see 2.5.). In case of a violation of these rights by a decision of the court, these persons may file a complaint (section 87 CCP).

If a victim joins criminal proceedings as a private party (section 67 para 1 and 2 CCP), it can use all remedies provided for them during the preliminary proceedings as well as in trial.

- 3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

See 3.1.

- 3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

Public prosecutors usually follow their legal obligations (see 3.1).

As public prosecutors lead the investigations (preliminary proceedings; section 20 para 1 CCP) they naturally have to cooperate with the police. In this respect public prosecutors do also carry out supervisory or monitoring functions.

- 3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Because of the – above mentioned – leading role of prosecutors in the pretrial phase these persons may also apply directly to the public prosecutor during the preliminary proceedings.

In case of an alleged violation of their rights, these persons have to apply to the court by using the mentioned remedies provided by the CCP.

- 3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Yes. Public prosecutors can make applications to the court with regard to these rights, e.g. for an interrogation behind the screen or in absence of the defendant (section 165 para 2, section 250 CCP) or for the exclusion of the public from trial (section 229 CCP).

- 3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

In practice public prosecutors keep a close and regular contact with all kind of victim support services. This includes contact in specific cases (e.g. in cases of a withdrawal from prosecution after a victim-offender-mediation [section 204 CCP]) as well as on the basis of regular meetings and round tables.

- 3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

*In cooperation with victim support organisation training courses, seminars and other events on this topic are offered regularly as part of the basic education of judges and prosecutors as well as part of their continued education.
During the phase of their basic education judges and prosecutors mandatorily have to absolve an internship of several weeks at a victim support organisation.*

- 3.8 Any other relevant point you wish to raise.

Belgium / Belgique

1. Définitions

- 1.1 Existe-t-il dans votre pays **une définition** de la victime ou du témoin d'un crime? Si oui, est-elle inscrite dans la loi, dans d'autres instruments juridiques?

Il existe plusieurs définitions dans la loi en fonction des droits et des obligations qui sont octroyés aux victimes ou aux témoins dans le cadre de la procédure pénale

- 1.2 Existe-t-il dans votre pays **des régimes spéciaux** pour les victimes de certains types de crimes, par exemple la violence domestique, les abus sexuels, la traite d'êtres humains? Si oui, pouvez-vous les énumérer?

Oui, il existe des dispositions spéciales pour les victimes d'infractions sexuelles dans le cadre des auditions par la police.

Il existe un statut protecteur spécifique pour les victimes de traite des êtres humains qui peuvent bénéficier sous certaines conditions, d'un asile dans le pays

- 1.3 Existe-t-il dans votre pays **une définition** des personnes vulnérables, en général ou notamment dans le cadre de la procédure pénale? Si oui, est-elle inscrite dans la loi, dans d'autres instruments juridiques?

Oui, une loi pénale protège particulièrement les personnes vulnérables victimes de maltraitements et définit ces personnes en fonction de critères précis (âge, grossesse, maladie infirmité etc.)

2. Les droits des victimes, des témoins et des personnes vulnérables

- 2.1 Existe-t-il dans votre pays des droits spécifiques pour les victimes, les témoins et les personnes vulnérables dans le cadre de la procédure pénale, en plus des droits de l'homme en général?

Oui. La loi précise pour chacune de ces catégories les droits particuliers qui leur sont attachés dans le cadre de la procédure pénale

- 2.2 Si oui, sont-ils inscrits dans la loi ou dans d'autres instruments juridiques?

Ils sont inscrits dans la loi mais précisés dans des circulaires ou des directives des procureurs généraux ou du ministre de la justice

- 2.3 Veuillez énumérer brièvement ces droits spécifiques (ex. le droit à la protection, à être traité équitablement et avec dignité, à être informé, à être présent et entendu lors des procédures judiciaires, à demander réparation, le droit au respect de la vie privée, à porter plainte contre la violation ou le déni de leurs droits).

Il convient de distinguer chacune de ces trois catégories qui ont leurs spécificités.

Les victimes ont le droit d'être bien traitées, d'être informées, d'intervenir dans la procédure pénale et dans le cadre de l'exécution des peines, d'être indemnisées, d'être assistée d'un avocat.

Il en va de même pour les personnes vulnérables mais s'il s'agit de traite des êtres humains, elles peuvent rester sur le territoire national si elles collaborent à l'enquête.

Les victimes de délinquance sexuelle ne seront entendue qu'une seule fois par audition vidéo filmée.

Les témoins bénéficient d'une protection spéciale s'ils sont menacés et ils peuvent être entendus anonymement, totalement ou partiellement selon une procédure précise.

Les victimes de violences intrafamiliales bénéficient d'une circulaire des procureurs généraux qui prévoit une politique précise à leur égard visant, notamment, au départ de l'époux violent du domicile conjugal

2.4 Comment les victimes, les témoins et les personnes vulnérables sont-ils informés de leurs droits? Existe-t-il des mécanismes formels ou informels, un accès gratuit aux informations et bases de données pertinentes, etc.?

Des dispositions obligent le verbalisant à informer la victime de ses droit. Un service d'accueil des victimes a été créé dans les parquet pour recevoir les victimes et les informer de leurs droits et de leur dossier particulier.

2.5 Quelles sont les sanctions prévues pour la violation de ces droits?

Des peines disciplinaires sont prévues pour ceux qui ne se conformeraient pas à ces obligations

2.6 Existe-t-il dans votre pays des droits spécifiques pour les personnes vulnérables en raison de leur âge (enfants, personnes âgées) ou d'un handicap (physique ou mental), en tant que victimes ou témoins?

Oui, il s'agit de personnes vulnérables. Des dispositions existent aussi pour les mineurs qui sont amés à témoigner en justice, en particulier, celui de se faire accompagner par une personne majeure de son choix.

2.7 Lorsqu'une décision, rendue en matière pénale, est susceptible d'affecter les droits ou la situation d'une personne vulnérable, celle-ci est-elle portée à la connaissance des autres instances traitant des droits de cette personne (par ex. une mesure d'interdiction de contact avec sa femme pour un mari en cas de violence domestique à l'instance chargée de statuer sur la garde des enfants)?

Oui. La loi a institué des tribunaux de la famille de manière à rassembler dans une seule juridiction tous les conflits liés à la famille

2.8 Ces personnes vulnérables peuvent-elles témoigner seules ou uniquement après avoir été autorisées par leurs représentants légaux et, dans ce dernier cas, dans quelles conditions?

Il faut distinguer selon la vulnérabilité. Les mineurs peuvent se faire accompagner. Pas les autres.

2.9 Le refus de témoigner est-il possible, par exemple en ce qui concerne les enfants ou les handicapés mentaux? Dans quelles conditions?

Il existe une obligation de témoigner en justice devant un juge d'instruction et de prêter serment sous peine d'amende. Toutefois, les personnes soumises au secret professionnel, les condamnés, les mineurs d'âge de moins de 15 ans ne peuvent être soumises à l'obligation du serment. Elles doivent toutefois comparaître et le juge apprécie le refus de témoigner.

2.10 Qui procède à l'évaluation des personnes vulnérables et comment le risque est-il évalué? La personne vulnérable peut-elle avoir un rôle dans l'évaluation de ce risque? Quelles sont les mesures de protection qui peuvent être adoptées et par qui?

La loi définit les personnes vulnérables et le juge apprécie au cas par cas, au besoin après une expertise.

Si la question concerne les témoins menacés, c'est le juge d'instruction qui apprécie le danger pour le témoin et qui peut l'autoriser à témoigner anonymement. Cela n'est possible que pour certaines infractions graves et il faut une menace sérieuse. Il existe aussi une commission spéciale qui gère les témoins menacés et leur accorde une protection physique

2.11 Existe-t-il dans votre pays des procédures spéciales permettant les témoignages filmés, enregistrés et/ou cachés derrière un écran? Si oui, dans quelles circonstances?

Oui. La loi prévoit que le tribunal peut décider d'entendre un témoin par le biais d'une vidéo conférence. Il en va de même pour les témoins mineurs, particulièrement les victimes de délinquance sexuelle

2.12 Comment la prévention de la victimisation répétée est-elle assurée?

Précisément par le souci de n'entendre ces témoins qu'une seule fois afin d'éviter une victimisation secondaire

2.13 Les droits des victimes, des témoins et des personnes vulnérables sont-ils prévus uniquement pour les citoyens ou aussi pour les étrangers? Dans quelles circonstances?

Il n'y a pas de différence faite sur base de la nationalité sauf pour les victimes de traite des êtres humains qui peuvent bénéficier d'un droit d'asile s'ils sont étrangers

3. Rôle des procureurs dans la protection des droits des victimes, des témoins et des personnes vulnérables

3.1 Comment les droits des victimes, des témoins et des personnes vulnérables sont-ils appliqués et garantis dans le cadre de la procédure pénale? Quel est le rôle des procureurs en la matière?

La loi prévoit que les procureurs doivent respecter les droits des victimes en toute circonstance durant la procédure et ils disposent d'un service social spécifique chargé de l'accueil de l'accompagnement et de l'information des victimes

3.2 Ce rôle des procureurs est-il inscrit dans la loi ou dans d'autres instruments juridiques? Ce rôle est-il inscrit dans les règles de déontologie des procureurs?

La loi énonce le principe général et des circulaires ministérielles ou du collège des procureurs généraux précisent les modalités d'exécution des droits.

- 3.3 Comment ce rôle est-il exercé dans la pratique? Comment les procureurs collaborent-ils avec d'autres organes de l'État pour remplir ce rôle? Les procureurs ont-ils des fonctions de supervision ou de surveillance?

Les services d'accueil des victimes dépendent des régions, la Belgique étant un Etat fédéral mais il existe des protocoles d'accord et des circulaires pour assurer une bonne coopération avec les procureurs. Les procureurs sont aussi chargés de la surveillance de la procédure pénale et de la conduite des services d'enquête, en particulier en ce qui concerne la manière dont les victimes sont traitées par la police. Celle-ci est aussi soumise à des circulaires du ministre de l'intérieur sur le sujet.

- 3.4 Les victimes, les témoins et les personnes vulnérables peuvent-ils saisir directement le procureur pour la protection de leurs droits?

Oui. Le procureur ou le juge d'instruction saisi du dossier sont les interlocuteurs naturels de toutes les parties durant l'enquête pénale.

- 3.5 Les procureurs peuvent-ils agir de leur propre initiative pour protéger les droits des victimes, des témoins et des personnes vulnérables?

Le procureur ou le juge d'instruction saisi du dossier peuvent et doivent prendre toutes les initiatives utiles en faveur de ces personnes, conformément à la loi et aux circulaires en application

- 3.6 Pour l'assistance aux victimes, aux témoins et aux personnes vulnérables, les procureurs coopèrent-ils avec d'autres organes de l'État, des instances privées ou des ONG?

Certaines associations ont comme objet social la défense des intérêts des victimes et certaines se sont vu reconnaître le droit d'ester en justice en leur nom propre pour défendre les intérêts des victimes. Il existe une collaboration suivie avec des associations de victimes et des procureurs

- 3.7 Les procureurs bénéficient-ils d'une formation spécifique concernant la protection des droits des victimes, des témoins et des personnes vulnérables? Cette formation implique-t-elle également le personnel du Parquet et les services de police? Les procureurs jouent-ils un rôle dans la mise en œuvre de cette formation?

Oui, il existe des formations spécifiques tant pour les procureurs que les policiers auxquels les procureurs mais aussi des associations ou des policiers participent comme formateurs

- 3.8 Tout autre point que vous voulez soulever.

Il conviendrait aussi de s'intéresser (suggestions)

1. aux droits des victimes de mobiliser la justice même en cas d'inaction des procureurs,
2. à l'exercice des droits de défense des victimes (Avocats, payés ou non) : le rôle des procureurs dans le respect des droits des victimes
3. à l'indemnisation des victimes par les pouvoirs publics lorsque les auteurs sont inconnus ou impécunieux : rôle des procureurs ?

4. l'intervention des procureurs dans les procédures de médiation pénale comme alternative aux poursuites afin de veiller à l'indemnisation des victimes.
5. Une loi de 2005 prévoit dans la procédure pénale belge la possibilité pour une victime d'infraction de faire appel à tous les stades de la procédure pénale à un tiers (médiateur) pour opérer une médiation dite « réparatrice » visant à récupérer le préjudice subi. Il appartient au procureur d'informer la victime de cette possibilité.

Bosnia and Herzegovina / Bosnie et Herzégovine

1. Definitions

1. There is a definition of a victim in the commentary to the Criminal Law, for example in connection with the offense „rape“ or „trade in human beings“ but not in the Criminal Code itself.
2. There are not special regimes for victims without the institution of a „Safe House“ in the case of atrocities at home against women or children, and in case of international trade in human beings, the institution of an „Immigration Center“.
3. A definition of vulnerable persons is laid down in the following law codes: the law of public welfare and social security, the law on health care, the law on maternity and the law on protection of mother and child.

2. The rights of victims, witnesses, vulnerable persons

1. Within the framework of criminal procedure the law on protection of witnesses does exist for years. For witnesses it schedules the right to appear on court with a new identity or under initials.
2. Law on protection of witnesses, see above 1.
3. In the above mentioned law the complete scale of rights to the witnesses in a criminal procedure is scheduled, beginning with the protection of his identity if necessary and ending with his hidden appearance in the final conviction of the criminal and including the right of complaint about an infringement of the prosecutor or his staff.
4. The witnesses or other victims or vulnerable persons are informed about their rights by reading them their rights by hand a prepared paper. This information is officially given them by the police officer or the prosecutor respectively according to the law of criminal procedure.
5. A witness who bears false testimony could be sentenced by prison up to six months. To affect a witness can be sentenced by prison from six months up to five years.
6. The specific rights of children, juveniles, persons of mental incapacity or mental illness as well as of physical disabled persons are scheduled in the Criminal Code of Conduct.
7. Decisions which affect the rights or the social situation of a vulnerable person are for example brought to the attention of the parents, the family's advocate, the guardian, the court of guardianship, in case of compensation for the victim, to the attention of the Social Court and in case of the adjudication of a juvenile, to the probation officer.

8. Such vulnerable persons alone cannot bear testimony but only following authorization and/ or presence of their parents or their guardian respectively. Before a testimony of such vulnerable persons, his/ her mental responsible capacity, in case of a criminal offense his/ her criminal responsibility has to be assessed.

9. In principle children as well as mentally disabled persons cannot bear testimony. The obligation to assess who is a mentally disabled person is given in the hands of the court's physician. The right to refuse to give evidence is guaranteed by the criminal law for all persons only in case that they are personally involved in the crime concerning.

10. Vulnerable persons are evaluated by the responsible prosecutor. who has

to assess the personal risks concerning the witness of a crime. The same prosecutor has to decide about protective measures of the witness of a crime. Such measures could be to give a new identity before or after the testimony.

11. The special procedures for bearing testimony of a witness of crime depend

on the dimensions of the crime and the risks for the life of the witness or the danger from the side of criminals or the criminal organization involved. The testimony itself could be filmed or recorded and/ or given from behind a screen.

12. There is not a special manual to prevent a repeating victimization. In case

of outrage against the wife or the children at home a reiteration of such attacks cannot be prevented at all. In other cases of violence could be prohibited the entering the house of the victims by the former attacker.

13. in general foreigners have the same rights as the nationals.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

1. So far as the criminal procedure is concerned, the above mentioned rights of victims, witnesses and vulnerable persons are enforced and guaranteed by the management of the Prosecutor's Office. The prosecutor in charge of the case is the dominant actor in this matter. It is visible that his role will be further reinforced in the upcoming changes of our Code of criminal conduct.

2. See above 1.

3. In practice the prosecutor is directed to cooperate with the police, the other courts involved in the case and special state's institutions responsible for vulnerable persons, victims or witnesses. The prosecutors in general are strongly supervised by the hierarchy of the Prosecutor's Office on the different levels of Bosnia and Herzegovina. In case of mistakes by the prosecutor or his staff there are sanctions under the authority of the Hight

Judicial and Prosecutorial Council of Bosnia and Herzegovina.

4. Victims etc. could apply directly to prosecutors for protection of their rights.

5. Prosecutors need the approval of the judge to start legal actions protection

of the rights of victims etc.

6. Interaction for example takes place with other state bodies as the above mentioned institutions for social welfare, the police and the different courts on the three levels of the state Bosnia and Herzegovina. The cooperation with private entities, so far they exist at all, is not quite usual at the moment. But some NGO are helpful by providing education of prosecutors and judges in modernizing our social law in general. Policemen, prosecutorial staff and law enforcement agencies are usually included in the educational seminar.

7. See above 6.

8. -

Bulgaria / Bulgarie

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

Yes, there is a definition of a victim, established in the law: **Article 74 Criminal Procedure Code (CPC):**

(1) The person who has suffered material or immaterial damages from the criminal offence shall be a victim.

(2) After the death of such persons, this right shall pass on to their heirs.

(3) The accused party shall not exercise the rights of a victim within one and the same proceedings.

There is no a positive definition of a witness, but the Criminal Procedure Code (CPC) defines the witness testimony (as oral objective forms of evidence) in **art. 117** and enumerates the Individuals who may not have the capacity of witnesses in **art. 118**.

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

There are special measures for victims of trafficking in human beings and domestic violence, regulated by special laws, outside the CPC (*Combating Trafficking in Human Beings Act and Protection Against Domestic Violence Act*). The special protection and treatment of witnesses in the CPC, incl. restrictive measures towards the accused person, follow the assessment of the threat and objective vulnerability (age, disability, dependence), not a certain types of crime.

- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

There is no definition of vulnerable persons in the CPC. The perception of vulnerability is rather introduced in the practice on the basis of typical criteria – age, dependence from the perpetrator, victimization by sexual offence, trafficking of human beings, organized crime etc.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Yes.

- 2.2 If yes, are they established in the law or other legal instruments?

The rights of the victim and the witness are established in the law.

- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Article 75 CPC (victim)

- to be informed of his/her rights within the criminal proceedings;
- to obtain protection with regard to his/her personal safety and the safety of its relatives;
- to be informed of the progress of the criminal proceedings;
- to take part in the proceedings in accordance with the provisions of this Code;
- to furnish requests, note and objections;
- to file appeals with regard to the acts resulting in the termination or suspension of criminal proceedings;
- to have a counsel.

The authority which initiates the pre-trial proceedings shall immediately notify the victim thereof, if the latter has specified an address for service in Bulgaria.

The victim's rights arise if he/she has expressly requested to be involved in the pre-trial proceedings and specified an address for service in Bulgaria.

Article 119, 121, 122, 123, 140 CPC (witness)

- to use notes about figures, dates etc., available with them and which refer to their testimony;
- to receive remuneration for the lost workday and to be reimbursed for any expenses incurred, as well as to request revocation of acts that infringe upon their rights and lawful interests.
- to consult a lawyer, where he/she believes that by answering the question his/her fundamental rights are infringed upon (where a request to this effect has been made, the investigative body or the court shall allow for this possibility).
- to obtain protection (The prosecutor, the judge-rapporteur or the court shall, upon request or with consent of the witness, take measures for his/her immediate protection, should there be sufficient grounds to assume that, as a result of testimony, a real threat has arisen or may arise to the life, health or property of the witness, his/her ascending and descending relatives, brothers, sisters, spouse or individuals with whom he is in a particularly close relationship)
- children shall be interrogated as witnesses in the presence of a pedagogue or psychologist, and where necessary, also in the presence of their parent or guardian.
- witnesses shall not be obligated to testify on questions, the answers to which might incriminate them, their relatives of ascending and descending line, brothers, sisters, spouses or individuals with whom they live together, in the commission of crime]
- the spouse, ascendants, descendants, brothers, sisters of the accused party and the individuals with whom he/she lives together may refuse to testify

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

The investigator, the prosecutor and the court are obliged to inform the victim/witness about her/his rights and to explain them. This is their duty (formal arrangement). In the

court-phase the information is provided orally and put in the trial record. In the pre-trial investigation the information about the rights of the victim/witness is included in the protocol, signed by him/her.

- 2.5 What kind of penalties and sanctions are established for violation of these rights?
The violation of the rights of the victim gives ground for the court to terminate the court proceeding and to return the case file to the prosecutor. The judge's order shall state the violations made. In such cases the prosecutor shall eliminate the specified procedural violations. This is considered as a specific "procedural sanction" for a low quality work in the pre-trial phase.
Concrete evidence, which is collected not in compliance with the rules, may be deemed inadmissible. Disciplinary sanctions are also admissible for the prosecutor/investigator.
- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?
Yes. See above 1.2.
- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?
Yes.
- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?
Yes, the person testifies without the authorisation by his/her legal representatives. The parent/legal representative takes part in the interrogation only when this is necessary.
- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?
Yes, see above 2.3. Individuals, who on account of physical or mental deficiencies are unable to properly perceive the facts of significance in the case, or give reliable testimonies about them, may not have the capacity of witnesses.
- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?
The body (court or prosecutor) which conducts the case in the respective phase does the evaluation – when necessary with the help of experts. The person can play a certain role in this process by obtaining special measures of witness protection. The possible temporary measures under the CPC are a) personal physical protection and b) keeping his/her identity secret. Within up to thirty days of taking a temporary measure, the prosecutor or judge-rapporteur may propose the inclusion of the witness or his/her ascending or descending relatives, siblings, spouse or of the persons with whom he/she is in particularly close relationships into the protection programme.
- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

Yes. Every testimony can be filmed and recorded, based on a decision of the pre-trial body (Art. 238-238 CPC). This does not mean that in the trial phase the testimony will be not given or will be given without the presence in the court-room/behind the screen. The latter is possible in cases of: witness protection; interrogation before judge in the pre-trial phase or upon consent of the parties; phone and videoconference; interrogation of a child.

2.12 How is the prevention of repeated victimisation ensured?

There are several instruments:

- The possibility to read the depositions of the witnesses, given in the pre-trial phase before a judge.
- The possibility to read the depositions of the witnesses, given in the pre-trial phase upon the consent of the parties;
- The possibility to use videoconference.
- Witness protection.

2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

Nationals and foreigners enjoy equal treatment.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

See above 1.2 and 2.3. As “dominus litis” in the pre-trial phase the prosecutor plays a crucial role in guarantying the rights of victims, witnesses and vulnerable persons.

3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

The role is established in the law – CPC and other acts, concerning victim – support and witness protection.

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

The prosecutor directs the police in carrying the investigation and cooperates with other state bodies with competencies in this field (e.g. State agency for child protection, National commission for combating the trafficking in human beings) and NGOs. The prosecutor has supervisory or monitoring functions towards the police.

3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Yes, they can.

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Yes, under conditions.

In cases of criminal offences prosecuted following complaint of the victim (Art. 48-50 CPC)

- Where the victim, due to helpless state or dependency upon the perpetrator of the crime, cannot defend his or her rights and lawful interests, the prosecutor may join the

proceedings initiated after a complaint by the victim, at any stage of the case, and may take up the accusation.

- In exceptional cases of crimes prosecuted on the grounds of complaint by the victim, where the latter cannot defend his or her rights and legal interests due to a state of helplessness or dependency upon the perpetrator of the crime, the prosecutor may institute criminal proceedings ex officio.

In terms of bringing civil action (Art. 51 CPC)

Where the victim, on account of being underage or of a physical or mental deficiency, is unable to defend his/her rights and legal interests, the prosecutor may bring a civil action to his/her benefit.

- 3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Yes, see above 3.3.

- 3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Yes. The prosecutors take part in training courses, organized by the National Institute of Justice and in the Internal training program of the Prosecutor's office. The latter was focused on participation of children in criminal proceedings in the last 2 years. The prosecutors provide trainings for the police on regular basis.

- 3.8 Any other relevant point you wish to raise.

No.

Croatia / Croatie

1. Definitions

- 1.1 Is there in your country a **definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

ANS: Yes, definition of a victim is provided by Art.87.,paragraph 25 of the Penal Code. The definition of a witness is not strictly provided, but the Criminal Procedure Act provides in Art. 283.Para1. that a person who is likely to give information about the crime, the perpetrator and other relevant information is to be summoned as a witness.

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

ANS: Yes, the regime is provided by Art. 43. of the Criminal Procedure Act. The victims are entitled to efficient psychological and other types of aid provided by the State, right to participate in the criminal proceedings, right to receive information from the State Attorney on actions taken regarding the charges filed by the victim, right of complaint to a higher State Attorney, If a person is a victim of a crime punishable by imprisonment of 10 or more years, and suffers serious psycho-physical damage or other grievous consequences of a crime, the victim is entitled to an expert advisor before giving testimony, or filing a property damage request. A victim of a violent crime committed with intent has a right to receive a pecuniary remuneration from the State budget. The victims are to be informed of their rights by the police, State Attorney and the Judge, and the information on their rights will be noted in the record.

Furthermore, a child victim is provided with further rights under Art.44 of the Criminal Procedure Act;

- an attorney provided by the State
- escort by a person of trust while the actions are conducted
- secrecy of personal information
- exclusion of public from the proceedings

Under Art. 45. of the Criminal Procedure Act, a victim of a sex crime or a victim of trafficking has additional rights:

- to talk to a counselor before being questioned
- to be questioned at the police and at the State Attorney's Office by the person of the same sex
- to be questioned in the presence of a person of trust
- to withhold the answer to unnecessary questions regarding strictly personal life of a victim
- to demand to be questioned by the use of audio-visual device
- secrecy of personal information
- exclusion of public from the proceedings

- 1.3 Is there in your country a **definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

ANS: No, there is no general definition. The Criminal Procedure Act proves in Art. 292. Para.2. that a child over 14 and under 18 years of age, especially if it is aggrieved by a crime, will be questioned by the Judge of The Investigation, and the questioning will be conducted considerably.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

ANS: Yes, see above, under 1.2.

- 2.2 If yes, are they established in the law or other legal instruments?

ANS: See above, under 1.2.

- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Victim: see above under 1.2.

Witness: the witness has a right to withhold the answer if the answer could lead to great shame, serious damage or criminal prosecution of him or a close relative. If a child under 14 years of age is a witness it will be questioned without the presence of the parties, by using a psychologist and an audio-video device. If a witness is a child over 14 years of age the questioning will be conducted by the Judge of Investigation. Also, older persons or persons of poor health may be questioned at their home or place of residence, and by the use of audio-visual device.

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

ANS: The victim receives a written instruction of rights, and a witness is instructed of his rights in a written invitation, and at the beginning of his questioning.

- 2.5 What kind of penalties and sanctions are established for violation of these rights?

ANS: Disciplinary sanctions. Also, a record of the questioning may be deemed inadmissible, pending on the scope of the violation of rights.

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Ans: Yes, see above 1.2.

- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

ANS: Yes

- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

ANS: Alone, see above under 2.3.

- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

ANS: Yes, see above 2.3.

- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

ANS: the body conducting the proceedings is evaluating (State Attorney or a Judge), and if necessary, requests expert help.

- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

ANS: Yes, see under 2.3

- 2.12 How is the prevention of repeated victimisation ensured?

ANS: See under 1.2

- 2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

ANS: The rights are foreseen for nationals and foreigners alike

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

- 3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

ANS: see under 1.2.

- 3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

ANS: The role is established by Criminal Procedure Act, see under 1.2.

- 3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

ANS: The roles are fulfilled in practice by cooperation with the police, and Centers for social care, as well as with the Center for special guardianship, and other state bodies.

- 3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

ANS: Yes, they can apply to the police, prosecutors and courts, under Art. 46. of the Criminal Procedure Act.

- 3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

ANS: Yes, the prosecutor can inform the Center for social care or other state bodies on their own initiative.

- 3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

ANS: Yes, see above.

- 3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

ANS: Yes, there are education projects organised by the Judicial Academy.

- 3.8 Any other relevant point you wish to raise.

Czech Republic / République tchèque

1. Definitions

1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

*A definition of a victim in the Czech Republic is established in the Act on Victims of Crime (the Act No. 45/2013 Coll., as amended). According to Sec. 2, par. 2 and 3 of the Act on Victims of Crime **a victim means** a natural person, who suffered or allegedly suffered bodily harm, material or non-material harm, or at the expense of which the perpetrator enriched himself. In case the victim was killed by the criminal act, his relative in direct line, sibling, adoptive child, adoptive parent, spouse or registered partner or companion, if he is a close person, are also considered to be victims.*

In the particular circumstances, a victim or an especially vulnerable victim (see below) can be an aggrieved person or witness within the criminal proceedings.

1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

There is a special regime for victims of:

- *a criminal offence of trafficking in human beings; and*
- *a criminal act against human dignity in sexual area or a criminal act that encompassed violence or threat of violence, if there is an increased risk of causing secondary harm to the victim.*

From the 1st of April 2017, there will be a special regime for victims of:

- *a criminal offence of trafficking in human beings;*
- *a criminal offence of terrorist attack;*
- *a criminal act against human dignity in sexual area, a criminal act that encompassed compulsion, violence or a threat of violence, a criminal act committed for belonging to a nation, race, ethnic group, religion, class or other group of persons or a criminal act committed in favor of an organized criminal group, if there is an increased risk of causing secondary harm to the victim.*

1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

There is just a definition of a vulnerable victim in general sense in the Act on Victims of Crime. According to this Act vulnerable victims are called especially vulnerable victims.

Especially vulnerable victim, according to Sec. 2, par. 4 of the Act on Victims of Crime, means:

- a child;
- a person with a physical, mental or psychic handicap or sensory dysfunction that in connection with various obstacles can prevent full and effective fulfilment of oneself in the society in comparison to other persons;
- a victim of a criminal offense of trafficking in human beings;
- a victim of a criminal act against human dignity in sexual area or a criminal act that encompassed violence or threat of violence, if there is an increased risk of causing secondary harm to the victim especially with regard to his age, gender, race, nationality, sexual orientation, religion, medical condition, intellectual development, ability to express oneself, current situation in life or with regard to the relationship with the suspect of the crime or dependence on such person.

From the 1st of April 2017 the especially vulnerable victim will mean:

- a child;
- a person of a high age or a person with a physical, mental or psychic handicap or sensory dysfunction if these facts can in the context of circumstances of the case and personal circumstances prevent of his/ her full and effective fulfilment in the society in comparison to other persons;
- a victim of the criminal offence of trafficking in human beings and of the criminal offence of terroristic attack;
- a criminal act against human dignity in sexual area, a criminal act that encompassed compulsion, violence or a threat of violence, a criminal act committed for belonging to a nation, race, ethnic group, religion, class or other group of persons or a criminal act committed in favor of an organized criminal group, if there is an increased risk of causing secondary harm to the victim especially with regard to his age, gender, race, nationality, sexual orientation, religion, medical condition, intellectual development, ability to express oneself, current situation in life or with regard to the relationship with the suspect of the crime or dependence on such person.

2. The rights of victims, witnesses and vulnerable persons

2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

There are specific rights of:

- victims of crime;
- witnesses and aggrieved persons (an *aggrieved person* means a *person to whom was caused bodily harm, material damage or non-material harm by a criminal offence, or those at whose expense has the offender enriched himself by a criminal offence*; an aggrieved person is a party to criminal proceedings and this person may be a victim according to the Act on Victims of Crime) within the framework of criminal proceedings;
- vulnerable victims (according to the Act on Victims of Crime so called especially vulnerable victims); and
- some witnesses and aggrieved persons, which we may consider as vulnerable.

2.2 If yes, are they established in the law or other legal instruments?

The rights of victims and especially vulnerable victims are established in the Act on Victims of Crime.

The rights of witnesses, aggrieved persons and witnesses and aggrieved persons who may be considered as vulnerable, are established in the Code of Criminal Procedure.

2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Victims

According to the Act on Victims of Crime, a victim has the right to:

- *expert assistance*;
- *information*;
- *protection against impending threat*;
- *protection of privacy*;
- *protection from secondary harm*; this right include, in particular, the right to:
 - ask for measures preventing a contact between a victim and a person, which a victim have marked as a suspicious or against whom the criminal proceedings is conducted;
 - be questioned, within the questions directed to a victim's intimate sphere only if it is unnecessary; questions directed to a victim's intimate sphere need to be asked especially gently and in such a way there will be no need to repeat it again;
 - ask to be questioned by a person of the same sex;

- make a statement, in any stadium of criminal proceedings, what impact had a criminal offence on the victim's life;
- *financial assistance.*

An especially vulnerable victim has the same rights as a victim (see above), **but within the rights to protection from secondary harm, an especially vulnerable victim has, in particular, also the right to:**

- be questioned, if it is possible, by a specially trained person; if the victim is a child, the questioning has to be executed by a specially trained person, in principle, always;
- be questioned in such a way, there will be no need to repeat the questioning; if there is the need to question a victim again, the questioning should execute the same person as the former one;
- be questioned in such a way, there will be no visual contact between a victim and a person, which a victim have marked as a suspicious or against whom the criminal proceedings is conducted; in particular, the audio-visual technology is used;

Certain victims and all especially vulnerable victims have a right under the conditions of Sec. 51a of the Code of Criminal Procedure to legal assistance of an agent free of charge or at a reduced rate (see Sec. 6, par. 1 of the Act on Victims of Crime together with Sec. 51a of the Code of Criminal Procedure).

Witnesses

A witness has, in particular, the right to:

- refuse testimony;
- not to be questioned about circumstances related to classified information protected by a special legal enactment, that he/she is obliged to keep confidential, unless he/she was relieved of this obligation by a competent authority;
- remuneration of necessary expenses and compensation for proven lost income.

A witness under 18 years old:

- has also the right to be questioned about circumstances, reviving of which in memory could, in respect of his age, adversely affect his intellectual and moral development, with especial care and concerning its contents in such a way that it generally should not be necessary to repeat the questioning in further proceedings (Sec. 102 of the Code of Criminal Procedure);
- bears witness obligatorily in the presence of the authority of social and legal protection of children (see the Act No. 359/1999 Coll., on Social and Legal Protection of the Children, as amended) or any other person having experience with education of juveniles; and
- can bear witness in the presence of parents.

A witness at which the circumstances indicate that he/she (or persons close to him/her) is under a threat of bodily harm or any other serious risk of violation of their fundamental rights in relation to the testimony, and if a witness protection cannot be reliably ensured in another way, has a right to concealing the identity of the witness (see Sec. 55, par. 2 of the Code of Criminal Procedure).

A witness, who is in danger in connection with staying of the accused or convicted person at liberty, can request on specific information concerning an accused or convicted person detention (see Sec. 103a of the Code of Criminal Procedure).

Aggrieved persons

An aggrieved person has, in particular, a right to:

- *make proposals for additional evidence;*
- *inspect files;*
- *attend negotiation of agreement on the guilt and punishment;*
- *attend the trial and public session held on an appeal or approval of an agreement on the guilt and punishment;*
- *comment on the matter before the proceeding is concluded.*
- *claim compensation of damage harmed by crime.*

Some specific *aggrieved persons* which we may consider as *vulnerable* (e. g. aggrieved persons who *suffered a grievous bodily harm by an intentional criminal offence or children*) have a right to legal assistance of an agent free of charge or at a reduced rate.

2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

Victims

Irrespective if the criminal proceedings is conducted or not, in particular, the Police of the Czech Republic and authorities involved in criminal proceedings, are obliged to comprehensively inform the victims of their rights and allow them to fully exercise these rights. The same apply for the especially vulnerable victims. The specific conditions for providing information on rights of victims of crime are set in Sec. 7 et seq. of the Act on Victims of Crime.

Witnesses

According to the Code of Criminal Procedure (see Sec. 101), it is always necessary to instruct a witness, prior to questioning, about the right to refuse testimony and if necessary, also about prohibition of questioning or the possibility to proceed, as well as about the fact that he is obliged to tell the complete truth and not withhold anything. Furthermore, the witness must be instructed about the meaning of a testimony in the view of a public interest and about criminal consequences of a false testimony. If a person under fifteen years of age is questioned as a witness, he is instructed accordingly to his age.

Aggrieved persons

In the criminal proceeding the authorities involved in criminal proceedings are obliged to advise the aggrieved person on his rights and to provide him/her a full possibility to exercise them (see Sec. 2, par. 15 of the Code of Criminal Procedure).

The information about the rights of victims, witnesses and aggrieved persons can be also seen at websites of the Supreme Public Prosecutor's Office (see <http://www.nsz.cz/index.php/en>).

2.5 What kind of penalties and sanctions are established for violation of these rights?

Witnesses

Violation of the rights of witnesses during a testimony generally causes an inefficiency of this evidence.

Victims and aggrieved persons

Violation of rights of victims and aggrieved persons (and also of witnesses) by a public prosecutor can generally cause committing a disciplinary violation to which public prosecutors are responsible according to the Act on Public Prosecutor's Office (the Act No. 283/1993 Coll., as amended); **disciplinary violation means** *a deliberate violation of the public prosecutor's duties, the public prosecutor's deliberate behaviour or conduct diminishing the trust in the Public Prosecutor's Office activity or proficiency of its operation or degrading reputation and dignity of the public prosecutor's position.*

Similarly, police officers are responsible, according to the Act on the Service of Members of Security Forces (the Act No. 361/2003 Coll., as amended) for disciplinary offences; **disciplinary offence means** *a deliberate action, which violate an official duty and it is not a criminal offence or an action, which has the character of minor offence or other administrative offence.*

2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Vulnerable victims

According to the Act on Victims of Crime an **especially vulnerable victim** due to his/her age is:

- a child;
- a person with a physical, mental or psychic handicap or sensory dysfunction that in connection with various obstacles can prevent full and effective fulfilment of oneself in the society in comparison to other persons.

From the 1st of April 2017, the especially vulnerable victim due to his/her age will be:

- a child;
- a person of a high age or a person with a physical, mental or psychic handicap or sensory dysfunction if these facts can in the context of circumstances of the case and personal circumstances prevent of his/ her full and effective fulfilment in the society in comparison to other persons.

"Vulnerable witness"

A witness under 18 years old:

- has the right to be questioned about circumstances, reviving of which in memory could, in respect of his age, adversely affect his intellectual and moral development, with especial care and concerning its contents in such a way that it generally should not be necessary to repeat the questioning in further proceedings (Sec. 102 of the Code of Criminal Procedure);
- bears witness obligatorily also in the presence of the authority of social and legal protection of children (see the Act No. 359/1999 Coll., on Social and Legal Protection of the Children, as amended) or any other person having experience with education of juveniles; and
- can bear witness in the presence of parents.

"Vulnerable aggrieved persons"

An aggrieved person under the age of 18 is entitled to legal assistance provided by an agent free of charge (see Sec. 51a of the Act on Victims of Crime).

2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

In these situations, the public prosecutor may impose to an accused person one of the *preliminary measures* established in Sec. 88c et seq. of the Code of Criminal Procedure; in particular:

- *a measure of a prohibition to contact certain persons; or*
- *a prohibition to enter a residence.*

Under the conditions in the Code of Criminal Procedure (see Sec. 67 et seq.) an accused person can be also taken into custody by decision of a court and in pre-trial proceedings by a judge upon a motion of a public prosecutor.

Under the conditions in the Code of Criminal Procedure (see Sec. 73 et seq.) an authority deciding custody can substitute it by:

- *a guarantee from an interest citizens association or a trustworthy person capable to advantageously influence behaviour of the accused person;*
- *a written assurance from the accused person;*
- *a supervision of an probation officer over the accused person;*
- *one of the preliminary measures; or*
- *a pecuniary guarantee (bail).*

2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

Vulnerable victims can bear witness:

- *alone;*
- *with an agent; or*
- *with a confidant.*

A witness can generally bear witness:

- *alone;*
- *with an agent;*

A witness which is a child younger than 18, if he/she is questioned as a witness about circumstances, reviving of which in memory could, in respect of his age, adversely affect his intellectual and moral development:

- *bears witness obligatorily in the presence of the authority of social and legal protection of children (see the Act No. 359/1999 Coll., on Social and Legal Protection of the Children, as amended) or any other person having experience with education of juveniles; and*
- *can bear witness also in the presence of parents, if it may help to proper leading of a testimony.*

2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

According to Sec. 100 of the Code of Criminal Procedure, a right to refuse testimony as a witness has a person related of the accused person in direct lineage, his sibling, adoptive parent, adoptive child, spouse, partner and companion. A witness is entitled to refuse testimony also if it could cause danger of criminal prosecution to himself, his relative in direct lineage, sibling adoptive parent, adoptive child, spouse, partner and companion or to other persons in family or similar relationship to him, whose detriment would the witness perceive as his own.

2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

Vulnerable victims

Any person, who feels to be a victim of a committed crime, must be treated as a victim unless it is found otherwise or unless it is a clear abuse of the position of the victim according to the Act on Victims of Crime (presumption of a victim – see Sec. 3, par. 1 of the Act on Victims of Crime).

From the 1st of April 2017, there will be established in the Act on Victims of Crime, that if there will be any doubts if the victim is especially vulnerable victim or not, it will be necessary to consider a victim as an especially vulnerable victim.

“Vulnerable witness”

A witness younger than 18 - the evaluation is made by an authority involved in criminal proceedings who conduct a questioning (*“prior to questioning a witness it is always necessary to identify him”* - see Sec. 101, par. 1 of the Code of Criminal Procedure).

A witness at which the circumstances indicate that he/she (or persons close to him/her) is under a threat of bodily harm or any other serious risk of violation of his/her fundamental rights in relation to the testimony - the evaluation is made by an authority involved in criminal proceedings who conduct a questioning – in particular by a Police authority; if a Police authority finds no reason for providing this protection, even though the witness demands it, the Police authority is obliged to submit the matter to the public prosecutor to review it (see Sec. 101a of the Code of Criminal Procedure).

A witness, who is in danger in connection with staying of the accused or convicted person at liberty - the evaluation is generally made by the requested authority (i. e. detention centre). If a witness doesn't file this request and accused or convicted person was released or escaped, and there is a reasonable concern that there is a danger in relation to the accused or convicted person being at liberty, an authority involved in criminal proceedings, or other authority set in Sec. 103a, par. 2 of the Code of Criminal Procedure, is obliged to inform an Police authority; Police authority is then obliged to take necessary measures to ensure the safety of witness.

“Vulnerable aggrieved persons”

A legal assistance provided by an agent free of charge *for an aggrieved person under the age of 18* is evaluated by *a judge* in pre-trial proceedings and in trial proceedings by *the presiding judge* (see Sec. 51a of the Code of Criminal Procedure). The petition for this decision is in pre-trial proceedings submitted by an aggrieved person through the public prosecutor, who attaches his opinion.

2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

According to the Act on Victims of Crime an especially vulnerable victim has a right to be questioned in such a way, there will be no visual contact between a victim and a person, which a victim has marked as a suspicious or against whom the criminal proceedings is conducted; to securing of this right is used, in particular, the audio-visual technology (see Sec. 20, par. 4).

According to Sec. 52a of the Code of Criminal Procedure, technical devices for transferring picture and sound may be used in the course of performing acts in criminal proceedings, if it is necessary for the protection of rights of persons, especially with regard to their age or health condition, or if it is required by security or other serious reasons and if the nature of these acts allow it and if it is technically possible.

To protective measures within the framework of the criminal proceedings see the chapter no. 2. 7.

2.12 How is the prevention of repeated victimisation ensured?

There are special provisions in Sec. 17 et seq. of the Act on Victims of Crime providing protection from secondary harm (secondary victimisation).

2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

According to the Act of Victims on Crime, a victim has, in principle (if the Act doesn't set anything else), the rights according to this Act irrespective of his/her nationality.

The rights according to the Code of Criminal Procedure belong, in principle, to particular persons, irrespective of their nationality.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

Authorities involved in criminal proceedings are according to law generally obliged to:

- advise the *aggrieved person* on his rights and to provide him a full possibility to exercise them;
- inform the *victims and especially vulnerable victims* of their rights and allow them to fully exercise these rights;
- instruct *witness* about the right to refuse testimony and if necessary, also about prohibition of questioning or the possibility to proceed according to provisions on concealing the identity of a witness, as well as about the fact that he is obliged to tell the complete truth and not withhold anything; a witness must be also instructed about the meaning of a testimony in the view of a public interest and about criminal consequences of a false testimony.

According to Sec. 174 of the Code of Criminal Procedure a public prosecutor conducts supervision over compliance with the legality in pre-trial proceedings.

3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

The role of public prosecutor as a supervisor over compliance with the legality in pre-trial proceedings is established in Sec. 174 of the Code of Criminal Procedure. This role is also set in the Instruction of General Nature on Criminal Proceedings (the Instruction of General Nature of the Supreme Public Prosecutor No. 8/2009 Coll., as amended).

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

There are known any capital problems within a role of public prosecutor as a supervisor over compliance with the legality in pre-trial proceedings.

Authorities involved in criminal proceedings are generally obliged to assist each other in execution of tasks arising from the Code of Criminal Procedure (see Sec. 7 of the Code of Criminal Procedure).

In pre-trial proceedings, a public prosecutor can, *inter alia*, give binding instructions for the investigation of the criminal offences to Police authority (see Sec. 174 of the Code of Criminal Procedure).

Public authorities, legal entities and natural persons are according to the Code of Criminal Procedure generally obliged to comply with request of authorities involved in criminal proceedings in the performance of their tasks; public authorities are also obliged to immediately notify the public prosecutor or police authorities of facts indicating that a criminal offence has been committed (see Sec. 8, par. 1).

3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Victims

In general, victims are entitled to apply directly to prosecutors for protection of their rights, because a public prosecutor is obliged to allow them to fully exercise their rights (see Sec. 3, par. 4 of the Act on Victims of Crime).

Witnesses

In general, witnesses may apply for protection of their rights during bearing witness to the authority which conducts a questioning. If there is a public prosecutor, a witness may apply to him/her.

Aggrieved persons

In general, aggrieved persons are entitled to apply directly to prosecutors for protection of their rights, because a public prosecutor is obliged to provide to aggrieved persons a full possibility to exercise their rights (see Sec. 2, par. 15 of the Code of Criminal Procedure).

An aggrieved person (i.e. also a victim if he/she takes part in criminal proceedings as an aggrieved person) has in the criminal proceedings the right to ask a public prosecutor to

eliminate delays in the proceedings or any defects in the procedure of a Police authority (see Sec. 157a of the Code of Criminal Procedure).

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

In criminal proceedings if a public prosecutor finds out serious deficiencies in a procedure of a Police authority, he/she can point out them to a chief officer of Police authority in writings. A public prosecutor may also submit a supervisory file with a record on deficiencies to the chief public prosecutor, who may discuss a matter with a chief of Police authority and who may propose a remedial measure. If this does not lead up to remedy, chief public prosecutor informs a chief officer of the superior Police authority with the requirement to eliminate the deficiencies (see Sec. 8 of the Instructions of General Nature of the Supreme Public Prosecutor on Criminal Proceedings).

According to Sec. 158, par. 2 of the Code of Criminal Procedure, a public prosecutor is obliged to accept reports of facts suggesting that a criminal Procedure has been committed – a public prosecutor than hand over a criminal complaint to a competent police authority with an instruction to verify. A public prosecutor may also issue an instruction to issue a resolution on initiation of criminal prosecution (see Sec. 14 of the the Instructions of General Nature of the Supreme Public Prosecutor on Criminal Proceedings).

3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Within the criminal proceedings the public authorities, legal entities and natural persons have a general duty to comply with request of public prosecutor in the performance of his/her tasks (see Sec. 8, par. 1 of the Code of Criminal Procedure). All authorities involved in criminal proceedings also generally cooperate with public interest associations and utilise their educational activities (see Sec. 2, par. 7 of the Code of Criminal Procedure).

According to the Act on Victims of Crime (see Sec. 3, par 5), Police of the Czech Republic and authorities involved in criminal proceedings cooperate within providing the assistance to the victims with entities providing the assistance to the victims of crime.

3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

The training of judges, public prosecutors and other persons acting in the judiciary provides the Judicial Academy, which is the central institution of the justice sector for training of judges, public prosecutors and other target groups (see the Act No. 6/2002 Coll., on Courts and Judges, as amended).

3.8 Any other relevant point you wish to raise.

Denmark / Danemark

1. Definitions

1.1. There are no definition of a victim or a witness establish by law or other legal instruments in Denmark. In the Danish Administration of Justice act there are separate sections regarding witnesses and separate sections regarding the rights of victims. In general a victim is a person or company, who has been victimized (victim of a criminal offence), while a witness is any kind of person who can contribute information to the police about a crime.

1.2. Victims in general have a number of rights. Victims have the right to present in court and to be notified about the outcome of the case. In cases about serious violence and sexual offenses the victim can ask the court to be notified when the offender is released on parole. Victims have the right to claim compensation from the perpetrator and the claim can be dealt with together with the criminal case.

In criminal cases about for example domestic violence, sexual abuse, attempt of homicide the victim has the right to a support attorney.

Compensation for bodily injury caused by a criminal offence is provided by the state under the law on victim compensation. In cases of violent crimes, domestic violence and other related kinds of crimes the perpetrator can be granted an emergency barring order, restraining order or/and ban of residence at request of the victim.

1.3. There is no definitions of vulnerable persons establish by law. The Director of Public Prosecution sets guidelines for prosecutors handling of criminal cases including guidance of handling cases involving vulnerable persons like children, mentally disabled persons and persons that has been victim of a crime.

2. The rights of victims, witnesses and vulnerable persons

2.1. There are specific rights of victims, witnesses and vulnerable persons set in the Danish Administration of Justice act and in guidelines from The Director of Public Prosecutions.

The rights include information about the case and the expected progress of the case, charges against the perpetrator, witness rights and duty, getting help throughout the process and the possibility of getting a support attorney and compensation.

In terms of vulnerable persons the Danish Administration of Justice act contains special rules on interrogation of children and mentally disabled people involved in a criminal case as victims or witnesses.

In cases about e.g. violence, domestic violence and stalking the victim can request a restraining order, emergency barring order or ban of residence against the perpetrator.

2.2. See section 2.1.

2.3. See section 2.1.

2.4. In Guidelines of The Director of Public Prosecutions, section on guidance of aggrieved, guidelines to the prosecutors and to the police on how to inform victims about support services and legal measures available to them are set. The prosecutor have to inform and guide the victim of a violent crime about the case and the expected progress of the case. The information and guidance should be given regularly and includes information about charges and the court case, witness rights and duty, getting help throughout the process and the possibility of getting a support attorney. On the homepage of The Director of Public Prosecution detailed information for victims is to be found. Leaflets for victims in seven languages is also available here.

Information about possibilities for restraining orders, ban of residence and emergency barring orders are available and a leaflet for victims of following, harassment and stalking is also available on the homepage.

2.5. It will depend on the type of breach. In serious cases a breach could result in disciplinary action or have consequences for the employment of the prosecutor or police officer responsible for the breach.

2.6. See section 2.1. The Danish Administration of Justice act contains special rules on interrogation of children and mentally disabled people involved in a criminal case as victims or witnesses. Children under 13 years and other vulnerable persons (typically persons who are mentally disabled) can be interrogated on video. The video will represent their testimony in court. If the children are under 18 years will the custodial parent be present when the child must testify. These persons also have the right to a support lawyer.

2.7. The police and the prosecution service is committed to inform the social services in cases of crime against children. Neither the police or the prosecution service is committed to inform other authorities unless the perpetrator is a public official person. A conviction for a criminal offense will appear on the perpetrator's criminal record.

2.8. The prosecutor decides which witnesses who have to testify during the proceedings whether it is children or vulnerable persons. See also section 2.6.

2.9. See section 2.8. Children and mentally disabled persons have the same rights to refuse to bear testimony as other witnesses. The rights are set in the Danish Administration of Justice act (sec 171) including the right to refuse to bear testimony against close relatives.

2.10. The police have specially trained staff to manage interviews with children and

other vulnerable persons.

2.11. See section 2.6. It is possible to get the perpetrator led to another room while the witness gives evidence in court if there are specific reasons that speak for an unreserved explanation is not otherwise achievable. The decision is taken by the judge.

2.12. In cases about for example domestic violence, threats, harassment and sexual abuse it is possible for the victim to seek a restraining order, ban of residence and emergency barring orders on the perpetrator.

2.13. There is no distinction made between Danish citizens and foreigners.

1.The role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1. The police and the prosecutor service are required to comply with the rules of rights of victims, witnesses and vulnerable persons. The Director of Public Prosecution sets guidelines for the prosecutors handling of criminal cases. In Guidelines of the Director of Public Prosecutions, section on guidance of aggrieved, guidelines to the prosecutors and to the police on how to inform victims about support services and legal measures available to them are set. Victims and witnesses can also seek information about their rights on the homepage of prosecution service.

3.2. The rules are established by Law and in guidelines from the Director of Public Prosecutions. See also section 3.1.

3.3. See section 3.1.

3.4. The obligation to inform and advise victims and witnesses relies primarily on the police as the police have the main contact with the victims and witnesses during the investigation of the crime. The prosecutor must ensure that the witness's rights are observed. Usually the prosecutor only have contact with witnesses in court but if a prosecutor is contacted by a victim or a witness before or after the court hearing the prosecutor should inform victim or a witness about their rights according to the Guidelines of the Director of Public Prosecutions.

3.5. See section 3.4.

3.6. A victim of a serious crime has the right to a support attorney to assist them. The support attorney should assist them in necessary contact with other state bodies, private entities and others. See also section 3.4.

3.7. The Director of Public Prosecutions has prepared a training program for all prosecutors. It is mandatory for all newly hired lawyers in the prosecution service to go

through basic training as a prosecutor. In the basic training, prosecutors are educated in the handling of criminal cases, also the handling of vulnerable persons, who are attending as witnesses in criminal cases. The program has focus on questioning victims and witnesses - also witnesses who may be particularly vulnerable. The program includes training on psychological aspects, advice and guidance from experienced prosecutors and exercises.

Furthermore, the Director for Public Prosecution offers a course related to crimes involving children. The course deals with the rules concerning abuse, from report to conviction, including the particular rules in relation to the questioning of children.

Estonia / Estonie

1. Definitions

1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

Yes, a victim is a natural or legal person whose legal rights have been directly violated by a criminal offence aimed at the person or by an unlawful act committed by a person not capable of guilt. In the case of an attempt to commit a criminal offence, a person is a victim even if, instead of the legal rights attacked, such legal rights are violated the violation of which is covered by the legal rights attacked.

1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

Yes. Estonia's Victim Support Act provides the bases for state organisation of victim support, organisation of conciliation and women's support centre service, organisation of victim support service to victim of trafficking in human beings and sexually abused minor, compensation for the cost of the psychological care paid within the framework of provision of victim support service and the organisation of payment of state compensation to victims of crimes of violence.

In addition, the body conducting proceedings is obligated to assess whether any circumstances exist which give reason to believe that the victim requires special treatment and protection in criminal proceedings.

1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

Yes, indirectly. Estonia's Penal Code establishes that the commission of an offence knowingly against a person who is less than eighteen years of age, pregnant, in an advanced age, in need of assistance, has a severe mental disorder, who is in a service or financially dependent relationship with the offender, and against a former or current family member of the offender, against a person who lives with the offender or a person who is otherwise in a family relationship with the offender is considered an aggravating circumstance. The Code's article 121 paragraph 2 stipulates that while causing damage to the health of another person and physical abuse which causes pain is punishable by up to one year's imprisonment, the same act if committed in a close relationship or relationship of subordination is punishable by up to five years' imprisonment.

2. The rights of victims, witnesses and vulnerable persons

2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Yes.

2.2 If yes, are they established in the law or other legal instruments?

Yes.

2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Yes, a victim has the right to:

- 1) contest a refusal to commence or termination of criminal proceedings pursuant to the procedure provided for in the Code of Criminal Proceedings.
- 2) file a civil action or proof of claim in public law through an investigative body or the prosecutor's office during the term provided for in the Code.
- 3) give or refuse to give testimony on the bases provided for in the Code
- 4) submit evidence;
- 5) submit requests and complaints;
- 6) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes;
- 7) examine the materials of the criminal file pursuant to the procedure provided for in the Code.
- 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 and the amount of damage set out in the charges and the civil action or the proof of claim in public law;
- 10) give consent to the application of temporary restraining order and request application of restraining order pursuant to the procedure provided for in the Code.
- 11) request that his or her hearing is conducted by a person of the same sex when it comes to sexual violence, gender violence or a criminal offence committed in close relationship, except if the hearing is conducted by a prosecutor or a judge or if this would hinder the course of the proceeding.

2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

Victims and witnesses are informed of their rights immediately when they are involved in the proceedings as a victim by subjection to procedural acts or by a ruling of the body conducting

proceedings. The victim, when involved in criminal proceedings for the first time, signs a document which explicitly outlines the victim's rights and obligations.

If a body conducting proceedings has not received appropriate training, involvement of a child protection official, social worker, teacher or psychologist in the hearing of a minor is mandatory if:

- 1) the witness is up to ten years of age and repeated hearing may have a harmful effect on the mind of a minor;
- 2) the witness is up to fourteen years of age and the hearing is related to domestic violence or sexual abuse;
- 3) the witness is with speech impairments, sensory or learning disabilities or mental disorders.

If necessary, the hearing of minors is video recorded. The hearing of minors is video recorded if the intention is to use such hearing as evidence in court proceeding because hearing of a minor directly in a court is impossible due to his or her age or mental state.

2.5 What kind of penalties and sanctions are established for violation of these rights?

A person whose rights are violated by the unlawful activities of a public authority in a public law relationship (hereinafter injured party) may claim compensation for damage caused to the person if damage could not be prevented and cannot be eliminated by the protection or restoration of rights.

Knowingly preventing a witness from appearing at pre-trial proceedings or court proceedings as well as knowingly influencing the specified persons for the same purpose is punishable by a pecuniary punishment or up to one year's imprisonment.

2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Yes. The body conducting proceedings is obligated to assess whether any circumstances exist which give reason to believe that the victim requires special treatment and protection in criminal proceedings. The assessment takes into consideration the victim's personal characteristics, the gravity and nature of the criminal offence, the personality of the suspect, the circumstances relating to the commission of the criminal offence and the damage caused to the victim. A victim who is a minor is presumed to need special treatment and protection in criminal proceedings.

2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

No, a civil court is not automatically informed of the particular decision reached by the criminal court.

2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

Yes, they can.

2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

The following persons have the right to refuse to give testimony as witnesses:

- 1) the descendants and ascendants of the suspect or accused;
- 2) a sister, stepsister, brother or stepbrother of the suspect or accused, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the suspect or accused;
- 3) a step or foster parent or a step or foster child of the suspect or accused;
- 4) an adoptive parent or an adopted child of the suspect or accused;
- 5) the spouse of or a person permanently living together with the suspect or accused, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended.

A witness may also refuse to give testimony if the testimony may lay blame on him or her or a person listed in the previous paragraph for the commission of a criminal offence or a misdemeanour or if he or she has been acquitted or convicted in the same criminal offence as a joint principal offender or an accomplice.

2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

As outlined above, this evaluation is conducted by the body conducting proceedings. The assessment takes into consideration the victim's personal characteristics, the gravity and nature of the criminal offence, the personality of the suspect, the circumstances relating to the commission of the criminal offence and the damage caused to the victim. A victim who is a minor is presumed to need special treatment and protection in criminal proceedings.

Among the applied protective measures are conducting the hearing in the premises adapted for the special needs of the victim, by a specialist trained for hearing victims with special protection needs or with his or her participation or, if possible, by the same person during the whole proceedings.

2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

At the request of a party or on its own initiative, the court may allow a telehearing to be conducted or use a partition to hide the witness from the accused. A body conducting the proceedings may organise telehearing 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. Telehearing by telephone is permitted only with the consent of the person to be heard and the suspect or accused. The consent of the suspect or accused is unnecessary for the telehearing of anonymous witnesses by telephone.

2.12 How is the prevention of repeated victimisation ensured?

Provision of victim support services includes:

- 1) counselling of victims;
- 2) assisting victims in communicating with state and local government authorities and legal persons.
- 3) ensuring safe accommodation;
- 4) ensuring catering;
- 5) ensuring access to necessary health services;
- 6) providing necessary material assistance;
- 7) providing necessary psychological assistance;
- 8) enabling necessary translation and interpretation services for receiving the services provided within the framework of victim support services;
- 9) providing other services necessary for physical and psycho-social rehabilitation of victims.

2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

Estonia's Code of Criminal Proceedings does not differentiate between victims of Estonian nationality and foreign victims. While the language of criminal proceedings is Estonian, victims who are not proficient in the Estonian language shall be ensured the assistance of an interpreter or translator. In the case of doubt, the body conducting proceedings shall determine the proficiency in the Estonian language. If it is impossible to determine the proficiency in the Estonian language or it proves to be insufficient, the assistance of an interpreter or translator shall be ensured. If a victim is not proficient in the Estonian language, translating of the text which is essential for understanding the substance of the ruling on termination of criminal proceedings or the court judgment or for ensuring the fairness of the proceedings into his or her native language or a language in which he or she is proficient may be requested within ten days. A victim may also request translating of other documents which are essential for ensuring his or her procedural rights. If the body conducting the proceedings finds that the request for translating other documents is not justified, such body shall formalise the refusal by a ruling.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

A victim may file an appeal with a prosecutor's office against refusal to commence criminal proceedings. Depending on who issued the disputed refusal, this appeal is heard by either the state or the district prosecutor's office.

A victim also has the right to file an appeal with the prosecutor's office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights. Similarly, this appeal is heard by either the state or the district prosecutor's office or the county court.

3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

Yes, this role is established in the Estonian Code of Criminal Proceedings.

The prosecutors' code of ethics explicitly stipulates that the prosecutor is to take into account the rights of victims and witnesses as well as human rights in general.

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

Yes, in the appeal's process described above the prosecutor acts as a supervisory body to the body conducting proceedings and a prosecutor of the Office of the Prosecutor General conducts supervision of District Prosecutor's Offices. During the proceedings, the prosecutor can also request a letter of explanation regarding said supposed violation from the relevant member of the state's organ in order to assess whether a violation of the victim's rights has indeed occurred.

3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Yes.

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Yes, the appeals' process described above can be initiated (and, in practise, is initiated) by the supervisory department of Office of the Prosecutor General.

3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Yes.

3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Yes, members of the Prosecutor's Office and law enforcement agencies routinely take part in relevant training programs as well as conduct them themselves.

Finland / Finlande

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

There is not any definition of the victim in the Finnish law. The common definition of the victim is said in the legal literature. According to legal literature the victim is

1) the person, who owns the object of legal protection, that has been violated or threatened by a crime

2) the one, who can claim compensation because of the crime

3) the one, whose legal sphere is threatened by the crime

There is no exact definition of the witness in the Finnish law. According to Criminal Procedure Act everybody, except the party of the case, can be heard as a witness. In the Criminal Procedure Act there are mentioned some situations, when the person, who is in certain position, must not be heard as a witness or when this kind of person may refuse to testify.

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

The victims of trafficking in human beings have a possibility to get to the assistance system for victims of trafficking of human beings. They have this possibility even if there is no charge or judgment on trafficking on human beings.

In Finland we have also so-called safe houses for victims of domestic violence.

- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

We have not any special, official definition of vulnerable person. In the Criminal Investigation Act there are provisions on the procedure, how the police must assess, if the victim of the crime is in the need of special protection. (directive 2012/29/EU)

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Yes, we have some specific rights, that are listed at the point 2.3.

2.2 If yes, are they established in the law or other legal instruments?

They are established in the law.

2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

A victim has the right to

- claim compensation for the damages.

- have a lawyer in the pre-trial investigation and in the court hearing. Under certain circumstances the legal aid is free of charge.

- if a victim is a victim of a sexual crime or other crimes against life, health and freedom and if the victim is heard in the court hearing, he/she has the right to a support person,

- if the victim is summoned to the court hearing to give a testimony he/she has the right to a compensation for the expenses that has been caused by coming to the court hearing

- a right for interpretation of the main documents that has been gathered in the pre-trial investigation and that are presented in the court hearings.

- a right for interpreter in the pre-trial investigation and in the court hearing

- a right to get the decision not to start the pre-trial investigation or to stop the pre-trial investigation and the decision not to prosecute

- a right to get to know when and where the main hearing is and right to get the judgment.

A victim has these rights even whether or not he/she is assessed as a person in the need of special protection

A witness has the right for compensation for the expenses that has been caused for coming to the court hearing.

If a victim is in the need of special protection, in the pre-trial investigation he/she has the right to

- to be heard in pre-trial investigation in a place, that is suitable for vulnerable persons,

- to be heard in the pre-trial investigation by the same investigators

- to be heard in the pre-trial investigation by the investigator, who is same gender as the person himself/herself

In the court hearing the victim or witness can be heard

- so that the defendant is not in the same room

- so that the defendant does not see a victim or a witness, although the defendant is in the same room

- a victim or a witness can be heard via a videoconference if certain conditions, that are mentioned in Criminal Procedure Act, are fulfilled

- A victim or witness can be heard so that his/her testimony is videotaped in the pre-trial investigation and this videotape is seen in the court hearing. This is possible if certain conditions that are mentioned in Criminal Procedure Act, are fulfilled.

-In certain cases, mainly if it is question of sexual crimes, the main hearing is in closed doors.

-In certain types of documents are ordered secret, if a victim so asks.

-In certain cases the name of a victim and other personal details are ordered secret, if he/she so asks.

These abovementioned rights are established in law. A victim has these rights if he/she is in the need of special protection and also in some other situations that are mentioned in the Criminal Procedure Act. A witness has these rights also in some situations that are mentioned in that law.

In many court houses it is also possible that a victim and a witness can wait the beginning of the hearing in a place, so that he/she need not meet the defendant. In Finland judges and prosecutors may have training how to deal with vulnerable persons. In some court houses there are also some voluntary persons who inform victims and witnesses about the procedure in court hearings.

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

According to Criminal Investigation Act a police has to inform a victim in the pre-trial investigation about many of the rights that are mentioned above. There are also many NGO:s, that inform victims about their rights. These NGO:s have also data pages and leaflets where victims can find information.

- 2.5 What kind of penalties and sanctions are established for violation of these rights?

There are not any special penalties for violations of these rights. But a victim or a witness can make an extraordinary appeal on the basis of the procedure of the civil servant (police, prosecutor, judge)

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

-Children under 15 years of age can be heard so, that their testimony is videotaped in the pre-trial investigation and this video tape is shown in the court hearing. The victims of certain sexual crimes have this same right if they are under 18 years of age and if they ask to be heard like this. Victims that are under 18 years of age and who are in the need of special protection have this same right. Mentally disordered persons can also be heard like this. In these cases the defendant has to have a possibility to make questions for them in the pre-trial investigation.

Persons under 15 years of age and mentally disordered persons can be heard also via videoconference. Persons that can not come to the main hearing for instance for health problems can also be heard via videoconference.

These above-mentioned rights are established in Criminal Procedure Act.

In practice in many courts it is possible that this kind of persons may wait their turn to give their testimony in a peaceful room, where they don't have to meet the defendant. In practice it is possible in many courts that persons who don't want to see the defendant may give their testimony behind the curtain.

- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

In Finland the criminal law cases are separate from civil law cases. The only way to bring these kind of issues to other bodies is that the parties will bring it to the attention of the court.

- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

In Finland the process is oral. In some situations the person (injured party or witness) may be heard in the main hearing without being presence of a party or another person if the court deems that this is appropriate and such hearing is necessary

- (1) in order to protect the person being heard or a person related to said person from a threat directed at life or health;
- (2) if the person being heard would otherwise not reveal what he or she knows about the matter; or
- (3) if a person disturbs or attempts to mislead the person being heard during his or her testimony.

The person (injured party or witness) may also be heard in the main hearing behind a screen or from another place by video.

- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

In Finland there is free assessment of evidence. If the injured party does not want to bear testimony he or she does not have to. General rule is that a witness cannot refuse to bear testimony. If the witness is a close relative to the parties he or she can refuse to bear testimony because of the close relationship.

Under 15-year-olds and disabled persons can be heard at the court if the court decides it is appropriate and if it is very meaningful and it is not harmful for the person who will be heard. Court can also order a support person if needed.

- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

The police proceed the evaluation. The investigator of the case discusses with the assessed person and asks relevant questions from the person. Then the investigator

presents the results of the discussion to the head of the investigation. They will fill in a form which is then delivered to the prosecutor of the case.

See the answer 2.8. In most cases children who are victims of sexual crimes can be heard by the police and the hearing video recorded. After the recording the defense can ask relayed by the police new questions if they are appropriate. Then the video recording can be presented in the main hearing without the child being present.

Also during the trial phase the session can be carried out without the audience.

By the request of the injured party his or her identity can be ordered to be in secret.

- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?
See the answer 2.10.

- 2.12 How is the prevention of repeated victimisation ensured?
There is no legislation about this issue and the prosecutors do not have answer to this question.

- 2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?
It is for all individuals.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

- 3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?
See all the earlier answers, rights of victims are mainly in law and prosecutors have official duty to take care that they are used.

There are specific rules about prosecutors role in **Criminal Investigation Act:**

Section 2 – The competence of the public prosecutor in the criminal Investigation

(1) On the request of the public prosecutor, the criminal investigation authority shall conduct a criminal investigation or perform a criminal investigation measure. Also otherwise the criminal investigation authority shall comply with orders given by the public prosecutor intended to ensure clarification of the matter in the manner referred to in Chapter 1, section 2.

(2) After a matter has been transferred to the public prosecutor following the conclusion of the investigation, the public prosecutor decides on criminal investigation measures.

Section 3 – Obligation to cooperate

- 3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

See the previous answer. The role of prosecutors is established in law.

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

3.4 Mainly it is fulfilled, but of course in a particular case it's always depends on the Prosecutor.

And it's requires training, that is, unfortunately, too little.

3.5 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Yes they can, but the general rule is that they would be taken into account already in the investigation.

3.6 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Yes, in some cases. See the earlier answers, the prosecutor is mentioned in many rules the one who can make the initiative to the court.

For example (Act on Restraining Orders;Section 5;Imposition of a restraining order may be applied for by anyone who feels threatened or harassed or by a police, social welfare or **prosecuting authority**)

3.7 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Yes, and but again the general rule is that they would be taken into account already in the investigation. And the Prosecutor shall ensure that this is happening.

3.8 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Yes they do, and we had have some training, but it should be more and on a regular basis and In addition to revising

3.9 Any other relevant point you wish to raise.

Germany / Allemagne

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

The Criminal Procedural Law does not provide a specific definition of the legal terms “victim” or “witness”, but defines in a number of provisions specific rights and duties of these persons (see 2.1. - 2.3.).

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

In general, there are no special regimes for certain types of crime. Nonetheless, in particular cases the criminal law entails certain special rules for victims of specific types of crime. E.g. the beginning of the limitation period for sexual abuses of children begins only after the 18th birthday of the victim in order to secure an autonomous decision to initiate criminal proceedings.

- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

There is no a general definition of the term “vulnerable person” in German Law. However, there are provisions to grant special protection to certain persons during the criminal proceedings and the court hearing, e.g. children (see answers 2.6. – 2.9.).

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?
- 2.2 If yes, are they established in the law or other legal instruments?
- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Questions 2.1. – 2.3 shall be answered cohesively. German law provides the following rights for victims, witnesses and vulnerable persons:

Rights of victims:

Victims of crimes have the right to be represented by an attorney, who also may inspect the files. For certain crimes, victims can join a public prosecution as private accessory

prosecutor, who shall be summoned to the main hearing before the court and is entitled to be present at the main hearing even if he is to be examined as a witness.

Furthermore, victims of crimes can bring actions for damages which are to be decided in the course of the criminal proceedings.

In case the prosecution office terminates the investigation, a person whose rights have been infringed by the alleged act in a direct way (aggrieved party) has the right to lodge a complaint with the Higher Regional Court in order to exact public charges.

Rights of witnesses:

As a general rule, a witness is under the obligation to appear before the court (or before the prosecutor during the investigation) and to give full and true testimony in the presence of the defendant and/or the defence counsel. However, there are exceptions to this rule as to both the duty to testify and to the circumstances under which a testimony is to be given:

Due to section 52 of the German Code of Criminal Procedure close relatives of the accused are entitled to refuse testimony.

Also, certain professionals and professional-assistants who receive confidential information in a consultative capacity (e.g. clergymen, defence counsels, lawyers, and drugs dependency counsellors) are entitled to refuse testimony pursuant to section 53 and section 53a of the German Code of Criminal Procedure.

To secure the freedom of self-incrimination, pursuant to section 55 of the German Code of Criminal Procedure any witness may refuse to give evidence in case the witness would incriminate him- or herself or close relatives by answering a specific question.

Furthermore, special rules govern the protection of witnesses who are threatened by known or unknown persons. The court has a variety of measures at hand: Thus, the witness may be permitted not to provide personal identification data. Pursuant to section 247 of the German Code of Criminal Law, the removal of the defendant during the interrogation of the witness can be ordered. Alternatively, according to section 247a of the German Criminal Code, the court may order the examination of the witness in another location together with the simultaneous audio-visual transmission of the testimony if there is an imminent risk of serious detriment to the well-being of the witness were he to be examined in the presence of those attending the main hearing (see also 2.11).

Concerning public officials, their testimony may not be called for if their highest superior authority declares that it would be detrimental to the welfare of the Federation or a German Land. This also applies to the content of files or documents.

To secure their rights, due to section 68 b of the German Code of Criminal Procedure, witnesses are generally entitled to be accompanied by a legal counsel while giving their testimony before the court.

Questions concerning facts which might dishonour the witness should only be posed if unavoidable. The court may intervene at all times, especially in cross examination, to ensure a fair treatment of the witness. In order to protect the interests of a witness with regard to circumstances of his private sphere the court may also, under certain conditions,

exclude the public during the testimony, unless there is an overriding interest in public discussion (section 171b German Courts Constitution Act).

However, if a witness refuses to testify without legal reason, he or she shall be subject to a coercive fine or coercive detention (section 71 of the German Code of Criminal Procedure). The witness has a judicial remedy to challenge such a decision.

Rights of vulnerable persons:

German Law does not provide for specific legal rules tailored for “vulnerable persons”. However, there are specific rules for the protection of children (see 2.6. – 2.9.).

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

According to section 406i of the German Code of Criminal Procedure, aggrieved parties have to be informed in writing as soon as possible, and where possible in a language they understand. If there are indications of a particular need for protection, the aggrieved party shall be referred to the appropriate provisions in the further procedure at a suitable point.

According to section 406j of the German Code of Criminal Procedure aggrieved parties are also to be informed about their rights beyond the criminal procedure, as damages for pain and suffering or other compensation, measures against the defendant according to the Protection against Violence Act as well as aid and support through victim aid organisations.

At an early stage of the preliminary proceedings victims, witnesses and vulnerable persons are informed by the police. The police are also under an obligation to assess personal risks for victims and witnesses that may stem from their involvement in the issue and to take protective countermeasures ex officio. Furthermore both the Federal Ministry of Justice and Consumer Protection and the judicial authorities of the Länder provide information sheets about the rights of victims and aggrieved persons in various languages and more information including links to aid agencies for the protection of victims on their homepages.

- 2.5 What kind of penalties and sanctions are established for violation of these rights?

The information duties are mandatory but their breach is not subject to legal sanction.

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

In addition to the above described rights children and their parents or legal guardians shall be informed about the possibility of recording the examination by audio-visual means and later showing the recordings during trial. In court, a witness under 18 years will only be interviewed by the presiding judge (sections 58a and 241a of the German Code of Criminal Procedure).

There are no specific provisions for disabled or elderly people. However, if a person is not able to appear in court his or her statement shall be recorded audio-visually and the recording reproduced during trial.

- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

Any conviction will be passed on to the Federal Central Registry. The courts and the public prosecution offices can obtain information from this database.

Internal guidelines also pledge the prosecution to inform other institutions and authorities about such a decision.

- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

There is no general incapacity to testify. In principle, children can bear testimony by themselves and they can be interrogated alone. The specific rules for the protection of children as described above have to be observed.

- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

If minors who have the right to refuse testimony on personal grounds (because of relationship with the defendant) have no sufficient understanding of the importance of their right of refusal to testify, testimony may be taken from such persons only if they are willing to testify and if their statutory representative also agrees to their examination. The same applies to minors or persons placed in care due to mental illness or mental or emotional deficiency when they lack the understanding of their privilege to refuse to give evidence. If the statutory representative is accused himself, he may not decide on the exercise of the right of refusal to testify nor may a parent who is not accused, if both parents are entitled to act as statutory representatives (section 52 subsection 2 of the German Code of Criminal Procedure).

- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

In principle, the prosecutor safeguards the rights of vulnerable persons for the duration of the preliminary proceedings. As soon as public charges are brought, it is the court who takes responsibility for ensuring their rights. Upon application aggrieved parties may also avail themselves of the assistance of a psycho-social support during trial (section 406g of the German Code of Criminal Procedure).

In addition, there is a statutory duty following from the Witness Protection Harmonisation Act (ZSHG) for the police to assess individual risks for physical harm and substantial financial losses and to take preventive countermeasures in accordance with the prosecutor. This also includes the possibility for new identities if necessary.

- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

According to section 247a of the German Code of Criminal Procedure the court may order that the witness remains outside the court room during examination if there is an imminent risk of serious detriment to the well-being of the witness were he or she to be examined in the presence of those attending the main hearing. A simultaneous audio-visual transmission of the testimony shall be provided into the courtroom. The testimony shall be recorded if there is a concern that the witness will not be available for examination at a future main hearing and the recording is necessary for establishing the truth.

2.12 How is the prevention of repeated victimisation ensured?

The prevention of repeated victimisation is ensured for example by the means of audio-visual examination and by recording the testimony of the witness according to section 247a of the German Code of Criminal Procedure (see question 2.11 above).

2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

The German Code of Criminal Procedure does not differentiate rights of victims, witnesses and vulnerable persons according to nationalities nor does the Witness Protection Harmonisation Act.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

At an early stage of the preliminary proceedings the rights of victims, witnesses and vulnerable persons are ensured by informing them as early as possible of their rights in and beyond the criminal procedure. In practice it is the police who secure this information. Furthermore the prosecutor safeguards the rights of victims, witnesses and vulnerable persons for the duration of the preliminary proceedings.

As to witness protection, the witness has an enforceable right against the police to a fair assessment of his or her risks and the necessary countermeasures.

3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

The responsibility of the prosecutor for the preliminary proceedings is established in the law. This includes the safeguarding of the rights of victims, witnesses and vulnerable persons.

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

As part of the close cooperation of the prosecutor, who is the formal head of any investigation right from the beginning, and the police all measures of witness protection are usually the result of mutual considerations. The respective Act (section 2 subsection 4

of the Witness Protection Harmonisation Act) obliges the police to act in mutual consent with the prosecutor.

- 3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

A witness can always address the prosecutor and raise issues that may be relevant. Usually their needs are taken care of by the police who are by law (see 2.10) under the obligation to take all measures necessary to prevent any physical harm or substantial financial loss.

- 3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Prosecutors have to address the police to create awareness for potential risks for witnesses if police forces are not yet sensitive to these circumstances on their own.

- 3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

There is no duty to do so but prosecutors are not banned from contacting other bodies to the benefit of a witness and will do so if they see a necessity.

- 3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

There is a wide variety of training courses on any subject in connection with criminal proceedings including the protection of witnesses. These courses are held in a special academy funded by the Länder and participation is strongly encouraged by superiors.

- 3.8 Any other relevant point you wish to raise?

None.

Greece / Grèce

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments? In Greece, there are definitions of both victims and witnesses of crime. At law 4254/2014 there is the definition of witness: Anybody who contributes substantially with the information which provides the authorities with, without being the same involved and without aiming to personal interest, in order to reveal and prosecute cases regarding bribery of political persons or public servants or judges or marketing intermediaries influence, can be characterized as witness of public interest, after act of the competent public prosecutor. As regards the definition of the victim, the definition can be found at the Presidential Decree 233/2003 and it states that victims of the crimes of trafficking in human beings are those people, Greek nationals or foreigners, that have suffered direct damage into their physical integrity or into their personal or sexual freedom or there is a serious danger regarding these goods or their life.
- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them? There is in Greece a special regime for the protection of victims of domestic violence, of sexual abuse and of trafficking in human beings (THB): 1. The victims of domestic violence are entitled of moral support and of the necessary material help from public or private legal persons that are functioning specially for those purposes under the surveillance of the Ministry of Health and Social Solidarity and of social services of the municipalities. The victims that are asking for the taking of provisional measures, due to the situation caused by the act of the domestic violence, are provided with the benefit of legal aid if they cannot pay, even temporarily, the necessary judicial expenses. 2. The victims of THB are being protected from deportation, in case they are foreigners entered illegally in the country, care is taken for their security and living, medical assistance, psychological support, interpretation and legal aid is given. Special attention is given to the unaccompanied minors to whom the Prosecutor after specific request grants residency permit to the victim, that ensures access to work and to programs of professional training. 3. The victims of sexual abuse are being also protected. Particularly special care is provided for the minor victims of sexual abuse. Thus, the minor victim is examined by medical specialists to determine if he is in need for medical treatment, the judicial authorities can order the deportation of the perpetrator from the environment of the minor victim, the provisional residence of the minor in a protected environment and the prohibition of the communication between the victim and the perpetrator. Moreover, it is foreseen the presence of a child psychologist during the examination of the minor victim as a witness and the taking of the testimony of the minor audio visually and then the minor is not further examined at the court. There is also the possibility the lifting of secrecy of the telecommunications for the crimes of THB and sexual abuse of minors.
- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it

established in the law or other legal instruments? There is a definition of vulnerable persons/teams established in the Law 3907/2011. According to article 17 of the above Law, as vulnerable persons can be considered the unaccompanied minors, the persons who are handicapped or suffer from incurable disease, the elders, the women in pregnancy or confinement, the single parent families with underaged children, the victims of torture, rape or other serious form of psychological, bodily or sexual violence or exploitation and the victims from trafficking in human beings.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general? Yes, in Greece there is a specific and fully detailed and protective regime of rights for the victims, witnesses and vulnerable persons. Please refer above at the response under question 1.2.
- 2.2 If yes, are they established in the law or other legal instruments? These rights are established in the law.
- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights). These rights can be found above at the response under question 1.2. Furthermore, the victims of THB are protected, in case they are substantial witnesses in penal trials, after a request to the Prosecutor. Also for the acts of formation and participation in a criminal organization, measures can be taken to ensure the effective protection from possible revenge or intimidation of the substantial witnesses. These measures are mainly: custody of the witnesses by the appropriate police personnel, testimony with the use of audio visual means, the anonymization of the witnesses with the non-recording at the testimonies of the name, place of birth, residence, work, profession and age, the alteration of the identity of the witnesses, the relocation of the witnesses to other countries and the transposition of the witnesses who are public servants to other public services for indefinite time. These protection measures are being taken with the consensus of the witnesses, they do not restrict their personal freedom beyond the necessary point and are being terminated in case the witness ask for that in written or if he doesn't cooperate for their accomplishment.
- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.? The law enforcement authorities and the judicial authorities (prosecutors, investigative judges) inform the above persons of their rights. Non-the less, several NGOs can also play an informative role on this.
- 2.5 What kind of penalties and sanctions are established for violation of these rights? In case there is a breach of these rights, there is the possibility of a criminal/administrative procedure to be started against the perpetrators. Criminal sanctions (imprisonment) or administrative (fines etc) can be imposed.

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses? [In Greece, there are specific rights for these persons. Please see above at the response under question 1.3.](#)
- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)? [It is up to the litigants to bring that to the civil court.](#)
- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions? [They can bear testimony alone.](#)
- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions? [The general rule is that nobody is forced to bear testimony. In any case, the witness can exercise the right of silence and not to incriminate himself.](#)
- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom? [The public servants in charge of the reception of the vulnerable persons evaluate them and assess the risk.](#)
- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur? [Yes, there is such a possibility. Please refer above to the response given at question 2.3.](#)
- 2.12 How is the prevention of repeated victimisation ensured? [By impose of effective and proportionate penalties to the perpetrators and by social work at the level of prevention at the society.](#)
- 2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances? [The rights of victims, witnesses and vulnerable persons in Greece are foreseen without prejudice to Greek nationals or foreigners.](#)

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

- 3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter? [The rights of victims, witnesses and vulnerable persons are being ensured and enforced by the Law Enforcement Authorities and the Prosecution Offices of the Greek Republic. Furthermore, the general framework of the competency of the Prosecution Office in Greece is the following: The Public](#)

Prosecutor guarantee the enforcement of the relevant laws and has the competency to prosecute any deviation from the law, due to the principle of legality. The Public Prosecutor has the competency to supervise and control the police authorities about the prevention and prosecution of crimes. The Prosecution Office is a judicial authority independent of the courts and the government. It acts as a single authority and its mission is to ensure the observance of the legality, the protection of the citizen and the preservation of the rule of law. The Prosecutor has the competency to address orders, general directives and instructions to the law enforcement authorities and generally to all the public sector regarding the exercise of their duties. Moreover, has the power to recommend to everybody who are in dispute and brawl to refrain from acting illegally and to pursue on the peaceful settlement of their dispute. In this context, the Prosecutor ensures that the relevant laws are being enforced and the victims, witnesses and vulnerable persons receive the protection rendered by the law and all their rights are fully respected and applied. He can also address general or specific directives to the authorities involved in the protection of the above persons and supervises the execution of the protective measures and deals with the possible complaints and discrepancies.

- 3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors? This role of the Prosecutor, as described above, is foreseen at Law 1756/1988 and at the specific laws that regulate each right or obligation regarding the above persons. Besides, the Greek Judiciary enjoys a profound system of ethics and of professional conduct that ensures the safeguarding of the rights of the victims, witnesses and vulnerable persons.
- 3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions? In practise, the prosecutor is fully cooperating with the other functions of the state when exercising his duties and has a fully supervising and monitoring role on the application of the legislation.
- 3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights? All the above persons (victims, witnesses and vulnerable persons) have direct access themselves or through their legal assistance to the prosecutors and can apply directly to them for the safeguarding of their rights asking for assistance.
- 3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons? Prosecutors can also initiate and start legal action (order preliminary investigation or prosecute directly) any deviation from the application of the rights of victims, witnesses and vulnerable persons.
- 3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs? The Greek Police in order to fulfil its role on protecting the victims of THB and the protection of witnesses in cases of organised crime has to cooperate with the judicial authorities, mainly the Prosecution Offices and various other players on the field as NGOs. There is also in 24-hour basis a telephone line (197) that provides consultative and psychological support and information to the above categories of people. The Greek Police acting under the supervision of the local Prosecutor is moving the operations

of direct social intervention into crisis situations that are faced by persons, families and population groups, in order to anticipate and prevent them. It also refers to the services of EKKA (National Center for Social Solidarity of the Ministry of Health and Social Solidarity) and to other social bodies and services for further assistance (NGOs, International Organization for Migration etc).

- 3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training? The National School of Judges and Prosecutors is carrying out very often educational and training activities for the protection of victims, witnesses and vulnerable persons. The Prosecutors are playing a great role at the training, as they make numerous presentations and interventions during these seminars and training activities. The Law Enforcement Authorities are also trained regularly in such issues.
- 3.8 Any other relevant point you wish to raise.

Hungary / Hongrie

1. Definitions

1.1. Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

Yes, there is, and relevant rules and legal provisions are included in various Acts of Parliament (Section 1 of Act CXXXV of 2005 on Crime Victim Support and State Compensation giving a definition of victims; Section 51 (1) of Act XIX of 1998 on the Criminal Procedure Code (hereinafter: CPC) specifying rules on victims; Section 62/C. of CPC containing provisions on victims with specific protection needs and Section 79 (1) of CPC specifying rules on witnesses).

1.2. Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

Yes. Victims of these crimes can be considered as victims with specific protection needs owing to the nature of these crimes or the circumstances of their commission. If such crimes are committed, courts, prosecutors and the investigation authorities need to treat victims with specific protection needs with utmost care and sensitivity during the proceedings, and procedural acts affecting them should be prepared and carried out in view of their needs. Investigation authorities and courts should also strive to avoid unnecessary meetings between victims and offenders, and they shall ensure the separation of the two. Interviews of victims and any investigative acts carried out with their involvement should preferably be sound or video recorded or recorded by any other means. Interviews of witnesses below the age of 14 should always be recorded in such ways. Interviewing these victims over and over again or by several authorities should be avoided, and if justified, they should be interviewed via CCTV (closed-circuit-television).

During criminal investigations persons under the age of 14 should be interviewed in premises fit out for the purpose of interviewing them (i.e. for the purpose of interviewing such persons).

1.3. Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

If crimes are committed against such persons, they are considered to be victims with specific protection needs. The general definition of victims with specific protection needs is provided for by the Criminal Procedure Code. The Office of the Prosecutor General of Hungary has given a detailed guideline about persons who can be considered as victims with specific protection needs in addition to the statutory definition of CPC. There is no definition of vulnerable persons within the framework

of criminal procedure, but the category of vulnerable persons should include persons under the age of 14 and persons who are in need of assistance because of their mental disability or other state/condition.

2. The rights of victims, witnesses and vulnerable persons

2.1. Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Yes.

2.2. If yes, are they established in the law or other legal instruments?

The Criminal Procedure Code provides for rights of persons participating in criminal proceedings including the rights of victims and witnesses. Vulnerable persons participate in criminal proceedings either as victims or witnesses.

2.3. Please, enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Victims usually participate in criminal proceedings as criminal complainants or witnesses, but their procedural rights derive from their victim status and are more extensive than the rights granted to witnesses. Procedural rights of victims are: to be present at procedural acts, access and consult case files and records, make motions, petitions or observations during the proceedings, to be informed and notified and to appeal. Victims can also exercise their rights through their representatives, and in cases specified by law they can participate as substitute private accusers in proceedings. Upon their requests victims and persons exercising victims' rights are entitled to be notified of the offender's release or escape with regard to the crime having been committed against them. Victims with specific protection needs may request to be interviewed by officers of the same sex during criminal investigations into crimes against sexual freedom, sexual crimes and crimes committed against relatives.

Witnesses have the right to: refuse to give testimonies in cases specified by law, have legal counsels representing them, make written statements, have the costs and expenses arising from their attendance reimbursed, have their personal data confidentially processed, and where appropriate, to get personal protection.

2.4. How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

In accordance with the Criminal Procedure Code investigation authorities, prosecutors and courts shall inform victims and witnesses of their rights. It should be an aim that officers of competent authorities should advise persons concerned of their rights and obligations in a way which is clear and comprehensible for them, and they should make sure that the persons concerned have understood them. If not, officers of competent authorities should explain the rights and obligation to persons concerned. Records/templates of witness and victim interviews used in the course of criminal investigations include detailed information and advising of their rights and obligations. In addition, victims and witnesses may request competent authorities to advise them of their rights in any phase of the proceedings. Authorities shall comply with such requests, and victims and witnesses may also request the assistance of their legal counsels representing them. When victims are first contacted by the police, the police shall give them a leaflet informing them about victim's rights and shall call their attention to the possibility of victims support services. Receipt of this shall be certified by victims' signatures. Information regarding victims' support services is available on the website of the Police and the Justice Support Services Office, whereas information on procedural rights is accessible on the courts' website, and information in this respect can be requested either orally or in writing.

2.5. What kind of penalties and sanctions are established for violation of these rights?

Should any of the rights be violated, complaints can be lodged during criminal investigations, as a result of which the violation can be remedied. Violation of the rights can result in disciplinary or criminal sanctions or liability for damages depending on the nature of the violation.

2.6. Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Yes. Persons under 14 years of age may only be interviewed/heard as witnesses if the evidence expected to be provided by their testimony cannot be substituted by any other means. Persons under the age of 14 should be interviewed in premises fit out for the purpose of interviewing them (i.e. for the purpose of interviewing such persons). If such persons are heard by investigating judges, suspects and their legal counsels should be notified of this after the hearing, and they should be reminded that they have the right to consult the written records of the hearing at the prosecutors. Those who have limited capacity to understand the consequence of refusing to testify as witnesses due to their mental or other state may only be heard as witnesses if they wish to testify and their legal representatives or the relatives designated by the witnesses consent thereto. If such persons or persons under the age of 18 are to be heard as witnesses, their legal representatives, supporters or caretakers may be present at the hearing.

The Criminal Procedure Code stipulates that in case of persons under the age of 18 courts, prosecutors and investigation authorities shall take actions with special diligence in view of those persons' age and maturity, while in case of persons with hearing impairments, deaf-blind, blind or speech impaired persons, or persons who – regardless of their legal responsibility – are mentally impaired – should exercise special diligence during their actions in view of their state/condition.

2.7. When a decision in criminal matters is likely to affect the rights or the situations of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

Our experience shows that information does not flow effectively between the competent authorities.

2.8. Can such vulnerable persons bear testimony alone or only following authorization by their legal representatives, and in this latter case, in what conditions?

Legal representatives' statement of consent needs to be obtained in accordance with Point 2.6 only for persons who have limited capacity to understand the consequence of refusing to testify as witnesses due to their mental or other state. If there are no reasons that would exempt persons under the age of 14 from bearing testimonies, the obligation to testify as witnesses unconditionally prevails.

2.9. Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

Persons who apparently cannot be expected to give correct testimonies due to their physical or mental conditions cannot be interviewed or heard as witnesses. Defendants' relatives or persons who would incriminate themselves with their testimonies are entitled to refuse to bear testimonies. As mentioned above, persons under 14 years of age may only be interviewed/heard as witnesses if the evidence expected to be provided by their testimonies cannot be substituted by any other means.

2.10. Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

Evaluation of victims is carried out by the police in accordance with criteria and a questionnaire specified by a Decree issued by the Minister of Interior. The evaluation is carried out with the victims' involvement, and based on the outcome of the evaluation the police decide if the victim is to be considered as a victim with specific protection needs.

2.11. Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

Yes. Prosecutors, investigation authorities and investigating judges may order that witness testimonies should be audio- and video recorded. If witnesses below the age of 14 are heard by investigating judges, their testimonies should be audio- or video recorded or recorded by any other means. On the copy of the recordings, individual features of the witnesses suitable for identification (e.g.: face, voice) may be distorted by technical means. If specific conditions are met, the Criminal Procedure Code allows for witnesses to be considered as highly protected witnesses. In such cases, only investigating judges and prosecutors interviewing or hearing the witnesses know

their identities, other participants of the criminal proceedings can only consult the written records of the testimonies.

2.12. How is the prevention of repeated victimization ensured?

Crime victims support and the prevention of repeated victimization is part of the National Crime Prevention Strategy. This is implemented with the involvement of the police, the ministries and agencies responsible for victims support, NGOs, the local, regional and national media, and primarily by extensively informing the public. In the past few years several local projects aimed at preventing nationals' victimization have been implemented with EU support. The Prosecution Service plays no specific role in the prevention of victimization.

2.13. Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

In the territory of Hungary the rights of victims, witnesses and vulnerable persons are foreseen and guaranteed for everyone, irrespective of nationality.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1. How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

If criminal investigations are conducted by prosecutors, the rights of victims, witnesses and vulnerable persons within the framework of criminal procedures are enforced and guaranteed by prosecutors in accordance with the Criminal Procedure Code. In addition, prosecutors give victims a leaflet informing them about the possibility of victims support services prepared by the justice support services and issue certificates which are needed if victims want to claim support. If investigation authorities conduct criminal investigations on their own, prosecutors supervise investigations and ensure that during investigations provisions of laws and procedural rights are respected. If during the supervision of investigations prosecutors learn that investigation authorities have violated the law or failed to fulfil their responsibilities, prosecutors shall take measures to eliminate such violations or omissions, or shall instruct the given investigation authority to conduct the criminal procedure in compliance with law. Appeals can also be lodged to prosecutors against decisions, measures or omissions of the investigation authorities if rights of the above mentioned persons are violated.

3.2. Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

Rules regarding the role of prosecutors are established in the Act on the Prosecution Service, the Criminal Procedure Code and several Orders issued by the Prosecutor General of Hungary. Such Orders issued by the Prosecutor General of Hungary contain provisions which are binding on prosecutors.

3.3. How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

In a substantial part of the criminal proceedings prosecutors supervise the legality of criminal investigations. As explained in Point 3.1. prosecutors monitor that the investigation authorities comply with provisions of the Criminal Procedure Code and conduct criminal proceedings appropriately. Within the framework of supervision of investigations prosecutors may address observations to the investigation authorities and can give them instructions. Prosecutors monitor if during the investigations witnesses (and defendants) have been advised of their rights and exemptions in accordance with law, and in view of this, if their testimonies can be used as admissible evidence. Prosecutors themselves may initiate that victims should be deemed/qualified as victims with specific protection needs and that further procedural acts should be carried out in line with this. Prosecutors take special care that victims and witnesses below the age of 14 are heard by investigating judges as soon as possible in order to avoid further traumas.

A prosecutor gives the victim the leaflet informing him about the possibility of victims support services prepared by the justice support services if the victim has filed his criminal complaint with the prosecution office or if the criminal investigation is conducted by the Prosecutor Service and the leaflet has not been given to the victim earlier. Upon the victims' requests prosecutors issue certificates necessary for them to claim victim supports. If in a criminal case a prosecutor has issued a certificate needed for the victim to claim victim support, the prosecutor shall inform the justice support service about his decisions on the merit including the decision on indictment, the prosecutorial termination of investigation, or the results of the indictment postponement or mediation.

If criminal investigations are conducted by prosecutors, the tools used to guarantee victims – including victims with specific protection needs – that proceedings concerning them are properly conducted corresponding to their needs primarily comprise the treatment of victims with empathy and flexibility as well as the advising of witnesses of their rights and exemptions specified by law and the possibilities of victims support in a way which is adequate, clear and comprehensible for them. Such special treatments may include cases when witnesses are interviewed outside of office hours and in separate office premises that cannot be linked to investigative prosecution offices, serving a subpoena to an address indicated by the victim, the possibility of contacting competent prosecutors by cell phone out of office hours, and, if needed, actions taken for the personal protection of victims and witnesses. Furthermore, it is also an important criterion that victims of sexual crimes or minor victims of criminal offences should be interviewed or heard by officers of the same sex in proceedings.

3.4. Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Yes.

3.5. Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Yes, within the framework of criminal proceedings and primarily within the framework of child protection measures.

3.6. Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

In this regard the Act on the Prosecution Service entrust prosecutors with the task of initiating proceedings to assert minors' rights and to take necessary child protection measures. Prosecutors may also notify other state and municipal authorities carrying out social welfare and social care tasks if it seems necessary for the protection of the rights of persons concerned. Upon requests of other state bodies and agencies, private entities or non-governmental bodies the Prosecution Service may give information within the framework of the Criminal Procedure Code.

3.7. Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Yes. Trainings organized by the Prosecution Service generally include issues like the protection of the rights of victims and witnesses. Trainee prosecutors, junior prosecutors, prosecutors and senior prosecutors all participate in those trainings. In addition to prosecutor trainers, trainers of the trainings include criminologists, psychologists as well as staff members of the Police and the Justice Support Services Office who have expertise in victims' protection. Prosecutors also have the opportunity to attend trainings organized by the Justice Support Services Office, the office playing a major role in victims' support.

Ireland / Irlande

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

Not as at the date of writing. However, the definition of a Victim is enshrined in the EU Victim's directive which has been used for the basis for the definition of Victim of Crime in the Criminal Justice (Victims of Crime) Bill 2016 ("the Victims Bill"), which is due to be enacted into national law by end July 2017.

"Witness" is not formally defined in any Irish legislation but has been interpreted in caselaw as "one who is a spectator of an incident or one who is present at an incident": (see *In re Gibson*, dec'd cited in the High Court in *Dundalk AFC v FAI National League* ([1949] P. 434 at p. 436; Pearce J)).

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

See replies to section 2 below

- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

No, at the time of writing there is no such definition. Again it is intended that this will be contained in the Victims Bill.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Victims' Rights are recognised as falling into 3 broad categories:

1. Services or Welfare rights,
2. Procedural rights,
3. Participation rights.

1 Services/Welfare Rights

Under services/ welfare rights the state funds (in whole or in part) the provision of counselling, support, information & compensation to victims:

Counselling/Support: In addition to a large number of voluntary/NGO organisations (Rape Crisis Centres/Women's refuges) who are substantially funded by the State to provide counselling services, court accompaniment services, as well as information and advice

about the criminal justice process, the Health Service Executive provides a National Counselling Service (NCS). This service, established in September 2000, was developed largely in response to clerical abuse scandals. They too offered a free counselling and psychotherapy service and importantly these services were made available in all Health Service Executive (HSE) regions. Their services were directed to adults who had experienced trauma and abuse in childhood with priority given to adult survivors of institutional abuse. The provision of such services has become an established feature of the Irish States' response to victims of crime, but for the most part, welfare rights fall outside the scope of criminal procedure.

2 Procedural Rights:

Procedural rights, or protections, may be viewed as occupying the ground between welfare rights and full participation rights. Procedural rights have developed within the context of an increasing focus on particular types of victims, most especially those deemed to be 'vulnerable'.

Right to Information: Non-statutory rights include the right to be informed of the decision made to prosecute, for what offences, and when and where the trial is to take place. These are set down in the Guidelines for Prosecutors, along with all other rights and responsibilities that the prosecutor has to the Victim (Chapter 12). See Appendix 1.

Legal Advice and Assistance (although, importantly not representation) is available through the Legal Aid Advice and Assistance provisions – s.26(3)(A) of the Civil Legal Aid Act 1995 which provides that legal advice will be made available (no means test or payment of contribution required) to complainants in prosecutions for certain sexual offences who wish to seek such advice. There is no official data available detailing how often this service was used. However, anecdotally the numbers are thought to be relatively small.

Procedural protections in the context of giving evidence: The Criminal Evidence Act of 1992, as amended, introduced a number of important provisions including Section 13 which sought to make it easier for witnesses to give evidence in cases concerning violence, sexual offences, human trafficking or child pornography. In such cases, and where the witness is under 18 years of age or suffering from an intellectual disability, the evidence may be given by the witness through a live television link, whether from within or outside the State, unless the court sees a good reason to the contrary. The provision also allows other witnesses in such cases to do so provided the court agrees. The legislation also abolished the requirement for a child to give sworn testimony (replacing the same with a test, determined by the trial judge as to the child's ability to give an intelligible account). Other formalities of the court process which might be distressing to a child, such as the wearing of wigs and gowns, were also dispensed with).

These protections were extended to a wider group of vulnerable witnesses by Section 39 of the Criminal Justice Act 1999, which allows all witnesses who are in fear or subject to intimidation to give evidence, with the leave of the court, by means of live television link.

Section 16(1)(b) of the Criminal Evidence Act 1992 allows for video-recorded statements to be admissible as evidence in chief in certain limited circumstances. This proved to be resource intensive requiring the necessary facilities for the taking of such statements, the training of the specialist interviewers and a need to develop Practice Guidelines. See also reply to 2.6 below.

Similar rights to use videolink facilities and use intermediaries were included the Criminal Evidence Act 1992. While the provisions in relation to the use of intermediaries have not yet commenced, this will be amended in the context of the Victims Bill. The recent construction of a new Criminal Courts Complex in Dublin (with separate entrance/exit, children's evidence suite, safe waiting rooms and modern technological capacity of the new courtrooms, have also helped transform the experience of victims and witnesses giving evidence, whether live, through television link or from a remote location.

Compensation: A right to compensation is provided in both statutory and non-statutory form. The non-statutory Criminal Injuries Compensation Tribunal (since 1974) provides only for "out of pocket" compensation of those who suffer physical injury, as a result of violent crime, and does not cover those in a domestic violence situation. The statutory powers under s.6 of the Criminal Justice Act 1993, allow a trial judge, in the event of a finding of guilt, discretion to make an order for the compensation of a victim which may not exceed, at the Judge's discretion, the amount that a Victim might recover in a civil action. Recovery of this money is a matter for the Victim to monitor.

3 Participation Rights

Currently in Ireland there are two very important areas where legislative provisions allow the victim (or the deceased victim's family) to directly participate in the criminal process.

- (a) Limited Separate Legal Representation: The first of these significant 'participation' rights arises within a very narrowly defined and restricted circumstance. Where an accused standing trial in respect of a sexual offence wishes to ask a question or introduce evidence relating to the complainant's sexual experience they need the leave of the judge to do so (s.3 of the Criminal Law (Rape) Act 1990. ss.34 & 35 of the Sex Offenders Act 2001, provides that the defence must give notice of their intention to make an application to introduce such evidence; and further provides that the complainant is entitled to separate legal representation for the purpose of the defence application, which is made in the absence of the jury. This legal representation is provided free of charge by the Legal Aid Board.
- (b) Victim Impact Statements: Under s.5 of the Criminal Justice Act 1993, the Victim has the right to make a statement in respect of the effect that a crime has had on them in respect of offences of violence, certain more serious sexual offences, and homicide.

As noted by our leading author on sentencing: "Developments such as [Victim Impact Statements] have led to some recalibration in the scales of justice. How much further they can be tilted in favour of victims without unduly diluting the rights of offenders looks set to become one of the more difficult questions to be faced over the coming years". (O'Malley, 2009, P.18)

2.2 If yes, are they established in the law or other legal instruments?

As outlined at 2.1.

2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings,

to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

As outlined at 2.1 and see also Appendix 1.

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

At the time of writing, there is no formal right in this regard. Instead it relies on good practice under the Victims' Charter, as implemented inter alia by An Garda Síochána (National Police) along with other investigative agencies and the Office of the Director of Public Prosecutions. The Legal Aid Board (with statutory responsibilities to victims in relation to advice and assistance and legal representation) produce information leaflets outlining their services to victims.

- 2.5 What kind of penalties and sanctions are established for violation of these rights?

None, as at the time of writing.

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Yes. The Criminal Evidence Act 1992 (as amended) provides a number of protections to young/vulnerable victims, in particular the manner in which their evidence is adduced, for example, s.16 (1) (b) of the Act provides for the video recording of evidence in chief, avoiding the need for such victims to give live testimony viva voce, in the presence of the accused. The provisions of the 1992 Act are subject to imminent amendment by the Criminal Law (Sexual Offences) Act 2017 (enacted, but not yet at the time of writing commenced).

see: <http://www.irishstatutebook.ie/eli/2017/act/2/section/37/enacted/en/html#sec37>

and the Victims of Crime Bill.

See also reply to 2.1 above.

- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

Such matters are brought to the attention of relevant bodies. However, this is outside of the remit of the Prosecutor. For example Tusla (The Child & Family Agency) would be informed of child protection concerns in the context of a domestic violence situation. Responsibilities of sharing information on suspected child sexual abuse are mandated by Children First Guidelines.

- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

Within the Irish system, as outlined above, victims & witnesses have limited legal representation. Such legal representation does not extend to assessments of capacity to give evidence. The question of a witness' capacity to give evidence in the context of a criminal trial is determined by the trial Judge (which may be informed by specialist medical evidence as well as judicial examination of the witness). Legislative provisions under the Criminal Evidence Act 1992 (see s. 27) assist in this regard, permitting evidence to be received from a person of any age with a 'mental handicap' in any criminal proceedings, otherwise than on oath or affirmation, if the court (Judge) is satisfied that he or she is capable of giving an intelligible account of events relevant to those proceedings.

- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

As outlined above, if deemed 'an intelligible account', such evidence is admissible.

- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

As outlined above at 2.8

- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

Yes. See earlier replies above, the Criminal Evidence Act 1992, as amended and as augmented by the Criminal Law (Sexual Offences) Act 2017 & the Victims of Crime Bill.

- 2.12 How is the prevention of repeated victimisation ensured?

See previous replies above (Welfare rights, procedural rights, participation rights (including special measures)).

- 2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

Generally speaking victims' rights are afforded without reference to national status. However, the EU Victims Directive promotes a number of specific protective rights to members of the EU.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

- 3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

Yes, there is role in this regard, to ensure that the rights of Victims are fully respected and vindicated by the Court, defence practitioners, and other state actors. There is a role for

Prosecutors in this regard. See the following link to the Guidelines for Prosecutors. Of particular significance in this context is Chapter 12, reproduced in full at Appendix 1 of this document:

[https://www.dppireland.ie/filestore/documents/Guidelines_for_Prosecutors_\[4th_Edition_-_October_2016\].pdf](https://www.dppireland.ie/filestore/documents/Guidelines_for_Prosecutors_[4th_Edition_-_October_2016].pdf)

- 3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

The duties of Prosecutors in this regard are a combination of ethical rules, established prosecution policy, national legislation & European Directives (as advised previously). This role will be recognised by the Victims Bill in respect to the various agencies involved ensuring that they are obligated to provide the information and services that they are statutorily obligated to provide.

- 3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

See Appendix 1 at 12.26.

- 3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

See below at Appendix 1, specifically 12.10, 12.11 and 12.26.

- 3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Only in the context of existing criminal proceedings.

- 3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Yes, most especially in conjunction with An Garda Síochána (National Police Service). See 12.26 at Appendix 1 (below). Prosecutors receive training from & provide training to a number of NGO's including The Rape Crisis Centre, Migrants Rights organisations and others (Victim Support, Support after Homicide).

- 3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Yes on all counts and such training will be revised and updated in light of the change to national law when the Victim's Bill becomes law in July 2017 (proposed).

- 3.8 Any other relevant point you wish to raise.

No.

Appendix 1

Chapter 12

RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME

- 12.1** The purpose of this chapter is to set out the rights of victims of crime and their family members under the European Union Victims Directive 2012/29/EU as well as other measures for the rights, support and protection of victims of crime under existing law and prosecution policies. Further information is available in the Victims Charter on the Office website at www.dppireland.ie.
- 12.2** The Victims Directive came into effect on 16 November 2015. This chapter will be revised when domestic legislation transposing Directive 2012/29/EU is enacted.
- 12.3** The directive defines a ‘victim’ as:
- (a) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
 - (b) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death.
- 12.4** Under the directive, ‘family members’ of a deceased victim include:
- (a) the spouse, or person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis;
 - (b) a child (meaning any person below 18 years of age), grandchild, parent, grandparent, brother, or sister, and the dependants of the deceased person.
- 12.5** In cases where victims lack capacity to look after their own affairs, the prosecutor will treat family members of such persons as victims of crime.
- 12.6** A person who is under investigation for, or has been charged with, an offence in connection with the death of a deceased victim will not be regarded by the prosecutor as a family member of the deceased victim and is not entitled to request a summary of reasons for a decision not to prosecute.

ROLE OF THE DPP AND THE GARDA SÍOCHÁNA

- 12.7** The Director of Public Prosecutions prosecutes cases on behalf of the People of Ireland and not just in the interests of any one individual. The Office of the DPP will have regard to any views expressed by a victim when deciding whether or not to prosecute or in relation to the acceptance of a plea of guilty to any lesser charge. Although the views and interests of the victim are important, they are not the only consideration when deciding whether or not to prosecute or when deciding to accept a plea of guilty. The Office of the DPP will communicate with victims in simple and accessible language whether orally or in writing.
- 12.8** The Garda Síochána also make prosecution decisions. They may institute and conduct prosecutions in the name of the Director of Public Prosecutions. They can only do so for offences specified in a General Direction from the Director of Public Prosecutions under section 8(4) of the Garda Síochána Act 2005.
- 12.9** When a Garda Superintendent decides not to prosecute a suspect following the investigation of an offence, victims may request a summary of reasons and a review of that decision from the Garda Síochána.

GIVING OF REASONS BY DPP FOR DECISIONS NOT TO PROSECUTE

12.10 The Office of the DPP will provide to a victim upon request a summary of the reasons for a decision not to prosecute in respect of the following matters:

- (a) all of its decisions not to prosecute made on or after 16 November 2015; and
- (b) in relation to the death of a victim which occurred on or after 22 October 2008.

12.11 The Office of the DPP is not obliged to provide a summary of reasons for a decision not to prosecute where such disclosure may:

- (a) interfere with the on-going investigation of any offence; or
- (b) prejudice further criminal proceedings for any offence; or
- (c) endanger the personal safety of any person; or
- (d) endanger the security of the State.

12.12 In the case of a victim who does not understand or speak English or Irish, the Office of the DPP will provide to the victim upon request a translation of the summary of reasons for a decision not to prosecute.

12.13 It is important to note that there are time limits within which a victim must request a summary of reasons. This is to ensure the fair and efficient administration of justice and to balance the rights of a victim with those of a suspect. In some cases the time limits may be extended but only if there is a good reason and it is in the interests of justice to do so.

12.14 Requests for reasons for decisions not to prosecute should be in writing and addressed to:

**Communications and Victims Liaison Unit,
Office of the Director of Public Prosecutions,
Infirmary Road,
Dublin 7.**

Further information about the giving of reasons for decisions not to prosecute can be found on the Office website at www.dppireland.ie.

REVIEW BY DPP OF DECISIONS NOT TO PROSECUTE

12.15 The Office of the DPP will carry out a review of the decision not to prosecute upon request from a victim who is dissatisfied with the summary of reasons provided for the decision not to prosecute.

12.16 Alternatively, where a victim has not sought a summary of the reasons for the decision not to prosecute but wishes to have that decision reviewed, the Office of the DPP will upon request from the victim review the decision not to prosecute.

12.17 It is important to note that there are time limits within which a victim must request a review of a decision not to prosecute. This is to ensure the fair and efficient administration of justice and to balance the rights of a victim with those of a suspect. In some cases the time limits may be extended but only if there is a good reason and it is in the interests of justice to do so.

12.18 Requests for reviews of decisions not to prosecute should be in writing and addressed to:

**Communications and Victims Liaison Unit,
Office of the Director of Public Prosecutions,
Infirmary Road,
Dublin 7.**

Further information about reviewing decisions not to prosecute can be found on the Office website at www.dppireland.ie.

12.19 The Office of the DPP will also give careful consideration to any request 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 victim's wish that it would be discontinued.

PROSECUTION APPEALS AND SENTENCE REVIEWS

12.20 The Director of Public Prosecutions will consider any communication received from victims of crime, or the family members of victims of crime who have died, are ill or otherwise incapacitated, in connection with powers granted by law to the Director to appeal or apply in respect of the matters set out in paragraphs 12.21 to 12.25 below which are also discussed in Chapter 11.

12.21 The Director may apply to the Court of Appeal for a review of sentences which appear to the Director to be unduly lenient, in accordance with the provisions of section 2 of the Criminal Justice Act 1993. The Director cannot apply for a review of sentence imposed by a court on conviction of a person in summary proceedings and may do so only in respect of sentences imposed by a court on conviction of a person on indictment.

12.22 The Director may apply to the Court of Appeal for a re-trial order in respect of a person tried on indictment and acquitted either at trial, or on appeal against conviction, or on appeal from such a decision on appeal, in accordance with the provisions of Part 3 of the Criminal Procedure Act 2010:

(a) under section 8(3) – where it appears to the Director that:

(i) there is new and compelling evidence against the person acquitted in relation to the relevant offence concerned; and

(ii) it is in the public interest to do so;

(b) under section 9(3) – where the person acquitted or another person has been convicted of an offence against the administration of justice relating to the proceedings which resulted in the acquittal, thus tainting those proceedings and that acquittal, and where it appears to the Director that:

(i) there is compelling evidence against the person acquitted; and

(ii) it is in the public interest to do so.

12.23 The Director may appeal on a question of law to the Court of Appeal the acquittal of a person tried on indictment, in accordance with the provisions of section 23(1)(I) and Part 4 of the Criminal Procedure Act 2010, where it appears to the Director that:

- (a) a ruling was made by the trial court which erroneously excluded compelling evidence; or
- (b) a direction was given by the trial court directing the jury to find the person not guilty, where:
 - (i) the direction was wrong in law, and
 - (ii) the evidence adduced in the proceedings was evidence upon which a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned.

12.24 The Director may seek leave to appeal on a question of law to the Supreme Court under Article 34.5.4 of the Constitution the acquittal of a person tried on indictment in the Central Criminal Court, pursuant to the provisions of section 23(1)(II) and Part 4 of the Criminal Procedure Act 2010, where it appears to the Director that the conditions in paragraph 12.23 (a) or (b) above are met. For such an appeal to lie, the Supreme Court must be satisfied that there are exceptional circumstances warranting a direct appeal to it and, as a precondition to being so satisfied, one or both of the following factors must be present: (i) the decision involves a matter of general public importance; (ii) the interests of justice.

12.25 The Director may seek leave to appeal on a question of law to the Supreme Court under Article 34.5.3 of the Constitution a decision of the Court of Appeal not to order the re-trial of a person whose conviction on indictment was quashed on appeal, pursuant to the provisions of section 23(2) and Part 4 of the Criminal Procedure Act 2010, where it appears to the Director that a ruling was made during the hearing of the appeal which erroneously excluded compelling evidence. For such an appeal to lie, the Supreme Court must be satisfied that: (i) the decision involves a matter of general public importance, or (ii) an appeal is necessary in the interests of justice.

RESPONSIBILITIES OF PROSECUTORS TO VICTIMS IN CRIMINAL PROCEEDINGS

12.26 Prosecutors have the following responsibilities to victims of crime:

- (a) To work with the Garda Síochána to ensure that the victim is kept fully informed of developments in relation to the criminal prosecution and proceedings which result from the victim's statement of complaint and reporting of the crime.
- (b) To update the investigating Gardaí, and through them the victim, on developments in relation to pre-trial applications, applications before the Superior Courts or appeals against conviction and/or sentence.
- (c) To arrange at the victim's request a pre-trial meeting between the victim and the prosecutor who is dealing with the case.
- (d) To explain to the victim the processes and procedures relating to the trial or hearing of criminal cases and answer any questions the victim may have about them. Generally, the prosecutor is not permitted to discuss evidence with witnesses or victims in advance of the hearing of a case. This is intended to prevent witnesses or victims being told what evidence to give or to avoid any suggestion that this has happened.

- (e) To deal with victims in a respectful, professional, non-discriminatory and impartial manner and with due regard to the personal circumstances, rights and dignity of victims.
- (f) To listen and consider the views of the victim. The victim is not, however, entitled to give instructions to the prosecutor concerning the conduct of the trial or hearing of the case.
- (g) To seek to protect the interests of victims to the best of their professional abilities consistent with their duty to the court and their duty to conduct the prosecution on behalf of the People. Prosecutors should have due regard to the likelihood that a victim of crime when called to testify may experience again the emotional and physical distress caused by the offence.
- (h) To keep the victim informed of what is happening during the course of the trial or hearing of the case, including any decision to change, modify or not proceed with charges laid against the accused and any decision to accept a plea of guilty to a less serious charge.
- (i) To work with the Garda Síochána and the Courts Service to ensure that the victim can understand the criminal proceedings.
- (j) To draw the court's attention in appropriate cases to the following powers: to make an order under section 6 of the Criminal Justice Act 1993 requiring payment of compensation in respect of any personal injury or loss resulting from the offence (or any other offence that is taken into consideration by the court in determining sentence) to any person who has suffered such injury or loss; to make an order under section 56 of the Criminal Justice (Theft and Fraud Offences) Act 2001 for the restitution of property which was stolen where a person is convicted of an offence with reference to the theft (whether or not the stealing is the essential ingredient of the offence) or of any other offence where the theft offence is taken into consideration in determining sentence; and, pursuant to section 84 of the Criminal Justice (Mutual Assistance) Act 2008, to make a section 56 restitution order in relation to property which is outside the State.
- (k) To have due regard to Article 10 of the European Union Victims Directive 2012/29/EU under which victims of crime have a right to be heard during criminal proceedings and to provide evidence. That right encompasses the sentencing stage of criminal proceedings.

EFFECT OF OFFENCE ON VICTIM

12.27 The prosecutor will draw the provisions of section 5 of the Criminal Justice Act 1993 to the attention of a sentencing court and will furnish to that court any evidence or submission received concerning the effect of the offence on the victim, from the victim, or a family member of a victim who is deceased, ill or otherwise incapacitated as a result of the offence.

12.28 When imposing sentence on a person convicted of an offence specified in section 5(1) of the Criminal Justice Act 1993, a sentencing court must take into account the effect of the offence on the victim. The court may, where necessary, receive evidence or submissions concerning any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed. If the victim so requests, the court must hear the evidence of the victim as to the effect of the offence. Where the victim has died, is ill or is otherwise incapacitated as a result of the offence, a family member of that person may give evidence of the effect of the offence. Where the victim is a child under 14 years of age, a parent or guardian may give such evidence. In the case of a victim with a mental disorder, such evidence may be given by the person, or a family member, or a parent or guardian. Further information for victims of crime or their family members who have questions about victim impact evidence is available from a leaflet

entitled 'Making a Victim Impact Statement' which is found on the Office of the DPP website at www.dppireland.ie and on the Garda Síochána website at www.garda.ie.

12.29 The offences specified in section 5(1) of the Criminal Justice Act 1993, in respect of which the court must take into account the effect of the offence on the victim, are:

- (a) a 'sexual offence' within the meaning of section 2 of the Criminal Evidence Act 1992 – see paragraph 12.32(a) below;
- (b) an offence involving violence or the threat of violence to a person;
- (c) an offence under the Non-Fatal Offences Against the Person Act 1997;
- (d) an offence under section 2, 3 or 4 of the Criminal Justice (Female Genital Mutilation) Act 2012; and
- (e) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in paragraph (a), (b), (c) or (d) above.

12.30 A 'family member' of a victim who has died, is ill, or is otherwise incapacitated, is defined under section 5(6) of the Criminal Justice Act 1993 as:

- (a) a spouse or partner of the person;
- (b) a child under 18 years of age, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew or niece of the person;
- (c) a person who is acting in loco parentis to the person;
- (d) a dependant of the person; or
- (e) any other person whom the court considers to have had a close connection with the person.

PROCEEDINGS OTHERWISE THAN IN PUBLIC

12.31 The prosecutor will apply under section 6 of the Criminal Law (Rape) Act 1981, to the judge conducting proceedings, for the exclusion from the court during the hearing of all persons except officers of the court, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons (if any) as the judge may in his or her discretion permit to remain. The prosecutor's application is without prejudice to the right to remain in court of a parent, relative or friend of the victim, or of the accused where the accused is not of full age. Such applications cannot be made in respect of every sexual offence. For example, they do not apply to the offence of sexual assault. Applications by the prosecutor under section 6 of the 1981 Act may be made in any proceedings for:

- (a) a 'rape offence' – see paragraph 12.35(b) below – however, note these provisions which for the purposes of section 6 applications construe the following offences as a 'rape offence':
 - (i) defilement of a child under 15 or 17 years of age contrary to section 2 or 3 of the Criminal Law (Sexual Offences) Act 2006 – see section 6(3)(b) of the Criminal Law (Sexual Offences) Act 2006;

- (ii) soliciting or importuning a child under 17 years of age, or a person who is mentally impaired, for the purposes of a sexual offence, contrary to section 6 of the Criminal Law (Sexual Offences) Act 1993 – see section 3(3)(b) of the Criminal Law (Sexual Offences) (Amendment) Act 2007;
- (b) aggravated sexual assault or attempted aggravated assault;
- (c) aiding, abetting, counselling or procuring aggravated sexual assault or attempted aggravated sexual assault;
- (d) incitement to aggravated sexual assault; or
- (e) conspiracy to commit any of the offences at (a), (b), (c) or (d) above.

GIVING OF EVIDENCE BY LIVE TELEVISION LINK

12.32 The prosecutor will apply to the court under section 13 of the Criminal Evidence Act 1992, where it is considered appropriate to do so, to allow a victim of crime, who is a witness in any proceedings for an offence to which Part 3 of the 1992 Act applies, to give evidence through a live television link. In deciding whether to make such an application, the prosecutor will take into account any assessment by the Garda Síochána of the vulnerability of the victim. It is a matter for the judge hearing the application to decide whether the witness will be permitted to give such evidence. Where a witness is under 18 years of age, the giving of evidence by live television link may be allowed unless the judge sees good reason to the contrary. In any other case, a witness may give such evidence under section 13 with the leave of the judge. The offences to which Part 3 of the 1992 Act applies are set out in section 12 of the 1992 Act as follows:

- (a) a ‘sexual offence’ within the meaning of section 2 of the Criminal Evidence Act 1992 which includes (but specifically excludes attempts to commit) the following offences:
 - rape – sexual assault – aggravated sexual assault – rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 – procuring the defilement of a woman by threats or fraud or administering drugs contrary to section 3 of the Criminal Law Act 1885 – owner, occupier or manager of a premises permitting the defilement of a young girl contrary to section 6 of the Criminal Law Act 1885 – soliciting or importuning a child under 17 years of age, or a person who is mentally impaired, for the purposes of a sexual offence, contrary to section 6 of the Criminal Law (Sexual Offences) Act 1993 – incest by a male, or a female of or over 17, contrary to section 1 or 2 of the Punishment of Incest Act 1908 – defilement of a child under 15 or 17 years of age contrary to section 2 or 3 of the Criminal Law (Sexual Offences) Act 2006 – having sexual intercourse or committing an act of buggery with a person who is mentally impaired, or commission by a male of an act of gross indecency with another male person who is mentally impaired, contrary to section 5(1) or 5(2) of the Criminal Law (Sexual Offences) Act 1993;
- (b) an offence involving violence or the threat of violence to a person;
- (c) an offence under section 3, 4, 5 or 6 of the Child Trafficking and Pornography Act 1998;
- (d) an offence under section 2, 4, or 7 of the Criminal Law (Human Trafficking) Act 2008; or
- (e) an offence consisting of attempting or conspiring to commit, or of aiding or abetting, counselling, procuring or inciting the commission of, an offence in paragraph (a), (b), (c) or (d) above.

12.33 Where a victim of crime is a witness in criminal proceedings and is outside the State, the prosecutor will consider applying as appropriate under section 67 of the Criminal Justice (Mutual Assistance) Act 2008, or section 13 of the Criminal Evidence Act 1992, to allow the witness to give evidence by live television link from outside the State. It will be a matter for the judge hearing the application to decide whether the witness should be allowed to give such evidence in the circumstances. With regard to section 67 of the 2008 Act, the witness must be in a designated state and the judge must be satisfied that it is not desirable or practicable for the witness to give evidence in person. In relation to section 13 of the 1992 Act, a witness under 18 years of age who is outside the State may be allowed to give evidence by live television link unless the judge sees good reason to the contrary, and in any other case, a witness may give such evidence under section 13 with the leave of the judge.

EVIDENCE IN RELATION TO SEXUAL EXPERIENCE

12.34 In a prosecution for a 'sexual assault offence' (see paragraph 3.25 below) the prosecutor will, in accordance with the provisions of sections 3, 4, 4A and 6(2) of the Criminal Law (Rape) Act 1981:

- (a) object to questions being asked of a witness and/or evidence being adduced by the accused about any sexual experience of the complainant with any person, other than that to which the charge relates, where prior leave of the court has not been obtained;
- (b) notify the complainant if the accused has given notice of intention to apply:
 - (i) under section 3 - to the trial judge - for leave to cross-examine the complainant about any sexual experience of the complainant with any person, other than that to which the charge relates; or
 - (ii) under section 4 - to the judge conducting proceedings under Part 1A of the Criminal Procedure Act 1967 relating to the dismissal of a charge of a sexual assault offence or the taking of a person's evidence by way of deposition in the case of a sexual assault offence – for leave to adduce evidence or ask a question which, if the proceedings were a trial as under section 3, could not be adduced or asked without leave of the trial judge.
- (c) advise the complainant of the complainant's entitlement to be heard in relation to the accused's application and to be legally represented for that purpose during the application (see paragraph 12.36 below) – the prosecutor will upon request by the complainant contact the Legal Aid Board who will arrange for such legal representation;
- (d) apply to the trial judge for the exclusion from the court, during the hearing of the accused's application, of all persons except officers of the court and persons directly concerned in the proceedings – without prejudice to the right of a parent, relative or friend of the complainant, or of the accused where the accused is not of full age, to remain in court.
- (e) oppose the accused's application if, in the view of the prosecutor, it would not be unfair to the accused to refuse to allow the evidence to be adduced or the question to be asked, having regard to the provisions of sections 3(2)(b) and 4(2) of the 1981 Act.

12.35 A 'sexual assault offence' within the meaning of section 1 of the Criminal Law (Rape) Act 1981 includes:

- (a) sexual assault, attempted sexual assault, aggravated sexual assault, attempted aggravated sexual assault – aiding, abetting, counselling and procuring those four offences – incitement to sexual assault or aggravated sexual assault – conspiracy to commit any of the foregoing offences; and

- (b) a 'rape offence': rape, attempted rape, burglary with intent to commit rape – aiding, abetting, counselling and procuring those three offences – incitement to rape – rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 and attempted rape under section 4 – aiding abetting, counselling and procuring those two offences – incitement to rape under section 4; and
- (c) for the purposes of applications to the court under section 3, 4 or 6 of the Criminal Law (Rape) Act 1981, the following offences are construed as a 'sexual assault offence':
 - (i) defilement of a child under 15 or 17 years of age contrary to section 2 or 3 of the Criminal Law (Sexual Offences) Act 2006 – see section 6(3)(b) of the Criminal Law (Sexual Offences) Act 2006; and
 - (ii) soliciting or importuning a child under 17 years of age, or a person who is mentally impaired, for the purposes of a sexual offence, contrary to section 6 of the Criminal Law (Sexual Offences) Act 1993 – see section 3(3)(b) of the Criminal Law (Sexual Offences) (Amendment) Act 2007.

12.36 Whilst all proceedings for a 'sexual assault offence' attract the requirement to obtain leave of the court to ask questions of a witness and/or adduce evidence about the complainant's sexual experience, the entitlement of a complainant to be heard and legally represented during an application by an accused under section 3 or 4 of the Criminal Law (Rape) Act 1981 does not extend to every 'sexual assault offence'. For example, the complainant's entitlement does not include the offence of sexual assault. The offences to which it does apply are set out in section 4A(6) of the 1981 Act as follows:

- (a) a 'rape offence' – see paragraph 12.35(b) above;
- (b) defilement of a child under 15 or 17 years of age – contrary to section 2 or 3 of the Criminal Law (Sexual Offences) Act 2006;
- (c) soliciting or importuning a child under 17 years of age, or a person who is mentally impaired, for the purposes of a sexual offence - contrary to section 6 of the Criminal Law (Sexual Offences) Act 1993;
- (d) aggravated sexual assault, attempted aggravated sexual assault, incitement to aggravated sexual assault;
- (e) aiding, abetting, counselling and procuring aggravated sexual assault or attempted aggravated sexual assault.
- (f) conspiracy to commit any of the offences in paragraphs (a), (b), (c) or (d) above.

LEGAL ADVICE

12.37 Prosecutors will work with the Garda Síochána to ensure that complainants in prosecutions for sexual offences are aware of their entitlement to free legal advice which is arranged by the Legal Aid Board in accordance with the provisions of section 26(3A) of the Civil Legal Aid Act 1995. As stated above, the complainant's entitlement does not extend to all sexual offences. Complainants are entitled to free legal advice in prosecutions for the offences set out in section 26(3A) of the 1995 Act as follows:

- (a) rape – contrary to common law, or section 2 of the Criminal Law (Rape) Act 1981, or section 4 of the Criminal Law (Rape) (Amendment) Act 1990;

- (b) aggravated sexual assault – contrary to section 3 of the Criminal Law (Rape) (Amendment) Act 1990;
- (c) soliciting or importuning a child under 17 years of age, or a person who is mentally impaired, for the purposes of a sexual offence – contrary to section 6 of the Criminal Law (Sexual Offences) Act 1993;
- (d) defilement of a child under 15 or 17 years of age – contrary to section 2 or 3 of the Criminal Law (Sexual Offences) Act 2006;
- (e) incest – contrary to section 1 or 2 of the Punishment of Incest Act 1908.

12.38 A person who is identified as a suspected victim of a human trafficking offence is entitled to free legal advice which is arranged by the Legal Aid Board in accordance with the provisions of section 26(3B) of the Civil Legal Aid Act 1995. The entitlement applies whether or not a prosecution for the human trafficking offence has been instituted. Determinations as to whether there are reasonable grounds for believing a person is a victim of a human trafficking offence are made by the Garda Síochána under administrative arrangements for the protection of such victims.

FREEDOM OF INFORMATION

12.39 Information about requests to the Office of the DPP under the law on freedom of information can be found in chapter 16 and on the Office website at www.dppireland.ie.

PERSONAL DATA

12.40 Information about how the Office of the DPP processes personal data under data protection law can be found in chapter 16.

COMPLAINTS

12.41 Prosecutors or members of the Director's staff who become aware of anyone wishing to make a complaint about services provided by the Office of the DPP which directly affected them will inform those persons of the Complaints Policy. Information on the Complaints Policy can be found in chapter 16 and on the Office website at www.dppireland.ie.

12.42 Victims of crime, or family members of victims of crime who have died, are ill or otherwise incapacitated, who are dissatisfied with a decision not to prosecute may request a summary of the reasons for the decision or a review of the decision. That is a separate process to making a complaint about services provided by the Office of the DPP. Requests for reasons or review are discussed in paragraphs 12.10 to 12.19 above and further information can be found on the Office website at www.dppireland.ie.

Italy / Italie

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?
In the Italian legal system, the expression "*persona offesa dal reato*" (an injured party victim of a criminal offence) relates to a person holding a right protected by criminal law. There is no definition for "a witness", but it can be indirectly deduced from the Code of criminal procedure. The Code establishes that a witness "shall be questioned on the facts which are referred to as evidence".
- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?
In the Italian legal system, there are special regimes for the assistance to victims of certain types of crime: for example, for the victims of trafficking (programs for their assistance, protection and social inclusion are envisaged by the law) or for the victims of domestic violence (physical, sexual, psychological or economic violence within the family or between persons now or once united in marriage or by an emotional bond). The granting of a special residency permit is envisaged in case of foreigners. Moreover, several rules provide for an economic compensation in favour of victims of certain types of crime: civil servants or citizens who become victims in performing their duties, or victims of terrorist attacks or organized crime; civilian or military victims of terrorist attacks taking place abroad; victims of usury or serious extortion.
- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?
The notion of vulnerability can be derived from a number of specific legal provisions. It can be referred to the individual characteristics of a person who is suffering from the consequences of a crime or to the type of crime. Vulnerable persons include children, mentally-ill persons as well as victims of sexual offences, mistreatment, domestic violence, genital mutilations, trafficking and enslavement, mafia crimes, terrorism, heinous crimes (such as "femicide"). This category also includes the victims of crimes committed for racial hatred or for the purpose of discrimination, as well as the victims who are emotionally, psychologically or economically depending on the perpetrator.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?
Yes, there are.
- 2.2 If yes, are they established in the law or other legal instruments?
They are established in the law.

- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

An injured party victim of a criminal offence (*persona offesa dal reato*) has the right to receive a range of information that are listed in detail by Italian law (see point 2.4).

He/she can make use of legal counsel and (if he/she has no financial means) he/she can have access to Legal Aid.

He/she has the right to interpretation and translation of documents. He/she can lodge statements of case at every stage and level of the proceedings and indicate evidence. He/she can lodge a statement of opposition to the judge against the public prosecutor's request for dismissing the case. He/she can appoint his/her expert in case of *incidente probatorio* (procedure for the taking of evidence during the pre-trial stage). He/she can challenge the infringements of his/her rights.

Measures of protection can be ordered for him/her, when necessary.

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

The Italian Code of criminal procedure provides that an injured party victim of a criminal offence (*persona offesa dal reato*) shall have the right to be informed –since the first contact with a prosecuting authority and in a language he/she can understand– of the procedures whereby a complaint may be lodged, his/her position during trial and his/her possibility to claim damages and reimbursement for trial costs.

A victim may request that all information about the state of proceedings be sent to him/her. He/she may request to be warned of the public prosecutor's request for dismissing the case.

He/she must be informed of the place and date of trial, the count of indictment, the *incidente probatorio* (procedure for the taking of evidence during the pre-trial stage), the faculties he/she is entitled to. He/she must be informed that protection measures might eventually be ordered in his/her favour, how he/she can challenge any infringement of his/her rights. He/she must also be informed about the defendant's arrest, release and evasion, as well as health facilities on his/her territory, anti-violence centers and shelter houses.

- 2.5 What kind of penalties and sanctions are established for violation of these rights?

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

The general criterion to establish the condition of special vulnerability under Italian law has already been indicated at point 1.3.

There are rules reinforcing the protection of a particularly vulnerable victim during his/her hearing, whether it is during investigation, *incidente probatorio* (procedure for the taking of evidence during the pre-trial stage) or trial. The cases of *incidente probatorio* and audio-visual recording of his/her statements have been extended.

During the preliminary investigation, the police may make use of an expert in psychology appointed by the public prosecutor, when a particularly vulnerable victim is examined to give summary information. The police have to ensure that a particularly vulnerable victim shall have no contacts with the defendant during his/her hearing.

A victim must not be called to bear testimony several times, unless strictly necessary.

The judge can order that his/her examination shall take place “under protected conditions”, such as the usage of a “two-way mirror” together with an intercom system, or the examination shall be made in a different place rather than the Courts (even in the person’s home or in facilities specialized in assistance).

- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

Yes, it is. For example, if the victim is a child, the Juvenile Court is informed, in case they need to take a decision for his/her protection.

- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

Any person can be a witness (even children under fourteen years old, but the obligation in engaging oneself to tell the truth while he/she bears witness during trial is provided for persons that are older than fourteen years old).

It is up to the judge’s discretion to assess the reliability of a witness. The assessment of a witness under age made by the judge prevails on the evaluation of experts who are called to give an opinion on the child’s ability to bear testimony.

- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

Any person can bear testimony. However, it is up to the judge to assess, even through experts, if a person is physically or mentally suited to bear testimony.

Any person who is called to bear testimony has the obligation to present himself/herself before the courts and answer the questions, unless these questions might lead to his/her criminal liability.

- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

See point 2.6.

- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

Yes, there are. See point 2.6.

- 2.12 How is the prevention of repeated victimisation ensured?

Through the set of measures listed at point 2.6.

- 2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

The Italian legal system makes no difference between victims, whether nationals or foreigners.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

- 3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?
In the Italian legal system, public prosecutors belong to the judiciary and as such they are entitled to guarantee the respect for the victims' rights, just like judges.
Public prosecutors obtain criminal offence reports and they coordinate preliminary investigation.
With reference to victims, public prosecutors hear their statements in order to obtain more evidence, in comparison to what was recorded in their complaints or suits (this endeavour can be delegated to the police too). At the issue of this examination, they may order further investigation activities (searches, seizures, acquisition of phone records and documents, request for phone or electronic tapping, examination of witnesses, etc.).
- 3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?
This role is established in the law and it has a constitutional foundation.
- 3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?
As underlined at point 3.1, public prosecutors coordinate police activities under their direct authority. In this capacity, public prosecutors give police forces the direction for their investigation, delegating some specific activities and directly carrying out some acts.
- 3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?
Yes, they can.
- 3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?
Yes, they can.
- 3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?
Yes, they do. When some categories of offences are concerned, a network of organizations steadily interacts alongside with prosecution offices and police forces. When certain offences are prosecuted (such as mistreatment, sexual assault, stalking, trafficking) and there is a need for ensuring immediate protection to the victims, public prosecutors may address themselves to anti-violence centers or shelter houses. The latter can protect the victims by offering them safe shelters and anonymity.
- 3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?
Italian prosecutors belong to the judiciary, as underlined here above. As a result, they must attend training courses in general and special matters, as all the other members of the judiciary. The High School for the Judiciary organizes courses also devoted to the protection of victims of criminal offences and cooperates with other organizations, thus giving professionals outside the judiciary the chance to participate.

In addition to participating in training courses organized by the High School, prosecutors in turn cooperate –in the local communities where they work– with police forces. This way they can ensure that practical workers may receive some training in sensitive matters such as the examination of children and the examination of victims of sexual abuse or mistreatment offences.

3.8 Any other relevant point you wish to raise.

The Italian Minister of Justice has declared the reinforcement of the protection of victims of crime a political priority for the year 2017.

The General Directive issued by the Minister aims at reducing the “secondary victimisation”, as well as at granting the victims’ rights to be notified, to take part in judicial proceedings, to be assisted and to access expert support facilities.

Latvia / Lettonie

1. Definitions

1.1. In the Criminal Procedure Law is provided for that a victim in criminal procedure may be a natural or legal person to which harm was caused by a criminal offence, that is, a moral injury, physical suffering, or a pecuniary loss. The Criminal Procedure Law includes also the definition of a witness, providing for that a witness is a person who has been invited, in accordance with the procedures specified by Law, to provide information (testify) regarding the circumstances to be proven in criminal procedure and the facts and auxiliary facts connected with such circumstances.

1.2. For ensuring the special regime for persons who have suffered from the specific criminal offences in the Criminal Procedure Law is included the concept of the victim to whom the special protection shall be granted. The status of the victim whom the special protection shall be applied in the criminal procedure without additional assessment is applicable to under-aged person, a person who due to mental or other health disturbances can not fully enjoy his/her procedural rights, a person who has suffered from the criminal offence against his/her sexual inviolability and integrity or from the human trafficking, a person who has suffered from the criminal offence associated with the violence or threatened violence and committed by the relative, former spouse of the victim or by a person with whom the victim was living in informal partnership, a person to whom in the result of the criminal offence possibly are inflicted the serious bodily injuries or mental disorders, a person who has suffered from the criminal offence possibly committed due to racism, nationalism, ethnical or religious motives. By a decision of the person directing the proceedings (investigator, prosecutor or court) the special protection may be granted also to another person not included into the above list, if such person is especially vulnerable due to the detriment caused in the result of the criminal offence and is exposed to repeated threats, intimidation or reprisal.

1.3. The definition of a victim whom special protection shall be granted is included into the Criminal Procedure Law and its clarification is provided in 1.2 paragraph.

2. The rights of the victims, witnesses and vulnerable persons

2.1. In Latvia in addition to the general human rights for the victims, victims whom special protection shall be granted and the witnesses in the criminal procedure also other rights are provided for.

2.2. In the Criminal Procedure Law are laid down the fundamental rights and rights of the victims, including the victims whom the special protection must be granted in the criminal procedure, in the courts of first instance, appeal and cassation instance courts. The Criminal Procedure Law provides for also the rights of the witnesses.

2.3. The victims, including the victims whom the special protection shall be granted have rights to receive information regarding conditions for applying and receiving of the compensation, including the state compensation, to submit application regarding indemnification of the damages, do not provide testimonies against themselves or relatives, to made the settlement with the person who has caused the detriment to them, as well as to receive the information on making of the settlement and its consequences, to invite the counsel of defence for receiving of the legal assistance, to submit the request to take the necessary measures in case of threats to such person, his/her relatives or property, to submit application on reimbursement of the procedural expenses incurred in the criminal procedure, to submit the complaint regarding the procedural decision or actions of the person authorised to conduct the criminal procedure, to receive the contact information for communication in relation with the given criminal procedure, to receive the information regarding the available support and medical assistance. In addition to the abovementioned rights the victim in the pre-trial criminal procedure (also as the victim to whom a special protection shall be granted) has rights to familiarise him or herself with the criminal procedure register, and to submit a rejection to officials entered therein, to submit applications regarding the performance of investigative and other operations, to familiarise him or herself with a decision regarding the determination of an expert examination before the transferral thereof for execution, and to submit an application regarding the amendment thereof, if the expert examination is conducted on the basis of his or her own application, after the completion of a pre-trial criminal procedure to receive copies of the criminal case files to be transferred to a court that directly apply to the criminal offence with which harm has been caused to him or her, if they are not provided earlier, or by a consent of the Prosecutor to familiarize with such files of the criminal case, to submit a request to the investigating judge that he or she be acquainted with the files of special investigative operations that are not appended to the criminal case

(primary documents), to receive the written translation in cases provided for by the Law. In the first instance court the victim (including the victim enjoying the special protection) has rights to find out the place and time of the trial in a timely manner, to submit a rejection to the composition of the court, an individual judge, a public prosecuting official, and an expert, to participate him or herself in examination of a criminal case, to express his or her view regarding every matter to be discussed, to participate in an examination performed directly and orally of each piece of evidence to be examined in court, to submit applications, to speak in court debates, to familiarise himself or herself with a court judgment and the minutes of a court session, to appeal the court judgment. The victim enjoying the special protection additionally has the rights to request that his/her participation or hearing before the court would take place by using the technical means. In the appeal instance court the victim has the same rights as in the first instance court, as well as the rights to maintain and substantiate his/her complaint or to revoke it. The victim in the criminal procedure regarding the criminal offence associated with the violence or offence against sexual inviolability or integrity has the rights to request that a person directing the proceedings informs him/her regarding the advancing of the criminal procedure in part related with the criminal offence, by which the detriment was caused to him/her. The victim, his/her guardian or custodian in all phases of the criminal procedure and in all its types has rights to request to take the European Protection Order, if exist the grounds for issuing of the European Protection Order provided for by this Law. A witness has the right to know in what criminal procedure he or she has been invited to testify, to which official he or she is providing information, and the procedural status of such official. Before an inquiry and interrogation, a witness has the right to receive information from a performer of a procedural operation regarding his or her rights, duties, and liability, the mode of the recording of information, as well as regarding the right to provide testimony in a language that he or she knows well, using the services of an interpreter, if necessary. A witness has the rights to make notes and additions in testimonies recorded in writing, or to request the opportunity to write testimonies by hand in a language that he or she knows, do not testify against him or herself or against his or her close relatives, to submit a complaint regarding the progress of an inquiry or interrogation during pre-trial criminal procedure, to submit a complaint to an investigating judge regarding the unjustified disclosure of a private secret, or to request that the court withdraw a matter regarding a private secret, and to request that the request be entered in the minutes of the session if such request is rejected, to invite the counsel of defence for receiving of the legal assistance. The witness in all phases of the criminal procedure and in all its types has rights to request to take

the European Protection Order, if exist the grounds for issuing of the European Protection Order provided for by this Law. An image of a witness recorded as a photograph, video, or by other types of technical means shall not be published in the mass media during procedural operations without the consent of such witness, if such publication is not necessary for the disclosure of a criminal offence.

2.4. When a person is admitted to be the victim (also as the victim to whom a special protection shall be granted), the written information regarding the fundamental rights of the victim in the criminal procedure is provided, in case of necessity explaining them. Inter alia the victim shall be informed about the toll free hotline for receiving of emotional and psychological support and information about rights of the victim in the criminal procedure, including regarding compensation for damages and state compensation. Additionally to the victim is explained a possibility to visit the website consisting the information regarding the rights of the victims, legal issues, as well as practical recommendations. In the mentioned website are also indicated NGOs, where is possible to receive the assistance required for the victims, for example, consultations for children and families which have encountered with the violence. To the witness before the interrogation are explained the rights and obligations.

2.5. For intentional failing to comply with the procedures and requirements provided for by the legal acts the disciplinary liability may be applicable to an investigator or prosecutor and the disciplinary sanctions may be applied, for example, reproof or reprimand etc.

2.6. In Latvia are provided for the special rights for vulnerable persons (see reply to 1.2 regarding victims enjoying special protection). For example, the victim enjoying the special protection has rights with the consent of a person directing the proceedings to participate in the procedural actions together with a confidant, except if the criminal procedure is instituted against such confidant, if such person is detained, suspect or defendant. In its turn the provision of the legal assistance to the under-aged victim (victim enjoying special protection) and to the representative of the under-aged victim is mandatory in the criminal procedure regarding the criminal offence associated with the violence committed by the person, on whom the under-aged victim is financially or otherwise dependant, or if the criminal offence is committed against sexual integrity of inviolability.

2.7. In Latvia the temporary protection against the violence is regulated by the Civil Procedure Law and temporary protection measures are laid down by the Court. The Police is responsible for supervision of the fulfilment of the Court

rulings. In cases when imminent threats exist that any person present in home or nearby it may cause the detriment to life, freedom or health of a person to be protected, the police officers according to the procedures provided for by the “Law on Police” may take police decision on separation, by which may also be imposed the prohibition to the person presenting the threats to contact with the person to be protected.

In its turn in the criminal procedure for protection of the rights of any specific person the following security measure may be applied to the suspect or defendant – prohibition to approach the specific person or place. By imposing the prohibition to approach the specific person the rights of the suspect or defendant to be present at proximity of the given person closer than at certain distance laid down in such decision are limited. In such case the person, approaching to whom is prohibited, may herself/himself notify the person directing the proceedings regarding the violation of the security measure. Similarly the restriction to meet with certain persons may be imposed by applying the security measure – police supervision. The decision on applying the security measure in the form of the police supervision shall be sent for fulfilment to the police authority being in charge of the territory where the respective person is living. In such case the person, who can not be approached, may notify the police authority or a person directing the proceedings about the violations of the security measure, or such violation may be found by the police officers while conducting the checks provided for by the Law. There exist also another legal measure for protection of the witnesses and victims in the criminal procedure – special procedural protection, aimed to protection of the life, health and other legal interests of the persons providing testimonies. The decision on special procedural protection in the cases provided for by the Law is sent for fulfilment to the special protection authority.

As regards the victim enjoying the special protection the Criminal Procedure Law provides for that in cases when the application of the victim enjoying the special protection is received with request to provide information on release or escape from the prison or short-term detention facility of that arrested person who has caused the detriment to him/her, the person directing the proceedings shall send the given information to the victim as soon as it was learnt about the release or escape.

The victim, his/her guardian or custodian in all phases of the criminal procedure and in all its types has rights to request to take the European Protection Order, if exist the grounds for issuing of the European Protection Order provided for by the Criminal Procedure Law. After taking of the European Protection Order it shall be sent to the person directing the proceedings and to the competent authority of that EU Member State, where the person to be protected is planning to live or lives, or is planning to reside or resides.

2.8. The Criminal Procedure Law of Latvia does not provide for that the person directing the proceedings shall receive a permission for provision of testimonies from the legal representative of the victim enjoying special protection or of under-aged witness. Nevertheless, while conducting the interrogation of the under-aged person, the peculiarities of the interrogation of the under-aged person laid down by the Criminal Procedure Law shall be compulsorily taken into the consideration, for example, one of the legal representatives, adult relatives or confidants of the under-aged person have rights to be present during the interrogation. The mentioned person may ask the questions to the person to be interrogated, if a consent of the performer of the investigation activity is received. In case if the detriment is caused to a person, who due to physical or mental disability is admitted to be the victim without his/her consent, the victim shall be represented by one of his/her relatives. In such case all rights of the victim are exclusively and absolutely granted to his/her representative and the victim can not enjoy them autonomously.

2.9. The explanation regarding the rights of the person who due to physical or mental disability as admitted to be the victim without his/her consent is provided in Paragraph 2.8. Regarding the peculiarities of the interrogation of the under-aged persons it should be noted that in cases when the psychologist considers that the direct interrogation may cause harm to the mental condition of the person who has not reached the age of 14 years or to the mental condition of such under-aged person, who is admitted to be the victim of the violence committed by a person, on whom such under-aged person is financially or otherwise dependant, of the human trafficking or of the criminal offence against the sexual inviolability or integrity, such interrogation shall be conducted by using the technical means or through the psychologist. If investigator or prosecutor does not agree with it, then the direct interrogation shall be conducted only with the consent of the investigation judge, but before the Court – with the consent of the Court.

2.10. In the criminal Procedure Law are laid down those persons who should be admitted as the victims enjoying the special protection. The explanation regarding the victim enjoying the special protection is provided in Paragraph 1.2. Information regarding applying of the protection measures is already provided in Paragraph 2.7. For ensuring the protection of the persons involved into the criminal procedure, as well as in criminal cases related with the criminal offence committed against under-aged person the Court may decide that the hearing will take place in the closed court hearing. Additionally the victim enjoying the special protection may request that his/her participation or hearing before the Court is ensured by the technical means.

2.11. In Latvia the investigation activities conducted in the criminal procedure, including the providing of testimonies may be filmed, namely, the sound and picture may be recorded. The procedures thereof are laid down by the Criminal Procedure Law. In the Criminal Procedure Law are provided for the cases when the interrogation of the under-aged victim and witness shall be mandatory recorded by the sound and picture recording device. The interrogation of the under-aged victims and witnesses shall be recorded by the sound and picture recording device, if it is in the best interests of the under-aged person and is necessary for reaching the purpose of the criminal procedure. The interrogation shall be mandatory recorded by the sound and picture recording device also in cases, when testimonies are being provided by the under-aged person, who is admitted to be the victim of violence committed by the person, on whom the under-aged victim is financially or otherwise dependant, the victim of the human trafficking or if the criminal offence is committed against sexual integrity or inviolability. The sound and picture shall not be recorded in cases, when it is contrary to the best interests of the under-aged person or if it may hinder the reaching of the purpose of the criminal procedure.

2.12. If there are grounds for suspicions that a person suspected or accused for the commission of the criminal offence may commit repeated criminal offence against the victim, the person directing the proceedings shall take into consideration such possibility when applying the security measure. It is also possible to decide the issue on special procedural protection for the victim in the cases provided for by the Law. The persons who are victims of the violence and the human trafficking also have the possibility to use the social rehabilitation services.

2.13. All rights of the victims and witnesses provided for by the Criminal Procedure Law are applicable both to the locals and foreign nationals.

3. The role of Prosecutors in protection of the rights of victims, witnesses and vulnerable persons

3.1. The person directing the proceedings shall in due time inform the person about the rights to be admitted as the victim in the criminal procedure. The person shall be admitted to be the victim by the decision of the person directing the proceedings, inter alia it may be admitted to be the victim also by the decision of the Prosecutor. When the person is admitted to be the victim, to him/her shall be immediately issued the written information about the fundamental rights of the victim and in case of necessity also explained. Also the witness has the rights before the inquiry or interrogation to receive the information about his/her rights. During the conducting of the criminal procedure the person directing the

proceedings, including the Prosecutor shall ensure to the person involved into the proceedings the possibility to use all procedural rights.

Any criminal procedure in Latvia shall be conducted according to the basic principles laid down in the Criminal Procedure Law. In the cases provided for by the Law the victim has rights to lodge the complaint regarding the procedural decisions and actions of the person authorised to conduct the criminal procedure. When the victim or witness has lodged such complaint regarding the decision of the person directing the proceedings – investigator, such complaint according to the provisions of the Criminal Procedure Law shall be examined by the prosecutor supervising the investigation.

3.2. The rights of all persons involved into the criminal procedure, as well as the duties of the officials conducting the criminal procedure are laid down in the Criminal Procedure Law.

3.3. According to the provisions of the Criminal Procedure Law the Prosecutor in any specific criminal procedure may have the status of Prosecutor supervising the investigation, of the person directing the proceedings, or of the public prosecuting official. During the supervision of the investigation the Prosecutor has the following duties:

- to give instructions regarding the selection of the type of procedure, the direction of an investigation and the performance of investigative operations, if a person directing the proceedings does not ensure a targeted investigation and fails to prevent an unjustified interference into the life of a person or a delay;
- to request that the direct superior of an investigator replace a person directing the proceedings, or make changes in the investigative group, if given instructions are not fulfilled or if procedural violations are committed that threaten the conduction of criminal procedure;
- to examine the complaints within the frameworks of his/her competence;
- to take decisions regarding the lodged rejections within the frameworks of his/her competence;
- to take over the direction of criminal procedure without delay when sufficient evidence for the fair settlement of criminal legal relations has been obtained in an investigation.

The fulfilment of the mentioned duties may also be related with safeguarding of the rights of the victims or witnesses in the criminal procedure, for example, by

giving instructions regarding the investigative actions to be taken, while examining the complaints of the victims or upon taking the decision regarding notified rejections.

3.4. During the phase of the investigation and criminal prosecution the persons involved into the proceedings may apply directly to the Prosecutor regarding matters related with the protection of their rights. During the investigation phase the persons involved into the proceedings may submit the complaint regarding actions and decisions of the investigator or to submit the rejection of the person directing the proceedings, in its turn during the criminal prosecution phase, when the prosecutor is the person directing the proceedings, the persons involved into the proceedings may apply to Prosecutor with submission, application or request regarding ensuring of their rights and legal interests. The decisions taken by Prosecutor in the status of the person directing the proceedings the persons involved into the proceedings in cases provided for by the Law may appeal with superior Prosecutor.

3.5. The Prosecutor in the cases provided for by the Law may upon own discretion take measures for protection of the rights of the victims and witnesses. For example, if during the examination of the criminal procedure is found that the rights of the persons involved into the proceedings are not complied with, Prosecutor may not only give instructions to the person directing the proceedings and notify that a violation has incurred, but also according to the Prosecution Office Law to take Prosecutor's injunction for ceasing the illegal action, preventing the consequences of such action or for prevention of violation. Prosecutor being in charge of any specific criminal procedure may take decision on changing of the security measure applied to the defendant if there are data indicating that the defendant may influence the persons giving testimonies in the criminal procedure. The decision regarding the special procedural protection during the pre-trial procedure shall be taken by Prosecutor General, but in such case the application of the person being in danger and proposal of the person directing the proceedings is required.

3.6. In relation with the providing of the assistance to the victims, witnesses and vulnerable persons and in the matters of Prosecutor's qualification the Prosecutor General's Office is cooperating and will continue such cooperation with other public authorities and non-governmental organizations. In relation with these issues the Prosecutor General's Office has developed the successful cooperation with the foundation "Centrs Dardedze", the State Inspectorate for Protection of Children's Rights, Training Centre of the Local Governments of Latvia, the non-

governmental organization “PROVIDUS”, the State Probation Service, the Ombudsman of the Republic of Latvia etc.

3.7. The Prosecutor General’s Office jointly with the counterparts regularly every year is organizing the specialized training courses for Prosecutors in area of children’s rights protection. During the theoretical lectures and practical training conducted by the professional lecturers the Prosecutors of the all levels of the Prosecution Office structures have acquired in-depth knowledge regarding types of the violence against children and its features, peculiarities of the interrogation of children and inter-institutional cooperation in relation with the victims etc. The non-governmental organizations are organizing well-tailored seminars for Prosecutors, including in relation with the rights of the victims and legal assistance.

Lithuania / Lituanie

1. Definitions

1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

The definition of a victim is provided for in the Criminal Procedure Code of the Republic of Lithuania (hereinafter the Criminal Procedure Code). A victim is a natural person who suffered physical, material or non-material damage [harm] because of a criminal offence, or a family member or a close relative of a natural person who has died because of criminal offence and who, due to the death of that person has suffered physical, material or non-material damage. A person is recognized to be a victim further to the decision of a pre-trial investigation officer or a prosecutor or court's ruling.

The definition of a witness is also provided for in the Criminal Procedure Code. A witness may be any person who is known to have information about the circumstances relevant for investigation and hearing of the case.

1.2. Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

A victim of domestic violence is a person against whom the domestic violence has been used, or a family member of the person who has died because of domestic violence, who has suffered damage because of that person's death, or also a child who has become a witness of domestic violence or lives in an environment exposed to violence (Republic of Lithuania Law on Protection against Domestic Violence).

A victim of trafficking in human beings is a natural person against whom a criminal offence of trafficking in human beings has been committed, disregarding that person's will to be recognized as a victim or the moment of such recognition (Recommendations regarding Identification of Victims of Trafficking in Human Beings, Pre-trial Investigation and Inter-institutional Cooperation).

1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

The Criminal Procedure Code does not provide for a definition of a vulnerable person. However, in the criminal proceedings underage victims are always considered as especially vulnerable due to their age and social maturity, which means that usually all measures for protection against the secondary victimization are applied.

2. The rights of victims, witnesses and vulnerable persons

2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

The rights of victims and witnesses are defined in the Constitution of the Republic of Lithuania, Criminal Procedure Code, Recommendations approved by the Prosecutor General (hereinafter the Recommendations). Granting of anonymity or partial anonymity and specifics of questioning an underage witness or victim may be considered as specific rights of the witnesses and victims. Recommendations regarding Assessment of a Victim's Special Needs for Protection provide for the procedure for assessing the special needs for protection of the victims in the criminal proceedings and the grounds for application of special protection means.

2.2 If yes, are they established in the law or other legal instruments?

The rights are established in the Criminal Procedure Code, laws and Recommendations.

2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Pursuant to Article 31 Paragraph 3 of the Constitution of the Republic of Lithuania, a witness is advised that it shall be prohibited to compel anyone to give evidence against himself, or his family members or close relatives.

The victim has the following rights: to obtain information about the course of criminal proceedings involving him; to submit requests; to apply for disqualification; to get access to the pre-trial investigation material during the pre-trial investigation and trial; to appeal against actions and decisions of a pre-trial investigation officer, prosecutor, pre-trial judge and the court; to provide evidence; to receive compensation for expenses sustained as a result of his participation in the criminal proceedings; to obtain contact details in order to keep in contact with regards to the case; to be provided with translation and interpretation services; the right to procedural equality of the rights of foreign citizens and citizens of the Republic of Lithuania; the right to receive compensation for damage sustained as a result of the criminal offence; to be granted protection; to receive legal assistance; to have an accompanying person; to be present while his special protection needs are being assessed and to get special protection measures; to appeal against the court judgement and court ruling; to deliver the final speech. When special protection measures are being considered, it is recommended to follow certain guidelines such as: non-public hearing of the case; presence of an accompanying person; the questioning is conducted by the officer of the same gender as the person to be questioned; the questioning to be conducted by a specialized officer; the repeated questioning to be conducted by the same officer; the right to have a translator/interpreter has to be safeguarded to a victim of a criminal offence who does not understand the Lithuanian language or who has speech, hearing, mental disability, or victim's representative; notification about the suspect being released or suspect's escape from detention facility; notification about the arrest of the suspect; notification about the protection measures provided for in the legal acts and the procedure for application of such measures. Participation of statutory representative. Participation of authorised representative. Questioning

conducted using sound and video remote communication means. Questioning conducted at the pre-trial judge's. Questioning conducted in the premises specially adapted for questioning of children. Questioning to be conducted only once. Video and sound recording to be made during questioning. Questioning to be conducted in the absence of the suspect (at pre-trial judge's). Presence of specialized professionals in the questioning.

The witness has the following rights: to give testimony in his mother tongue and use interpreter/translator's services where questioning is conducted in the language he does not understand; to review the record of his questioning and make amendments and corrections in it; to request for making sound and video recording during his questioning; to write down his testimony himself; to apply for the measures preventing from criminal influence, following the procedures and referring to the grounds provided for in the laws; to get compensation for the expenses incurred; to have a representative.

2.4. How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

A natural person who has suffered damage [harm] caused by a criminal offence has a right to address in oral or written form a pre-trial investigation authority or prosecutor and request for commencement of pre-trial investigation. In the course of pre-trial investigation, prior to conducting a questioning of a victim or a witness, the person to be questioned is presented with a record of explanation of the rights and duties of the witness (victim) and the annex thereto, and the person to be questioned confirms by his signature that he has been informed of his rights and duties.

At present, in addition to the summons to the court, an informational brochure "What to do when you are summoned to give statements" is enclosed; also, in the website www.teismai.lt one can read a practical-methodological guide "Psychological support to the victims and witnesses and their protection during judicial proceedings".

2.5 What kind of penalties and sanctions are established for violation of these rights?

Prosecutor or pre-trial investigation officer must ensure that the parties of the proceedings are able to efficiently exercise their rights that are granted to them during the proceedings. A prosecutor who fails to fulfil his official duties may be subjected to official inspection, and his position may be considered in the Commission for Prosecutors' Ethics; also, the Criminal Code of the Republic of Lithuania (hereinafter the Criminal Code) provides for criminal liability for failure to fulfil official duties or abuse of official powers.

2.6. Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

The Criminal Procedure Code does not establish the age limits of a person summoned to give statements as a witness. Thus, even children of young age may be questioned as witnesses when required, provided that they are capable of understanding the important issues relevant to the case and giving correct statements in relation thereto.

Also, according to the Criminal Procedure Code, a witness cannot be a person who, according to the statement issued by healthcare institution or conclusion drawn up by forensic

psychiatrist or forensic professional is not capable of properly understanding the circumstances relevant for the case and giving statements related thereto due to his physical or mental disabilities [disorders].

When an underage witness who is under the age of sixteen, and in court's discretion, a person under the age of eighteen, is questioned, statutory representatives of the witness are also summoned; in addition, an educational professional or representative of the state child rights protection institution may be summoned to the questioning.

2.7. When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

As soon as police officers arrive to the scene of domestic violence crime, they inform the person who has suffered from domestic violence about availability of assistance and, with victim's being aware of, notify a specialized support centre about the incident. Upon receipt of notification from the police, the specialized support centre immediately contacts the person who has suffered the violence and offers him a specialized complex assistance. The police officers immediately, but no later than the next working day, notify a child rights protection office, if an underage has experienced domestic violence, or was a witness to the domestic violence, or lives in the environment where violence is being used, or if the person suspected of violence is underage. With the view to provide the victim of violence with long-term assistance, cooperation with municipal or non-governmental organizations dealing with crisis and providing with shelter or accommodation is maintained; also, officers cooperate with institutions rendering social services, police offices, healthcare institutions and institutions providing legal assistance. Upon discovery of the fact that children were the witnesses to the violence and (or) the violence was used against them, a specialized support centre informs the Child Rights Protection Division (Office) of Municipality Administration operating in the territory of the victim's place of residence.

The Criminal Procedure Code provides for a coercive measure namely, obligation to live separately from the victim and (or) not to approach the victim in a certain distance; this coercive measure is imposed upon prosecutor's request that is approved by pre-trial judge's ruling. Imposition of this particular coercive measure is grounded on the reasonable presumptions that a suspect might unlawfully make influence on the victim or might commit new criminal offences against the victim or the persons living with him.

2.8. Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

A representative of an underage witness or underage victim is entitled to be present in the questioning. If the prosecutor believes that presence of the representative may affect the quality of the questioning as well as have effect on the person to be questioned, he must either explain this to the representative so that he refuses to be present in the questioning, or seek for pre-trial judge's ruling on prohibiting the representative to be present in the premises where questioning is conducted, but allowing him to watch the real-time sound and video recording of the questioning.

Upon request of the parties of the proceedings or on the initiative of pre-trial investigation officer, prosecutor or pre-trial judge, a representative of state child rights protection institution or a psychologist must be invited to the questioning of an underage witness or underage victim; these persons help to question the underage considering his social and psychological development.

2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

If a person who according to the statement issued by healthcare institution or conclusion drawn up by forensic psychiatrist or forensic professional is not capable of properly understanding the circumstances relevant for the case and giving statements related thereto due to his physical or mental disabilities [disorders], such person cannot be questioned as a witness. The age limit of the person to give statements as a witness is not established. Still, it is not recommended to question children of a young age, i.e. under the age of fourteen, as witnesses, because children of this age usually tend to fantasize, find it more difficult to distinguish between the real things and imagination, are more easily influenced by others etc. Besides, the liability for giving false testimony is imposed only on the persons over sixteen years of age.

2.10. Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

The Criminal Procedure Code provides for obligation to assess all persons who have suffered from criminal offences in order to determine whether they have special protection needs and prevent them from psychological trauma, criminal influence or other negative consequences. These persons may include victims of sexual offences, trafficking in human beings, serious crimes of violence and other persons who need additional support. The statements on assessment of the needs for special protection are filled in by investigating pre-trial investigation officer or the prosecutor carrying out or monitoring the respective pre-trial investigation. It is not necessary to assess the special protection needs, if such needs of the victim have been determined in other ways, e.g. statement or conclusion of a professional, or conclusion on repeated risk assessment etc.

2.11. Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

It is established in the Criminal Procedure Code and Recommendations that in the course of pre-trial investigation an underage witness or underage victim is usually questioned in the facilities specially adapted for conducting children's questionings and no more than once. A video and sound recording must be made during such questionings. If the court which is the work place for the pre-trial judge who has been addressed with application for questioning of an underage, does not have a specialized room enabling watching of the video and sound recording made real-time from another room and giving questions through pre-trial judge, it is necessary to ask the pre-trial judge to come to the nearest institution (e.g. regional court, police office, public organization) equipped with required facilities and conduct the questioning. Such questioning should also be assisted by a specialized psychologist who helps to question the underage considering his social and psychological development.

2.12. How is the prevention of repeated victimisation ensured?

According to the Criminal Procedure Code, where it is determined that a victim has needs for special protection, a pre-trial investigation officer or prosecutor must organize the criminal proceedings respectively, with suggesting that the victim was questioned only once and only by pre-trial judge. In cases where it is however necessary to conduct the questioning of an underage witness or underage victim once again, the questioning usually is conducted by the same person who conducted the first questioning.

2.13. Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

A victim residing in the European Union Member State other than the one where the criminal offence was committed shall have the same rights as held by the persons living in that State where the crime was committed. If the victim is not able to file a report in the Member State of commission of the criminal offence, he may address a competent government authority operating in his original Member State. This report shall be forwarded to the competent government authority operating in the Member State of commission of the crime in the shortest possible time.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

The rights of victims and witnesses are defined in the Criminal Procedure Code, Recommendations and Records of Questioning Witnesses (Victims) and enclosures thereto as approved by the Prosecutor General. Prosecutors, pre-trial investigation officers and courts are obliged to ensure that victims and witnesses are given the possibility to exercise the procedural rights granted to them.

3.2. Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

According to the Criminal Procedure Code, every time when elements of a criminal offence are discovered, the prosecutor, acting within his competence, must undertake all measures established in the laws in order to investigate and disclose the criminal offence in the shortest possible time. In addition, Law on Prosecution Service provides that a prosecutor makes his decisions independently, at his own discretion, in compliance with laws and the principle of reasonableness, with respect for human rights and freedoms, the presumption of innocence, also the principle of equality of persons before the law, state institutions and officials irrespective of their social and family status, duties, occupation, convictions, views, origin, race, gender, nationality, language, religion and education. Besides, the Code of Ethics for Prosecutors of

Lithuania establishes the rules of conduct and professional ethics (activity) which must be complied with by all prosecutors working in the Prosecution Service. Also, this Code regulates prosecutors' relations during and after office hours as well as relations with the parties of the proceedings, the Lithuanian nationals and other persons.

3.3. How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

Prosecutors cooperate with state institutions and non-governmental organizations by participating in conferences, meetings, training courses, work teams and by providing with methodological or practical assistance. The controlling role is performed by prosecutors within the limits defined in the Criminal Procedure Code or laws.

3.4. Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Yes, they can do that.

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Yes, they can do that.

3.6. Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Prosecutors are actively involved in cooperation with state institutions and non-governmental organizations.

With the view to secure proper representation of a child in the criminal proceedings, on 27 January 2011 the Cooperation Agreement among the Prosecutor General's Office, Ministry of Social Security and Labour and Institution of the Ombudsman for Children Rights of the Republic of Lithuania was signed.

Prosecutors of territorial prosecutor's offices also participate in the activities of commissions for child's welfare which are set up by Municipal Administrations for the purpose of coordinating the implementation of education, rehabilitation, prevention and other programs in the territory of municipality, and maintaining cooperation among institutions in providing the school-level commissions for child's welfare with methodological, informational, consultative and specialized assistance.

In addition, with the view to enforce cooperation with institutions involved in the activities related to children, victims of crimes and witnesses to crimes, prosecutors work together with Children Support Centre. In 2016 Prosecutor General's Office and Children Support Centre undersigned the agreement on cooperation.

While implementing the project "Establishment of Support Centre for Children Suffering Sexual Violence" under the program "Children and Youth Exposed to Risk" implemented by the European Economic Area financial mechanism in 2009–2014, Prosecutor General's Office and Ministry of Social Security and Labour were actively engaged in preparation of Recommendations Regarding Provision of Complex Assistance to the Children who have Allegedly Suffered from Sexual Abuse, which were eventually approved on 14 July 2016.

Following recommendations listed in 31 December 2012 Report No. VA-P-10-2-21 of the National Audit Office of Lithuania on the public audit “Is child rights protection organized effectively?”, prosecutors of Prosecutor General’s Office participated in the activities of the work group set up by the Ministry of Social Security and Labour which was assigned to prepare Recommendations Regarding the Procedural Status and Functions of Specialists of Child Rights Protection Divisions in the Criminal Proceedings. These Recommendations were approved by State Child Rights Protection and Adoption Service on 27 May 2016.

3.7. Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

There is Training Division operating in the Prosecutor’s Office. It assesses the training needs and organizes training where presentations are also often made by prosecutors. Prosecutors take part and make presentations in the training courses on protection of witnesses and victims’ rights and broadening the knowledge in this particular field. The training courses are also attended by officers from courts, pre-trial investigation institutions, representatives of non-governmental organizations and psychologists. After each training session the participants are asked to share their feedback. According to the information held by the Training Division, prosecutors wish to attend more training in this particular field where sessions are held by professional psychologists and specialists of communication. One of the most common problem faced by the officers is that natural persons who have suffered from or have witnessed criminal offences and who have information about the committed criminal offence not always address the law enforcement authorities with the view to defend their rights.

3.8 Any other relevant point you wish to raise?

To continuously increase public awareness, encouraging everybody who has become a victim of a criminal offence or has witnessed a criminal offence to always address law enforcement authorities.

Luxembourg

1. Définitions

Le Luxembourg a transposé la directive 2012/29/UE du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection de victimes de la criminalité.

- 1.1 Existe-t-il dans votre pays **une définition** de la victime ou du témoin d'un crime? Si oui, est-elle inscrite dans la loi, dans d'autres instruments juridiques? Le Code de procédure pénale définit le statut de la victime (article 4-1 paragraphe 1) ainsi que le témoin (article 38)
- 1.2 Existe-t-il dans votre pays **des régimes spéciaux** pour les victimes de certains types de crimes, par exemple la violence domestique, les abus sexuels, la traite d'êtres humains? Si oui, pouvez-vous les énumérer? D'un point de vue pénal il n'existe pas de régime spécial. En matière de violence domestique la loi modifiée du 8 septembre 2003 prévoit la possibilité d'une mesure d'expulsion à l'encontre du cohabitant d'un domicile commun.
- 1.3 Existe-t-il dans votre pays **une définition** des personnes vulnérables, en général ou notamment dans le cadre de la procédure pénale? Si oui, est-elle inscrite dans la loi, dans d'autres instruments juridiques? Non.

2. Les droits des victimes, des témoins et des personnes vulnérables

- 2.1 Existe-t-il dans votre pays des droits spécifiques pour les victimes, les témoins et les personnes vulnérables dans le cadre de la procédure pénale, en plus des droits de l'homme en général? Oui pour les victimes et les mineurs d'âge.
- 2.2 Si oui, sont-ils inscrits dans la loi ou dans d'autres instruments juridiques? Dans le Code de procédure pénale.
- 2.3 Veuillez énumérer brièvement ces droits spécifiques (ex. le droit à la protection, à être traité équitablement et avec dignité, à être informé, à être présent et entendu lors des procédures judiciaires, à demander réparation, le droit au respect de la vie privée, à porter plainte contre la violation ou le déni de leurs droits). – droit d'être informée sur ses droits : type de soutien qu'elle peut obtenir – informations de base sur les procédures de dépôt d'une plainte et le rôle de la victime, - modalités et conditions d'obtention de protection – modalités et conditions d'accès à un avocat et à l'assistance judiciaire – modalités et conditions d'obtention d'une indemnisation, - droit à l'interprète et à la traduction de documents soit d'office soit sur demande – droit de bénéficier d'une mesure de justice restaurative, - droit d'être informée tout au long de la procédure - droit de faire valoir ses intérêts civils dans le cadre du procès pénal.
- 2.4 Comment les victimes, les témoins et les personnes vulnérables sont-ils informés de leurs droits? Existe-t-il des mécanismes formels ou informels, un accès gratuit aux informations et bases de données pertinentes, etc.? La victime bénéficiant de droits en application des dispositions spécifiques du Code de procédure pénale elle en est informée dès le dépôt

de la plainte par l'officier de police et dans la suite de la procédure par le Parquet en charge des poursuites.

- 2.5 Quelles sont les sanctions prévues pour la violation de ces droits? Violation de l'article 6 de la Convention européenne des droits de l'homme et du principe du droit à un procès équitable.
- 2.6 Existe-t-il dans votre pays des droits spécifiques pour les personnes vulnérables en raison de leur âge (enfants, personnes âgées) ou d'un handicap (physique ou mental), en tant que victimes ou témoins? Pour les mineurs d'âge.
- 2.7 Lorsqu'une décision, rendue en matière pénale, est susceptible d'affecter les droits ou la situation d'une personne vulnérable, celle-ci est-elle portée à la connaissance des autres instances traitant des droits de cette personne (par ex. une mesure d'interdiction de contact avec sa femme pour un mari en cas de violence domestique à l'instance chargée de statuer sur la garde des enfants)? Oui
- 2.8 Ces personnes vulnérables peuvent-elles témoigner seules ou uniquement après avoir été autorisées par leurs représentants légaux et, dans ce dernier cas, dans quelles conditions? Les mineurs peuvent lors de leurs auditions se faire accompagner soit de leur représentant légal soit d'une personne de leur choix.
- 2.9 Le refus de témoigner est-il possible, par exemple en ce qui concerne les enfants ou les handicapés mentaux? Dans quelles conditions? Le refus de témoigner est toujours possible.
- 2.10 Qui procède à l'évaluation des personnes vulnérables et comment le risque est-il évalué? La personne vulnérable peut-elle avoir un rôle dans l'évaluation de ce risque? Quelles sont les mesures de protection qui peuvent être adoptées et par qui? Il n'existe pas de procédure spécifique pour la personne vulnérable –témoin.
- 2.11 Existe-t-il dans votre pays des procédures spéciales permettant les témoignages filmés, enregistrés et/ou cachés derrière un écran? Si oui, dans quelles circonstances?
L'audition d'un témoin ainsi que d'un mineur peut faire l'objet d'un enregistrement sonore ou audiovisuel sur autorisation du procureur d'Etat. Dans le cadre d'infractions spécifiques l'audition du mineur victime ou témoin **doit** se faire par enregistrement sonore ou audiovisuel sauf si en raison de l'opposition du mineur, de son représentant légal ou de son administrateur ad hoc, le procureur d'Etat décide qu'il n'y a pas lieu d'y procéder.
- 2.12 Comment la prévention de la victimisation répétée est-elle assurée? Par des campagnes publicitaires de prévention surtout à l'initiative de la Police.
- 2.13 Les droits des victimes, des témoins et des personnes vulnérables sont-ils prévus uniquement pour les citoyens ou aussi pour les étrangers? Dans quelles circonstances? Il n'est fait aucune distinction.

3. Rôle des procureurs dans la protection des droits des victimes, des témoins et des personnes vulnérables

- 3.1 Comment les droits des victimes, des témoins et des personnes vulnérables sont-ils appliqués et garantis dans le cadre de la procédure pénale? Quel est le rôle des procureurs en la matière? Etant donnée que les droits des victimes sont définis par des dispositions légales figurant au Code de procédure pénale le Procureur d'Etat a un rôle primordial quant au respect de ces droits depuis le début de la plainte jusqu'à la phase de jugement. C'est à lui en premier lieu de s'assurer que les droits des victimes sont respectés afin d'assurer le procès équitable à leur égard.
- 3.2 Ce rôle des procureurs est-il inscrit dans la loi ou dans d'autres instruments juridiques? Ce rôle est-il inscrit dans les règles de déontologie des procureurs? Ce rôle est défini indirectement par le fait que ces dispositions protectrices figurent au Code de procédure pénale au même titre que les droits des inculpés et prévenus de sorte que c'est l'autorité de poursuite qui doit être garante de ces droits au cours de toute la procédure d'enquête/instruction et de poursuites jusqu'au jugement.
- 3.3 Comment ce rôle est-il exercé dans la pratique? Comment les procureurs collaborent-ils avec d'autres organes de l'État pour remplir ce rôle? Les procureurs ont-ils des fonctions de supervision ou de surveillance? Les procureurs sont en étroite collaboration avec des organismes sociaux oeuvrant dans le cadre de l'aide aux victimes. Le Service central d'assistance sociale dépendant du parquet général a un département spécifique intitulé Service d'aide aux victimes. Les renseignements pratiques figurent au Portail Internet relatif à la Justice.
- 3.4 Les victimes, les témoins et les personnes vulnérables peuvent-ils saisir directement le procureur pour la protection de leurs droits? Ils peuvent le faire à tout moment par simple courrier ou dépôt de plainte. Les victimes doivent être avisées par le procureur d'Etat dans un délai de 18 mois de la réception de la plainte ou de la dénonciation, des suites réservées à l'affaire.
- 3.5 Les procureurs peuvent-ils agir de leur propre initiative pour protéger les droits des victimes, des témoins et des personnes vulnérables? Il n'y a aucun obstacle juridique et les procureurs d'Etat informent systématiquement toutes les personnes lésées de la date de la parution à l'audience afin de permettre aux victimes d'agir en vue de l'indemnisation de leur dommage.
- 3.6 Pour l'assistance aux victimes, aux témoins et aux personnes vulnérables, les procureurs coopèrent-ils avec d'autres organes de l'État, des instances privées ou des ONG? Il est renvoyé à la réponse à la question 3.3 ci-dessus.
- 3.7 Les procureurs bénéficient-ils d'une formation spécifique concernant la protection des droits des victimes, des témoins et des personnes vulnérables? Cette formation implique-t-elle également le personnel du Parquet et les services de police? Les procureurs jouent-ils un rôle dans la mise en œuvre de cette formation? Les procureurs d'Etat bénéficient d'une formation générale dès leur entrée en service en tant qu'attaché de justice et sont sensibilisés aux aspects de la protection et de l'aide aux victimes. Ils sont eux-mêmes appelés à assurer la formation des futurs agents et officiers de police judiciaire.
- 3.8 Tout autre point que vous voulez soulever.

Republic of Moldova / République de Moldavie

1. Definitions

1 1 Is there in your country a definition of a victim or a witness of crime? If yes, is it established in the law or other legal Instruments?

The notion of a victim is defined in Art. 58, paragraph (1) of the Code of Criminal Procedure of the Republic of Moldova: "A victim is considered to be any individual or any legal entity, to which moral, physical or material damage is caused by a crime. "

The term of "a victim of crime" is defined also by Article 1, paragraph (3) of the Law No. 137 of July 29, 2016 "On rehabilitation of victims of crimes". Pursuant to this Law, "victim of crime" is a mentally or physically injured individual that has undergone an emotional suffering or a material loss caused directly by crime, pursuant to the Criminal Law, as well as spouse, children and persons maintained by the deceased person in case of support services: the state's psychological counseling or financial compensation of damage caused by crime.

At the same time, the status of victim is also defined in the other legal instruments that will be mentioned in the responses to the questions presented below.

The law of criminal procedure of the Republic of Moldova contains also a notion of ***injured party*** that is stipulated in Art. 59, paragraph (1) of the Code of Criminal Procedure stipulating that "Injured party is considered to be any individual or any legal entity, to which moral, physical or material damage is caused by a crime, recognized in this capacity under the law with the victim's consent. A minor person, to which damage has been caused, will be considered an injured party without their consent." Therefore, for the procedural quality to be attributed by the injured party, it is necessary that a victim expresses its consent in this respect, and the criminal prosecution authority orders it by its order. Rights and obligations of the injured party in the criminal procedure are more extended than those of a victim.

The notion of a ***witness*** is defined by Article 90, paragraph (1) of the Code of Criminal Procedure of the Republic of Moldova: "Witness is a person summoned in this quality by the criminal prosecution authority or by the court and a person that gives testimony as a witness in the manner stipulated by this Code. Persons who possess information on any circumstance that will be asserted in this case may be summoned as witnesses."

1 2 Are there in your country special regimes for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

The definition of victim of trafficking in human beings is provided by Article 2, paragraph 11) of the Law No. 241 of October 20, 2015 "On preventing and combating trafficking in human beings" victim of trafficking in human beings is an individual assumed or asserted as being subject to trafficking actions.

The aforementioned law contains also a special chapter on protection and assistance of victims of trafficking in human beings. So Article 16 of the Law No. 241 of October 20,

2005 foresees “Social rehabilitation of victims of trafficking in human beings is ; performed for their reintegration in a normal course of life, including granting of legal and material assistance, psychological, medical and professional rehabilitation, employment and granting of accommodation.”

Therefore, the document establishes centers of assistance and protection, a clear aspect of realization of the right of rehabilitation. There are also measures dedicated particularly to the needs of children and foreign citizens.

Likewise, the persons trafficked may benefit from a package of social assistance from the Ministry of Health and the Ministry of Labor, Social Protection and Family (Article 20 of the Law No. 241 of October 20, 2005).

Article 23 of the Law No. 241 of October 20, 2005 establishes the state guarantees granted to the victims of trafficking in human beings and namely:

(1) courts and criminal prosecution authorities apply on victims of trafficking in human beings the measures of ensuring the physical security and rights foreseen by the Code of Criminal Procedure and the Law on state protection of the injured party, witnesses and other persons providing assistance in the criminal proceedings.

(2) Victims of trafficking in human beings have the right to compensation of the damages according to the law.

The Criminal Code of the Republic of Moldova contains the clauses of release from the liability of the victims of trafficking in human beings. Pursuant to the provisions of Article 165 and 206 of the Criminal Code, the victim of trafficking in human beings as well as respectively victim of trafficking in children is released from the criminal liability for crimes committed by it in connection with this procedural quality.

Simultaneously, the Code of Criminal Procedure of the Republic of Moldova foresees a special regime for victims of trafficking in human beings. Thus,, differently from the other categories of victims, victims of trafficking in human beings are not obliged to appear given the summons of the criminal prosecution authority or the court and give explanations upon request of these authorities (Art. 58, paragraph (8), point 1) of the Code of Criminal Procedure of the Republic of Moldova).

At the same time, the law of criminal procedure of the Republic of Moldova foresees and other Instruments that are destined to provide protection to the victims, the safety of which is endangered, such as:

-Trial at the closed session. Courts, by derogation from the principle of openness, wherever interests of minors or protection of the private life of the trial parties require, may interdict to the press or the public an access to the courtroom. In the proceedings, where a minor person is a victim or a witness, the court will hear their testimony in the closed session (Article 18 of the Code of Criminal Procedure).

-Hearing by the investigating judge stipulated by Article 109 of the Code of Criminal Procedure: “In case the presence of a witness at the case trial is impossible for the reason of their leaving abroad or for other grounded reasons as well as to reduce dr to exclude exposure of the witness to evident danger or to reduce revictimization of

witness, the prosecutor may request their hearing by the investigating judge and to ensure the possibility to the suspect, the accused, their defense counsel, the injured party and prosecutor to make questions to the heard witness.”

-Hearing by the technical means, provided by Article 110 of the Code of Criminal Procedure:

(1) Should sound evidence exist that life, physical integrity or liberty of a witness, or of a close relative to him/her, are in danger in connection with the statements that s/he makes, then the investigating judge, or as the case may be, the court may permit to hold the hearing of this witness without his/her physical presence in the place where the criminal proceeding is carried out or in the courtroom. Instead the hearing is done with the assistance of technical means as stipulated in this article, provided that there exist adequate technical ways for hearing.

(2) Hearing of the witness in such conditions as mentioned in paragraph (1) is made based on the motivated court order of the investigating judge, or, as the case may be, of the court *ex officio* or at the explained and motivated request of the prosecutor, lawyer, respective witness or any other interested person.

(3) A witness heard in conditions according to the provisions of this article is allowed to disclose other data about his/her identity, than the real one. The investigating judge records data about real identity of the witness and other relevant data expressing the causal link between the committed crime and a witness in a separate minute which is stored in the respective court in a sealed envelope in conditions of maximum confidentiality.

(4) A witness giving testimony in conditions as specified in this article will be assisted in his/her special location during the trial by the respective investigating judge.

(5) A witness may be heard through a teleconference of closed broadcasting, his/her image and voice being distorted in such a way that s/he may not be recognised.

(6) The suspect, accused, defendant and his/her defence counsel, the injured party are ensured the possibility to ask questions to the heard witness under the conditions of paragraph 5.

(7) Testimony given by a witness heard in conditions of the present article are recorded on videotape and integrally entered in the minutes formulated in conformity to provisions of articles 260 and 261. The original videotapes with the witness's registered testimony are sealed with the seal of the court and stored within its premises along with the copy of the minutes of the testimony.

(8) Testimony given by the heard witnesses according to provisions of this article may be used as evidence only to the extent that they may be verified by other evidence.

(9) Undercover investigators, other parties of the proceedings that have obtained the status of a protected person under the conditions of the Law on protection of witnesses and other parties of the criminal proceedings may also be heard.

Special cases of hearing a minor witness stipulated by Article 1101 of the Code of Criminal Procedure:

(1) The investigating judge carries out hearing of a minor witness aged less than 14 years in the criminal cases on crimes of sexual character, on trafficking in children and domestic violence as well as other cases, in which the interests of justice or of a minor require, in conditions of Article 109 paragraph (5) in the specially equipped space provided with the audio/video recording means by means of an interviewer. Hearing of a minor is performed within the restricted terms.

(2) A minor witness and an interviewer will be in the hearing room separate from the investigating judge and other persons participating in this procedure.

(3) The investigating judge, prosecutor, defense counsel of the suspect or accused, psychologist, secretary, legal representative of the minor subject to hearing, legal representative of the injured party and other persons if the case is, pursuant to the law will be in the viewing room. Participants of the hearing will make questions to the investigating judge that will be verbally transmitted to the interviewer by technical means or in writing during the break.

(4) Upon necessity, the interviewer reserves the right to paraphrase questions, if they have been worded in the way it may cause suffering to a minor witness, however, without changing their essence.

(5) Hearing of the minor witness must be performed in such a way as to avoid causing any negative effect on his/her mental state.

(6) A minor witness that is not yet 14 years is to be noticed to speak the truth.

(7) Testimony given by a minor witness heard in conditions of the present article are recorded by audio and video means and integrally entered in the minutes made in conformity to provisions of articles 260 and 261. The investigating judge seals the informational carrier, on which the witness's registered testimony has been recorded and stores its original along with the copy of the minutes of the hearing. A copy of the audio/video recording and the minutes of the hearing shall be annexed to the criminal case. Within 3 days from the time of hearing or no later than the day, when the accused has appeared or has been brought with force, the criminal prosecution authority will inform the suspect or the accused the minutes of the hearing of a minor witness and a copy of its audio/video recording, on which a minutes will be made.

(8) If the suspect or the accused wants to make questions to a minor witness, an additional hearing is organized on the basis of an request in conditions of this article. A repeated hearing of a witness must be avoided to the extent it is possible.

(9) If during the hearing a suspect has not been identified, after identification of the person and attribution to him/her a status of suspect, the criminal prosecution authority will inform as soon as possible the suspect or his/her defense counsel the minutes of the hearing of a minor witness and a copy of its audio/video recording. If the suspect or the defense counsel wants to make questions to a minor, an additional hearing is organized on the basis of an request in conditions of this article."

Starting from the year of 2015, the National Institute of Justice in partnership with the National Center for Child Abuse has trained eight professionals that have taken a complex course in the field of hearing under the special conditions of the child that is a

victim of crime.

For promotion of the children-friendly justice, starting from 2014, 8 Chambers for hearing under the special conditions of children involved in the criminal proceedings as victim/witness of crime have started functioning, where the relatively proportional distribution of premises for hearing of children in the regions: the north, center and south of the country is ensured.

-Hearing in absence of the defendant. In case of the court investigation of the case, pursuant to the provisions of Article 369 of the Code of Criminal Procedure, hearing of the injured party shall be carried out according to the provisions dealing with the hearing of witnesses and shall be applied respectively. Victim or, if the case is, the injured party at his/her request or at the prosecutor's motion may be heard in absence of the defendant, providing to the latter the possibility to learn testimony and to make questions to the heard person.

1 3 ***Is there in your country definition of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?***

There is no definition of vulnerable person within the framework of criminal procedure. Still the notion of *vulnerability of a person, family or some groups* in general sense is defined in many legal instruments like Social Assistance Law No. 547 of December 25, 2003, Law No. 45 of March 01, 2007 on preventing and combating domestic violence, Law on preventing and combating trafficking in human beings, Social Assistance Law, Tax Code etc.

Therefore, in Article 1 of the Law on Social Assistance No. 547 of December 25, 2003, the following notions are used:

- ***disadvantaged person and family***: socially vulnerable person and family being in the situations which impede their normal activity from the economic, educative, social point of view, etc.;
- ***beneficiary of the social assistance***: disadvantaged person or family, to which on the basis of a request, social investigation and reports, to which social benefits and/or assistance is provided;
- ***difficult situation***: state of the person, which due to loss of physical, psychical or mental independence needs social assistance for fulfilling the current functions of vital importance.

At the same time, Law No. 45 of March 01, 2007 on preventing and combating domestic violence provides a notion of victims especially vulnerable due to their disability or reduced mental capacity.

Article 20, paragraph (2) of Law No. 241 of October 20, 2005 on preventing and combating trafficking in human beings establishes that a person assumed to be a victim of trafficking in human beings is considered to be vulnerable, benefiting from a minimal package of social and medical assistance ensured by the institutions of the Ministry of Health and of the Ministry of Labor, Social Protection and Family.

In case of victims of trafficking in human beings there is an Explicative Decision No. 37 of the Plenum of the Supreme Court of Justice of the Republic of Moldova in November

22, 2004 “On the practice of application of the legislation in the cases of victims of trafficking in human beings and trafficking in children”, according to which paragraph 5.8) the state of vulnerability of a victim is established by the following circumstances:

- their difficult situation from the point of view of social surviving;
- the situation created by a pregnancy, disease, infirmity, physical or mental deficiency;
- their difficult and illegal situation related to entrance or stay in the country of transit or destination.

Pursuant to the same of the Plenum of the Supreme Court of Justice, “state of vulnerability may be coordinated by the various factors, such as isolation of victim, his/her difficult economic, mental situation, family’s influence or lack of social resources, etc.”

Besides that, the Supreme Court of Justice specifies in the aforementioned Decision that “ situation of vulnerability of a victim means any type of vulnerability, both mental, affective, family, social and economic. A set of desperate situations that make a human being accept his/her exploitation is born in view.”

With reference to vulnerability of victims, the text of Social Assistance Law No. 547 of December 25, 2003 uses the following notions:

- **disadvantaged person and family:** socially vulnerable person and family being in the situations which impede their normal activity from the economic, educative, social point of view, etc.;
- **difficult situation:** state of the person, which due to loss of physical, psychical or mental independence needs social assistance for fulfilling the current functions of vital importance.

2. The rights of victims, witnesses and vulnerable persons

2 1 *Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?*

There are specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure. They were indicated in paragraph 1.2 of the questionnaire.

2.2 *If yes, are they established in the law or other legal instruments?*

The response is given in paragraphs 1.2 and 2.3.

2 3 *Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).*

Article 58 of the Code of Criminal Procedure foresees the following rights of victims:

(2) The victim has the right that his/her/its complaint to be immediately registered in the established way, be settled by the criminal prosecution authority, and afterwards to be informed on the results.

(3) The victim also benefits from the following rights:

- 1) to receive a certificate from the criminal prosecution authorities on the fact that s/he filed a complaint or a copy of the minutes regarding the verbal complaint;
- 2) to submit documents, objects and other evidence that confirm his/her complaint;
- 3) to file an additional complaint; /
- 4) to be informed at the request by the criminal prosecution authority, prosecutor, or if the case is, by the court on settlement of his/her complaint, on all decisions adopted that refer to his/her rights and interests; to receive for free upon request their copies, as well as on the decision of termination or dismissal of the criminal proceedings in the respective case, of non-inception of the criminal prosecution, a copy of the sentence, decision or of another definite court judgment;
- 5) to ask the criminal prosecution authority to recognize him/her as an injured party in a criminal case;
- 6) to submit a request in order to be recognized as a civil party in a criminal case;
- 7) to withdraw the complaint in cases provided by the law;
- 8) to get a certificate on the registration of the complaint and the initiation of the criminal prosecution, a copy of the decision on non-initiation of the criminal prosecution;
- 9) to appeal the decision on non-initiation of the criminal prosecution within 10 days from the time when s/he received a copy of the respective decision and to be informed on the materials that led to the issuing of the decision;
- 10) To be protected against actions forbidden by law in the way provided for the protection of persons participating in the criminal proceeding;
- 11) to be assisted by an appointed defense counsel in the procedure actions carried out with his/her participation.

(4) The victim of an extremely serious or exceptionally serious crime against person, **torture victim**, inhuman or infamous treatment, indifferently of the fact if s/he is recognized as an injured party or civil party, has as well the following rights:

- 1) to be advised by a defense counsel during the entire criminal proceeding, as well as the other parties in the proceeding;
- 2) to be assisted in conditions of the law by a counsel providing the legal assistance guaranteed by the state in case of no financial means to pay a lawyer;
- 3) to be accompanied by a reliable person, by his/her counsel, during all the investigations, including closed hearings;
- 4) to receive a court judgment regarding material compensation for the damage caused by crime.

(5) In the case that a company, institution or state organization is the victim, they will not be allowed to withdraw their complaint.

(6) The victim has to be warned in writing on criminal liability in case of slanderous denunciation.

(7) The victim has the following obligations:

- 1) to appear before the criminal prosecution bodies or the court when s/he is summoned by the latter and give explanation on this authority's request;
- 2) at the criminal prosecution bodies request, to submit objects, documents as well as other means of evidence s/he has in possession, as well as samples for comparative investigation;
- 3) to accept to be subjected to medical tests, at the criminal prosecution bodies request, in case that s/he claims physical damages;
- 4) to observe the legitimate orders of the representative of the authority that settles his complaint and of the president of the court hearing;
- (5) Once it has been identified, the victim enjoys in conditions of the law, the right of protection and compensation as well as the right to submit a request on application

of the measures of protection;

(51) Victim of acts of torture, inhuman or infamous treatment is subject to expertise of mental or physical state.

At the same time, in case of crimes of torture, it is obligatory to perform a complex expertise, involving a medical forensic, psychological examination, and where the case is, other forms of examination (Article 147, paragraph (11) of the Code of Criminal Procedure.

In case a victim of mistreatment is under custody, the right to access to a counsel incorporates the corollary rights to a confidential discussion and to presence of a counsel during hearings.

Pursuant to Article 187 of the Code of Criminal Procedure, the administration of the institution of detention of persons under custody or arrested persons is obliged to allow free meetings of the person under custody with a defense counsel, his/her legal representative, mediator, in conditions of confidentiality, without limiting the number and duration of meetings.

The right of access to a doctor includes and collateral rights to benefit from medical examinations performed not in the framework of hearing and in absence of police and non-medical personnel. Results of the medical examinations must be adequately registered and be available for the person under custody and his/her defense counsel. The initial moment when the general physical condition is fixed and request of access to a doctor is the detention report.

Therefore, pursuant to Article 167 paragraph (6) of the Code of Criminal Procedure, if upon detention presence of injuries or bodily lesions of the detained person is established, the person that performs the criminal prosecution shall immediately inform the prosecutor that shall immediately order performance of the forensic examination, or if the case is, of the forensic examination to establish origin and character of injuries or lesions.

Meanwhile, in accordance with Article 232 of the Execution Code, the medical examination of the condemned shall be performed upon acceptance to the penitentiary and upon request and periodically during serving the penalty, but no rarer than once in 6 months as well as upon release from the detention places.

The medical examination is performed in conditions of confidentiality and intimacy, except the cases, when the doctor for the reasons of safety and security requires presence of the other representatives of the penitentiary's administration, which will be recorded in the corresponding manner.

Upon arrival to the penitentiary, the condemned shall be examined during no less than 24 hours in the view of establishment of existence of bodily lesions or other traces of violence.

In case traces of violence, cruel treatment, inhuman or infamous treatment or other mistreatment, or the condemned person complains of violence, the doctor performing medical examination is obliged to enter in the medical card his/her report and statements of the condemned person in connection therewith or with any other aggression and inform immediately the head of the penitentiary institution that will report

to the prosecutor or to the People's Lawyer or in cases of condemned minor persons, the People's Lawyer for children's rights within 24 hours.

The condemned person has the right to request to be examined at his/her expense at the place of custody by a doctor outside the penitentiary system appointed by it or by the forensic doctor. A report of the doctor outside the penitentiary system shall be entered in the medical card of the condemned person, and the certificate of forensic examination shall be annexed to the medical card, after the condemned person has learnt its content against his/her signature.

In case of establishment that the condemned person was exposed to torture, cruel treatment, inhuman or infamous treatment or other mistreatment, the penitentiary's administration ensures an immediate notification thereof by cable or by other means to the family, other persons close to the condemned.

The role of managing cases containing allegations of torture, inhuman or infamous treatment is exclusively performed by the Prosecutor's Office, which ensures the right of a victim to an objective investigation of such allegations.

Therefore, we note that pursuant to Article 262 paragraph (41) of the Code of Criminal Procedure any statement, complaint or other information that serve a reason to assume that a person was exposed to torture actions, inhuman or infamous treatment provided by 1661 of the Criminal Code shall be presented or immediately transmitted to the prosecutor for examination.

To ensure promptness of the examinations, Article 274 paragraph (31) of the Code of Criminal Procedure provides that in case when from the content of the report of notification or of findings it results suspicion of committing of a crime stipulated in Article 1661 of the Criminal Code, the prosecutor shall decide on it within the term not surpassing 15 days.

At the same time, Article 270 paragraph (1) point 5) of the Code of Criminal Procedure establishes that the prosecutor performs criminal prosecution in the cases of torture, inhuman or infamous treatment foreseen by Article 1661 of the Criminal Code.

Besides these rights foreseen by the criminal procedure, victims of abuse, physical, mental or sexual violence have the right to public Services of support foreseen by the Law on rehabilitation of the victims of crimes No. 137 of July 29, 2016.

Rights of a minor victim are stipulated in Article 4811 of the Code of Criminal Procedure (applicable in the case of a minor victim), according to which they have the right to be confidential in all stages of the criminal procedure, to be ensured and trusted that all that s/he has suffered and told will not be spread over; to keep silent and not to be incriminated or that his/her relatives be incriminated; to make statements in his/her native language or in the language s/he speaks; to be provided with an interpreter for free; to have other procedural rights of the witness provided by Article 90 of the Code of Criminal Procedure.

At the same time, the law of criminal procedure distinguishes the range of procedural rights of the minor depending on the age and legal capacity:

- a minor victim aged 14-16 years has the right to object to an interpreter, interviewer, psychologist involved in a hearing; to refuse participation of the representative; to write

personally statements, requests, complaints against the criminal prosecution officer, prosecutor and court

- a minor victim aged 16-18 years, besides the aforementioned rights has also all rights and obligations of a witness, the right to be informed of all requests made by his/her representative as well as to raise objections to these actions. In case after discussion, a minor witness has not withdrawn objections, the legal representative must withdraw the request.

2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

In each case when victims are heard, the criminal prosecution officers or prosecutors inform them of their rights and hand them over the list of such rights (Article 58, paragraph (11) of the Code of Criminal Procedure, Article 105 paragraph (6) of the Code of Criminal Procedure and Article 90 of the Code of Criminal Procedure. The same procedure is respected also in case of hearing of the injured parties (Article 111 paragraph (2) of the Code of Criminal Procedure).

Modes of providing the Services of information of victims of crimes are regulated also in Section I of Chapter III of the Law No. 137 of July 29, 2016 on rehabilitation of victims of crimes.

Article 6. Informational counseling

“(1)The officer of findings authority, to which the victim addresses to make a complaint on the committed crime, the criminal prosecution officer and the prosecutor that is responsible for the case are obliged to provide the victim of crime in writing or in the other accessible form, if the victim’s special conditions require that, the information on:
a) support Services that a victim may benefit from, subjects that provide such Services and general conditions of their provision;
b) the criminal prosecution authority, to which s/he may submit the complaint on the crime committed against him/her;
c) procedural rights, which s/he benefits from, being the party to the criminal proceedings in accordance with the Code of Criminal Procedure and the Execution Code;
d) available protection measures pursuant to the provisions of the Code of Criminal Procedure and the Law No. 105-XVI of May 16, 2008 on protection of witnesses and other parties to the criminal proceedings, as well as information on the conditions and procedure of application of these measures;
e) other information required by the victim of crime, if they are disposed of.
(2)Provision to a victim of the information provided in Article (1) shall be entered in the record that is annexed to the criminal case findings.”

Article 7. Other means of information of victims of crimes

(1)In addition to the manner of information of victims of crimes provided in Article 6, they can be informed of the Services of support, of which they can benefit by means of the phone lines or official websites of the institutions responsible for provision of the Services of support indicated in Article 3 paragraph (2) and of the other subjects responsible in the domain of rehabilitation of victims of crimes.
(2) Subjects competent in provision of the Services of support to victims of crimes pursuant to the provisions of Article 3 paragraph (2) are obliged and the courts have the right to publish on their official websites the information stipulated in Article 6 paragraph

(1).

(3) Persons that ensure direct communication of the information to victim of crime are obliged to announce the police if, from the conversation with a victim, deduce that s/he is in danger.

(4) Subjects competent in provision of the Services of support to victims of crimes may create phone lines for Information of victims of crimes.”

At the same time, in accordance with the provisions of the Order of General Prosecutor No. 121/8 of December 10, 2009, with ulterior amendments, in all territorial and specialized Prosecutor’s Offices “a hotline” was instituted for receipt of information and notifications on the crimes of torture, inhuman or infamous treatment or penalties. The relevant data on existence of “hotline” are placed on the website of the General Prosecutor’s Office.

Notifications of reference have been published in the local press with disclosure of information that may be provided on the “hotline”, data on the prosecutor (prosecutors, if the case is) responsible for examination of the cases of torture, inhuman or infamous treatment or penalty, and namely: last name, first name, contact telephone numbers (of the Office as well as cell phone numbers of the corporate network), Office address and room number.

At the same time, announcements with the aforementioned information have been displayed also in the places accessible for citizens within the premises of all authorities of municipal, district, city, village public administration, as well as vigilance units of the police inspectorates within the territory of the sector served by the corresponding Prosecutor’s Office.

The General Prosecutor’s Office in cooperation with the Office of People’s Lawyer has organized throughout the first semester of 2015 displaying in the premises of the territorial or specialized Prosecutor’s Offices of the informational boards with the message “zero tolerance towards torture” containing the relevant information on the activity of the Section of combating torture of the General Prosecutor’s Office, of the Office of People’s Lawyer and indication of the hotline telephones for complaints on crimes of mistreatment and addresses of these institutions.

Likewise, to ensure publication of the information on the activity of the prosecutors invested with the duties of examination of the cases of torture from the territorial or specialized Prosecutor’s Offices, the informational brochures have been developed that contain data on the addresses of the territorial or specialized Prosecutor’s Offices and number of the hotline of each Prosecutor’s Office, information of general character on the notions of inhuman and infamous treatment, torture, public person and relevant extracts from the national and international legislation that deals with interdiction of mistreatment.

Respectively, persons that assume that they have been exposed to such illegal actions committed by the state agents have the possibility to appeal directly to the specialized prosecutors and therefore, the principle of promptness of initiation of the case investigations will be ensured.

2 5 *What kind of penalties and sanctions are established for violation of these rights?*

Depending on the infringed right and seriousness of deeds, a criminal, administrative liability or liability of the other nature may be imposed for violation of the rights of victim.

2 6 *Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?*

As for children there are specific rights, including the Code of Criminal Procedures, which contains a separate chapter on the criminal proceedings in the cases with minors.

Pursuant to Article 481 of the Code of Criminal Procedure, upon hearing of a minor victim, participation of a pedagogue or a psychologist is obligatory. At the same time, in accordance with paragraph (3) of the same article, upon hearing of a minor victim, his/her legal representative participates. The right of a minor victim to be represented at all stages of the proceedings by a legal representative is guaranteed by Article 481 of the Code of Criminal Procedure.

Assuming that a victim/witness child is deaf and mute, pursuant to Article 105 paragraph (4) of the Code of Criminal Procedure s/he is heard with participation of the interpreter that knows his/her signs and may communication therewith. If a victim/witness child does not know the language of the proceedings, a translator will be provided to him/her. In case a victim/witness child suffers from a mental disease or from another serious disease, his/her hearing under Article 105 paragraph (5) of the Code of Criminal Procedure is made with the consent of a doctor and in his/her presence. A doctor has the rights and obligations vested to a specialist contained in Article 87 of the Code of Criminal Procedure.

A minor victim/injured party has also the right to be consulted by a counsel throughout the whole criminal proceedings like other parties of the proceedings; to be assisted in conditions of the law by a counsel that provides the legal assistance guaranteed by the law in case s/he has no money to pay a lawyer.

Basing on the provisions of Article 478 of the Code of Criminal Procedure summoning of a victim/witness child to the trial shall be performed through his/her parents or through the other legal representatives, and in case the minor is in the special institution for minors, through the administration of this institution.

2 7 *When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?*

The legislation of the Republic of Moldova provides the protection measures of victims of crimes, including children.

In conditions of Article 215 of the Code of Criminal Procedure, in case in the framework of the criminal proceedings, it is found that the victim of domestic violence is jeopardized to be exposed to violence or other illegal actions, including destruction of his/her property, the criminal prosecution authority or the prosecutor intervenes

immediately to ensure obtaining of the protection measures. The request to obtain the protection measures is filed by the criminal prosecution authority or by the prosecutor on the basis of the request of the injured party.

Pursuant to Article 318* of the Code of Criminal Procedure the court issues the ruling on protection, by which protection to the victim and his/her children may be provided. In addition prosecutors appeal to the territorial tutelage authority to request Services of assistance and psychological rehabilitation for children who are victims of crimes of sexual character, trafficking in children or domestic violence.

In accordance with the provisions of Law No. 45 of March 01, 2007 on preventing and combating family violence, the local tutelage authority ensures initial assessment and taking of urgent measures of protection of children in the cases of domestic violence, where an imminent jeopardy is asserted for life and health of a child; ensures at the local level confidential mechanisms of reporting of the cases of domestic violence; cooperates with the territorial tutelage authorities in the view of ensuring protection of children that are victims of the domestic violence.

2 8 *Can such vulnerable persons bear testimony atone or only following authorisation by their legal representatives, and in this latter case, in what conditions?*

The legal representative of a victim has no right to take actions against the interests of person that s/he represents, which is provided by Article 78 paragraph (5) of the Code of Criminal Procedure.

In case there are reasons to consider that actions of the legal representative cause damage to the child's interests, the legal representative may be removed from the criminal proceedings and replaced with the other one, when it is possible, with the tutelage authority as well. Replacement of the legal representative takes place both before and after hearing of the child.

2 9 *Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?*

Pursuant to the provisions of Article 90 paragraph (3) point 1) of the Code of Criminal Procedure , persons that, due to physical or mental disabilities, are unable to truly realize circumstances that are important for the case and to give exact and true testimony, cannot be summoned and heard as witnesses.

2 10 *Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?*

Pursuant to the provisions of Article 215 of the Code of Criminal Procedure, under the circumstances provided by the Law on protection of witnesses and other parties to the criminal proceedings, the criminal prosecution authority, prosecutor or, where the case is, the court are obliged to take the measures provided by the law on protection of life, bodily integrity, liberty or property of the parties to the proceedings, and in conditions of the law, of close relatives and their family members.

Adoption of protective measures is ordered by the prosecutor's grounded ruling or the court ruling. A ruling is obligatory for the authority competent for protection of witnesses. Article 13 of the Law on protection of witnesses and other parties to the criminal proceedings provides that the criminal prosecution authority may adopt urgent measures on the jeopardized party of the criminal proceedings that applies immediate measures of ensuring the security. Urgent measures on the party of the criminal proceedings adopted by the criminal prosecution authority consist in:

- a) providing personal security, security of the place of stay, residence or of property;,
- b) interception of the his/her Communications in conditions of the Code of Criminal Procedure;
- c) surveillance by the audio/video means in conditions of the Code of Criminal Procedure;
- d) temporary placement at a safe place;
- e) protection while travelling or limiting of travels;
- f) giving active and passive special means of personal protection.

Article 13 of the Law on protection of witnesses and other parties to the criminal proceedings provides the following protective measures that may be applied within the framework of the criminal proceedings, on the protected person:

- a) protection of identity data;
- b) hearing and application of special procedures;
- c) change of the place of residence or place of work or study;
- d) change of identity, change of look;
- e) installation of an alarm system at the place of stay or residence;
- f) change of the telephone number;
- g) ensuring protection of the properties.

Protective measures are applied by the authority responsible for protection of witnesses and other parties to the criminal proceedings that functions a subdivision of the Ministry of Internal Affairs.

According to the Law on special protection of children being in the risk situations and children separated from parents No. 140 of June 14, 2013, organization of Identification of the children in the risk situations, their assessment, records and assistance shall be vested in the duties of the local tutelage authority represented by the locality mayor, which must involve in this respect the specialist for protection of children's rights, and in his/her absence, a community social assistant, involving, if applicable, other specialists in the field of health protection, education, public order, etc.

2 11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

One of the procedures is regulated by the provisions of Article 110 of the Code of Criminal Procedure (special modes of hearing of a witness and his/her protection) and was adopted by paragraph 1.2.

The other procedure is provided by Article 115 of the Code of Criminal Procedure .
Application of audio recordings or video recording during hearing of the persons
“ (1) At the request of the suspect, accused, defendant, damaged party, witnesses or

ex officio tape recording or video recording may be used by the criminal prosecution authority during their hearing. The person who is supposed to be subject of a tape recording or video recording is informed thereof before starting hearing.

(2) Tape recording or video recording should contain data about heard person, person who performs hearing, data that are supposed to be entered in the hearing minutes in conformity to requirements stated in Articles 260 and 261, as well as the entire development of the hearing action. Tape recording or video recording of a part of a hearing or special repetition for audio recording or video recording of already given statements are not allowed.

(3) After completion of hearing the tape recording or video recording is played basic entirely in the presence of the heard person. Any additions to the statements made on tape recording or video recording by the heard person are also recorded on tape or videocassettes. Tape recording or video recording ends with a declaration of the heard person who confirms the truthfulness of statements.

(4) Statements obtained during a hearing with the use of tape recording or video recording are stated in the minutes of the hearing.

(5) Whenever a tape recording or video recording is played during the development of any other criminal proceeding action, the criminal prosecution authority or the court is obliged to mention this thing in the respective minutes."

2 12 *How is the prevention of repeated victimisation ensured?*

Preventing of repeated exploitation of victims of trafficking in human beings is ensured by means of the National Reference System that reflects a special framework of cooperation, by which the governmental structures fulfill the obligations on protection and promotion of human rights, on persons who have suffered from trafficking in human beings and coordinate efforts in the strategic partnership with the civil society as well as with the other actors active in this domain. Assistance of victims and potential victims of the trafficking in human beings is performed in the view of reestablishment of the rights of persons who have suffered from trafficking experience, by their rehabilitation and reintegration in the society and represent a method of preventing of repeated victimization.

At the same time, the Law No. 137 of July 29, 2016 on rehabilitation of victims of crimes was adopted for the purpose of creation of the legal framework to ensure minimal conditions of rehabilitation of the victims of crimes as well as for protection and ensuring observation of their rights and legal interests.

This Law regulates categories of victims of crimes, on which its provisions are applied, organization and functioning of the mechanism of protection and rehabilitation of victims of crimes, manner and conditions of the state's financial compensation of the damage caused by the crime.

By the Decision of the Government of the Republic of Moldova No. 270 of April 08, 2014 the Instructions on the inter-sector mechanism of cooperation for identification, assessment, reference, assistance and monitoring of children of victims and potential victims of violence, negligence, exploitation and trafficking have been adopted.

2 13 *Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?*

The Code of Criminal Procedure does not distinguish among victims either being nationals of the Republic of Moldova, stateless or foreign citizens.

These conclusions are confirmed also by the provisions of Article 5 of the Code of Criminal Procedure that regulates the manner of application of the law of criminal procedure on foreign and stateless citizens:

(1) On the territory of the Republic of Moldova, the procedure in criminal cases regarding foreign and stateless citizens is carried out in compliance with the present Code.

(2) On individuals who benefit from diplomatic immunity, the criminal proceeding will be carried out in compliance with the Vienna Convention regarding diplomatic relations, as of April 18, 1961, as well as with the other international treaties to which the Republic of Moldova is a party.

Pursuant to Article 9 paragraph (2) of the Law No. 137 of July 29, 2016 on rehabilitation of victims of crimes, *psychological counseling* at the state's expense is provided to victims of crimes foreseen by paragraph (1), if the crime has been committed within the territory of the Republic of Moldova or if the crime has been committed outside the territory of the Republic of Moldova and the victim is a national of the Republic of Moldova, a foreign or stateless Citizen that legally resides in the Republic of Moldova.

According to Article 11 paragraph (1) of the Law No. 137 of July 29, 2016, a victim of crime benefits from the legal assistance guaranteed by the state, in accordance with the provisions of the Code of Criminal Procedure and in conditions of the Law No. 198-XVI of July 26, 2007 on legal assistance guaranteed by the state, if the crime has been committed within the territory of the Republic of Moldova or if the crime has been committed outside the territory of the Republic of Moldova and the victim is a national of the Republic of Moldova, a foreign or stateless Citizen that legally resides in the Republic of Moldova, and the criminal proceedings are carried out in the Republic of Moldova.

In case of the victim of crime of torture, inhuman or infamous treatment, s/he unconditionally benefits from the legal assistance guaranteed by the state (Article 11 paragraph (2) of the Law No. 137 of July 29, 2016).

The Law No. 137 of July 29, 2016 foresees the right of victim of crime also to the financial compensation, but these provisions of the Law will come in effect on January 01, 2018. Pursuant to Article 13 paragraph (1) of the Law No. 137 of July 29, 2016, the victim of crime committed within the territory of the Republic of Moldova provided by Article 12 paragraph (2) that is a national of the Republic of Moldova, a foreign or stateless Citizen that legally resides in the Republic of Moldova on the date of committing of a crime and requests the financial compensation, has the right to financial compensation.

In case of victims that do not belong to the categories of persons foreseen by paragraph (1), the financial compensation is granted on the basis of the international conventions, to which the Republic of Moldova is a party.

Victim children that come from the third countries have the right to have access within a reasonable period of time to the education system in conditions identical to children that are citizens of the respective state.

A victim child that comes from the third country and is not accompanied by a parent or by a legal guardian may return only after taking in consideration of the child's superior interest and after the member state will make sure that s/he is transmitted to a member of his/her family, to an appointed guardian or to the corresponding placement centers.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3 1 *How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?*

Pursuant to Article 5 of the Law on Prosecutor's Office, the following are among the duties of the Prosecutor's Office:

- application of protective measures of witnesses, victims of crime and other parties to the criminal proceedings.
- exercising of control on observance of laws in application of protective measures of witnesses, victims of crime and other parties to the criminal proceedings.

Pursuant to the provisions of Article 52 of the Code of Criminal Procedure, the prosecutor:

- carries out directly the criminal prosecution, being vested by the responsibilities of the criminal prosecution authority;
- personally leads the criminal prosecution and Controls the legality of procedural actions carried out by the criminal prosecution authority;

From these provisions it results that in some cases prosecutor directly ensures protection of the rights of victims, and in the other cases prosecutor Controls the manner in which protection of victims has been ensured by the criminal prosecution authority.

Pursuant to the provisions of Article 215 of the Code of Criminal Procedure, under the circumstances provided by the Law on protection of witnesses and other parties to the criminal proceedings, the criminal prosecution authority, prosecutor or, where the case is, the court are obliged to take the measures provided by the law on protection of life, bodily integrity, liberty or property of the parties to the proceedings, and in conditions of the law, of close relatives and their family members.

Adoption of protective measures is ordered by the prosecutor's grounded ruling or the court ruling. A ruling is obligatory for the authority competent for protection of witnesses.

3 2 *Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?*

Role of prosecutor in protection of the rights of victims is established by the Law, the

Code of Criminal Procedure, departmental instruments, including: the Order of the General Prosecutor No. 808-p of September 07, 2010 on responsibilities of the Prosecutor's Office in the domain of protection of child's rights and enforcement of justice for minors; the Methodological Guide on administration of the cases with victim children/witnesses of crimes approved by the Order of the General Prosecutor No. 25/25 of August 03, 2015 and the Regulation on organization and carrying out of transportation of parties to the hearing of victim children/witnesses of crimes to the specially equipped premises approved by the Order of the General Prosecutor No. 18/28 of March 06, 2014.

At the same time, the Code of Prosecutor's Ethics provides norms dealing with protection of human rights in general.

3 3 *How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?*

The General Prosecutor's Office in cooperation with the national and international non-governmental organizations have taken the measures to increase the professional level of criminal prosecution officers and prosecutors that are responsible for investigation of cases of trafficking in human beings, protection of victim of trafficking in human beings, where multiple training courses are organized.

In the framework of the criminal prosecution, needs of victims of trafficking in human beings have been assessed, and depending on their needs victims have been referred to the institutions of the National System of Referral to benefit from the medical, financial and legal assistance.

At the same time, on February 21, 2013, the General Prosecutor has developed the recommendations on carrying out the criminal prosecution on the cases of trafficking in human beings and trafficking in children. The recommendations are designed to identify and stress the connection between each element of the aforementioned crimes with possible evidence for each case separately.

Therefore, the practitioner, when applying these Recommendations, will manage to identify actions and methods, by which these crimes have been committed as well as intents pursued by the offender; they will be examined through the prism of evidence that would confirm existence or lack of obligatory elements of the crime, which would enable to establish the truth as a result of complete, objective and multilateral investigation. In such a way discharge of the state's obligation to carry out efficient investigations in each case of trafficking in human beings or trafficking in children, including by protecting and reinstating the victim's infringed rights.

Besides that, by the Order of the General Prosecutor No. 25/15 of April 10, 2014, the Instruction on hearing of victims of trafficking in human beings has been approved. The instruction establishes the used notions, principles applied and stages of the hearing of victims of trafficking in human beings, particularities of hearing of victims of the aforementioned category, importance of hearing of the victim by the prosecutor, establishment of the relation with a victim, some rules and procedures applied during the hearing of victims of trafficking in human beings, etc.

By the Order of the General Prosecutor No. 76/08 of December 30, 2013, “the Methodological Recommendations on efficient investigation of crimes of torture, inhuman or infamous treatment” for prosecutors have been approved.

To ensure a high degree of utility as well as to facilitation practical application of the Methodological Recommendations of reference, their editing was organized in the format of a brochure was organized.

These guidelines is a component of the measures undertaken to carry out the engagement assumed by the Republic of Moldova at the international forum of eradication of the phenomenon of torture and designed to ensure discharge of the positive obligation of the state competent authorities to investigate efficiently mistreatment.

The guidelines of reference contain detailed, clear and precise instructions on the procedural guarantees on victim of inhuman treatment, involvement of victims and control by the public, tactics and adequate manner of hearing of victim.

To ensure the adjustment of the national practice to the standards of international law, on December 30, 2015, the Oder of the General Prosecutor No. 39/8 on approval of the Methodological Recommendations on efficient investigation of crimes of torture, inhuman or infamous treatment that involves persons with psychosocial and mental disabilities was adopted, the purpose of which is to improve the mechanism of combating and investigation of notifications on inhuman or infamous treatment that involves persons with psychosocial and mental disabilities.

Implementation of these recommendations represent an important progress in consolidation of the national capacities of making investigations in the cases of mistreatment in the mental facilities and is a methodological support of high value for prosecutors, in the view of increasing the quality of such investigations in the prism of observation of the instructions of the specialized guidelines of the national law.

In the framework of these guidelines, general particularities of the procedural actions performed with participation of the persons with psychosocial and mental disabilities, possibilities of reasonable accommodation for giving testimony, structural barriers for investigation of the cases of torture, inhuman or infamous treatment in the mental health institutions have been characterized.

On December 31, 2013, by the Common Interdepartmental Order of the General Prosecutor, Ministry of Justice, Ministry of Internal Affairs, General Director of the Customs Service, Director of the National Center of Anti-Corruption and the Health Ministry No. 77/572/408/639-o/197/1589 the Regulation on procedure of identification, registration and recording of possible cases of torture, inhuman or infamous treatment has been adopted.

The Regulation of reference was published in the Official Monitor No. 147-151 of June 06, 2014 and came in effort on July 07, 2014.

Importance of implementation of this Regulation was in improving of the mechanism of identification, registration and recording of possible cases of torture, inhuman or infamous treatment by the prosecutor.

At the same time, a key chapter of this Regulation deals with the manner of completion of medical documentation, research principles and scheme of description of bodily lesions in case of examination of persons that are assumed to have been exposed to mistreatment.

All requirements and aforementioned rules ensure an attentive examination, complete entering and recording of a person's physical state, eventually, of existing bodily lesions, so that deficiencies of later preparation the reports of forensic examination be excluded.

Therefore, prosecutors monitor permanently the level of observance of the obligations established by the aforementioned interdepartmental order and in case of discovery of deficiencies reacts by submitting the observations to the heads of the reference institutions.

The objective of the activities of assessment is aimed at assessment of the degree of implementation of the Regulation and realization of its objective, which represents ensuring of the efficient interdepartmental cooperation and unification of the practice of - application of the international and national legislation during the preventing and combating cases of torture, inhuman or infamous treatment.

3 4 *Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?*

Victims can directly apply to the prosecutor for protection of their rights.

3 5 *Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?*

Pursuant to the provisions of Article 219 of the Code of Criminal Procedure, the civil action in the criminal proceedings is instituted by filing a request to the prosecutor or to the court by the individuals or legal entities, to whom material or moral damage has been caused directly by the crime (action or inaction) interdicted by the criminal law or in connection with its committing.

The prosecutor can institute and support a civil action instituted for compensation of the damage caused to the public authorities by the crime as well as by cancelation of acts that have caused damage, from bringing the criminal proceedings to cessation of the court investigation. A statement of claim may be filed regardless of the consent of the public authority.

Pursuant to Articles 262, 274, 276 of the Code of Criminal Procedure, prosecutors notify themselves and can decide, initiate a criminal action for protection of victims and witnesses. In case of a minor victim, the prosecutor institutes the criminal prosecution even if a victim has not filed a complaint.

Moreover, according to Article 6 paragraph (3) lit. j) of the Law on the Prosecutor's Office, the prosecutor is obliged to take measures in the view of reporting and recording of all violations of the law that have been made known during performance of his/her duties or beyond performance of his/her duties.

3 6 *Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?*

In the domain of the activity of preventing and combating the trafficking in human beings and assistance to victims, prosecutors cooperate with the representatives of the non-governmental sector as well as with the international organizations, among which the International Center “La Strada”, Embassy of the USA to the Republic of Moldova, the Mission of the International Organization for Migration in the Republic of Moldova, the OSCE Mission in the Republic of Moldova and others may be enumerated.

Cooperation with the associative sector and with the representatives of the international bodies in Moldova dealing with protection of children’s rights, including NORLAM in Moldova, IRP, National Center for Preventing of Abuse of Children, UNICEF, UNFPA missions, etc.

Prosecutors participate in the sessions of keeping records of the annual inter-sector activity of all Services of protection of children’s rights organized under the “Şgigis -of UNICEF Moldova, at which the problems existing in the system of justice for children are tackled and suggestions are made to improve the situation.

3 7 *Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?*

In the field of preventing and combating trafficking in human beings:

To increase the professional level of prosecutors that are responsible for investigation of the cases of trafficking in human beings, in the framework of the continuous training courses organized by the National Institute of Justice, multiple training courses have been organized in cooperation with the national and international non-governmental organizations. In this respect, state of things is eloquent in 2016.

Therefore, during the period of March 14-18, 2016, the representatives of the General Prosecutor’s Office along with the representatives of the CCTP of INI of the General Police Inspectorate of the Ministry of Internal Affairs and the Permanent Secretariat have made a training visit to the Hague, Netherlands, organized within the framework of the project of “Fortification of the response of the criminal justice to trafficking in human beings, guaranteeing of the legal assistance to victims and potential victims and preventing of domestic violence and hatred crimes in the Republic of Moldova” funded by the Bureau of International Narcotics and Law Enforcement of the US State Department.

During the period of April 21-22, 2016 and June 23-24, 2016, the representatives of the General Prosecutor’s Office have participated as instructors in the works of the seminar “Aspects on investigation and trial of crimes of trafficking in human beings: techniques of hearing of victims/witnesses of trafficking in human beings” organized by the National Institute of Justice in partnership with the International Organization for Migration. During this activity, judges, prosecutors and criminal prosecution officers have been instructed.

Likewise, during the period of June 05-10, 2016, the representatives of the General Prosecutor's Office along with the representatives of the CCTP of INI of the General Police Inspectorate of the Ministry of Internal Affairs and the Permanent Secretariat have made a training visit to Madrid, Spain, organized within the framework of the project of "Fortification of the response of the criminal justice to trafficking in human beings, guaranteeing of the legal assistance to victims and potential victims and preventing of domestic violence and hatred crimes in the Republic of Moldova" funded by the Bureau of International Narcotics and Law Enforcement of the US State Department.

During the period of June 05-10, 2016, the representatives of the General Prosecutor's Office along with the representatives of the CCTP of INI of the General Police Inspectorate of the Ministry of Internal Affairs and the Permanent Secretariat have made a training visit to Madrid, Spain, organized within the framework of the project of "Fortification of the response of the criminal justice to trafficking in human beings, guaranteeing of the legal assistance to victims and potential victims and preventing of domestic violence and hatred crimes in the Republic of Moldova" funded by the Bureau of International Narcotics and Law Enforcement of the US State Department."

During the period of September 12-16, 2016, the prosecutors have made a visit of study to Oslo, Norway, organized by the NORLAM Mission in the Republic of Moldova in partnership with the American Bar Association Rule of Law Initiative (ABA ROLI Moldova). In the framework of the visit of study, good practices of the law enforcement authorities of Norway on observance of human rights, including on dimension of combating trafficking in human beings, have been taken up.

Besides that, during September 18-23, 2016, prosecutors have made a visit of study to Israel, organized by the OSCE Mission in Moldova within the program of preventing and combating trafficking in human beings; the visit was designed to experience exchange and fortification of cooperation in the domain of combating trafficking in human beings for the purpose of organ removal, but the subjects on illegal migration have been tackled.

During the period of October 26-27, 2016, the representatives of the Prosecutor's Office have participated in the activity of the first semester being in the second composition organized by the Police authority of Sweden within the framework of the Program for Eastern Partnership of Police Cooperation, under the aegis of the European Union that took place in Stockholm, Sweden.

During the period of October 27-28, 2016, a group of prosecutors have participated in the seminar "Carrying out the financial investigation in the context of investigation of crimes of trafficking in human beings" organized by the Permanent Secretariat of the National Committee for Combating trafficking in human beings in partnership with the Council of Europe and the OIM Mission in Moldova.

On October 28, 2016, the prosecutors have participated in the training seminar "Rights of victims of crimes in the criminal proceedings" organized within the framework of the project of the European Union "Support in cooperation of the project of support of pretrial investigations".

On November 18, 2016, the prosecutors have participated in the training seminar

“Aspects on investigation and trial of crimes of trafficking in human beings: techniques of hearing of victims/witnesses of trafficking in human beings” organized by the National Institute of Justice.

On December 02, 2016, the prosecutors have participated in the seminar on the subject “Protection of victim in the criminal proceedings” organized by the General Prosecutor’s Office jointly with the National Institute of Justice and NORLAM.

During the period of December 6-7, 2016, the representatives of the Prosecutor’s Office have participated in the activity of the transnational seminar in the field of preventing and combating trafficking in human beings organized within the project funded by the EU Combatting against Trafficking in Human Beings and Organized Crime (THB/IFS/2) under the aegis of the International Center for Development of Migration Policies (ICMPD) that took place in Tirana, Albania.

In the field of preventing and combating torture

On April 26, 2016, within the framework of the project of the Council of Europe “Support of the reform of criminal justice in the Republic of Moldova” funded by the Government of Denmark, a roundtable on the subject “National Framework and European Standards on documentation and reporting of signs of mistreatment” has been organized, in which the representatives of the Ministry of Justice, the General Prosecutor’s Office, the Ministry of Internal Affairs, the Office of People’s Lawyer, the civil society have participated.

During the periods of April 14-15, 2016, November 21-22, 2016, within the framework of the project of the Council of Europe “Support of the reform of criminal justice in the Republic of Moldova” funded by the Government of Denmark, the training seminars for mixed groups of judges and prosecutors on the subject “Standards of efficient investigations of the cases of torture, inhuman and infamous treatment” have been organized.

On November 28, 2016, the General Prosecutor’s Office, with support of the NORLAM mission in Moldova, a round table on the subject “Persons with disabilities closer to the justice” has been organized, in which the representatives of the General Prosecutor’s Office, Office of the People’s Lawyer, Ministry of Labor, Social Protection and Family, Ministry of Health, the non-governmental organizations have participated.

Importance of this measure has been in making aware and active involvement of the decisive factors at the Ministry of Health and Ministry of Labor, Social Protection and Family, with the consent of which it was possible to identify the most efficient and democratic Solutions, by which diminution and even eradication of the cases of inhuman, infamous or torture in the mental institutions and psycho-neurological residential facilities may be obtained.

At the same time, another objective of this meeting was consolidation of the perception on the necessity of increasing the level of conditions of detention, maintenance, behavior and treatment of the beneficiaries of the mental hospitals and psycho-neurological residential facilities on one part, and the conditions of work, training, psychological counseling and/or social insurance of the employees of these institutions.

In the field of protection of rights and interests of child

To increase the efficiency in activity of prosecutors specialized on the issues of children, seminars of continuous training are permanently organized on the subject "Hearing in special conditions of children that are victims/witnesses of crimes", "Particularities of the investigations and trial of crimes committed by minors", "Principles of assessment of evidence in the cases involving children victims" at the National Institute of Justice.

Monaco

1. Définitions

1.1

La définition de la victime dans le droit pénal est toute personne qui subit personnellement et directement un préjudice (physique, moral ou matériel) causé par l'infraction.
Cette définition est doctrinale et n'est pas prévue par la loi.

Toutefois, l'article 2 du code de procédure pénale pose le principe selon lequel l'action pour la réparation du préjudice directement causé par un fait constituant une infraction appartient à tous ceux qui en ont personnellement souffert, et défini par là même indirectement le terme de victime. Il prévoit en outre que tous les dommages sont concernés, aussi bien matériels que corporels ou moraux.

En outre, l'article 73 du code pénal définit la partie civile, à savoir la personne lésée par un crime, un délit ou une contravention.

1.2

De manière générale, la procédure pénale est la même pour tous les types d'infractions.

Néanmoins, il existe une compétence générale des juridictions monégasques pour connaître des faits de tortures, au sens de la convention de New-York contre la torture et autres peines ou traitements inhumains ou dégradants, quel ait été leur lieu de commission (article 8 2° du code de procédure pénale).

Cette compétence générale existe également pour les infractions sexuelles commises sur des mineurs, si l'auteur est trouvé en Principauté de Monaco (article 8 3° du code de procédure pénale).

Par ailleurs, en matière de prescription, qui est en principe de 10 ans en matière criminelle, elle est portée à 30 ans révolus à compter de la majorité lorsqu'un mineur a été victime d'un crime (article 12 du code de procédure pénale).

1.3

Il n'existe pas de définition légale de la personne vulnérable.

Il est admis que la vulnérabilité d'une personne est due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique, à un état de grossesse.

2. Les droits des victimes, des témoins et des personnes vulnérables

2.1

Oui

2.2

Certains oui

2.3

- Pour les victimes :

Droit de porter plainte,

Droit d'être entendu,

Droit d'être assisté d'un avocat,

Droit d'accès à la procédure,

Droit de solliciter des actes de procédure,

Droit à indemnisation.

2.4

L'article 45 de la loi n° 1.382 du 20 juillet 2011 institue le droit à l'information et au conseil pour les victimes :

Ainsi, les officiers et agents de police doivent informer les victimes de leur droit à obtenir réparation, de se constituer partie civile ou de citer directement l'auteur ou de porter plainte devant le juge d'instruction, d'être aidées par les intervenants relevant de l'Etat ou par une association d'aide aux victimes.

Des plaquettes d'informations au sujet des droits des victimes doivent leur être remises et doivent être à dans les établissements d'hospitalisation et les cabinets médicaux.

Association d'aide aux victimes d'infractions pénales (AVIP)

A notamment pour mission de favoriser l'information des victimes

Des plaquettes d'information au sujet de cette association sont disposition dans de nombreuses institutions monégasques (locaux de police, hôpital, direction de l'éducation nationale, services sociaux...) et un site internet est accessible.

Base de données en libre accès sur internet des codes et loi (Légimonaco) et des décisions publiées (Jurimonaco)

2.5

2.6

Il existe des droits spécifiques pour les mineurs et pour les majeurs protégés (en raison de leur âge ou de leur handicap) en tant que victimes.

Ils sont représentés en justice et peuvent se voir nommer un administrateur ad hoc s'ils ne sont pas suffisamment protégés par leurs représentants légaux naturels.

Les auditions des mineurs et des majeurs incapables sont encadrées par la loi.

2.7

Les décisions rendues en matière pénale affectant les mineurs sont notifiées à ses représentants légaux et, le cas échéant, du service éducatif en charge d'une mesure d'assistance éducative.

Les décisions rendues en matière pénale affectant les majeurs protégés sont notifiées à leurs administrateurs judiciaires.

Les décisions rendues en matière pénale affectant une situation conjugale sont portées à la connaissance du juge statuant sur la garde des enfants.

2.8

Les personnes vulnérables peuvent témoigner seules.

Néanmoins, toute victime (a fortiori vulnérable) peut être assistée d'un avocat pour la confrontation avec l'auteur des faits en garde à vue (article 60-9 bis du code de procédure pénale).

Les mineurs ou majeurs incapables victimes de menaces, violences ou atteintes sexuelles doivent être assistés d'un avocat lors de leur audition par le juge d'instruction (article 268-2 du code de procédure pénale).

Cette audition fait l'objet d'un enregistrement audiovisuel (article 268-3 du code de procédure pénale).

Au cours de l'enquête ou de l'information judiciaire, les auditions ou confrontations de mineurs victimes de menaces, violences ou viols, peuvent être réalisées en présence d'un psychologue, d'un médecin spécialisé de l'enfance ou d'un membre de la famille ou de l'administrateur ad hoc ; sur décision du Procureur général ou du Juge d'instruction, le cas échéant à la demande du mineur ou de son représentant légal.

Enfin, les mineurs en dessous de l'âge de 15 ans ne peuvent être entendus comme témoins qu'à titre de renseignement et sans prestation de serment (article 134 du code de procédure pénale).

2.9

Le refus de témoigner est possible mais peut entraîner des conséquences juridiques, voir des sanctions.

En phase d'instruction :

En cas de non comparution de tout témoin régulièrement cité, le juge d'instruction peut délivrer un mandat d'amener (article 128 alinéa 2 du code de procédure pénale).

Il peut en outre condamner le témoin, s'il ne comparaît pas, refuse de prêter serment ou de déposer, à l'amende prévue au chiffre 1 de l'article 26 du code pénal.

En phase de jugement :

Le tribunal correctionnel ou le tribunal criminel peut ordonner que le témoin cité qui ne comparaît pas soit immédiatement amené à la barre par la force publique (articles 322 et 389 du code de procédure pénale).

S'il ne comparaît pas ou refuse de déposer sans en être légitimement empêché, ce qui relève de l'appréciation souveraine de la juridiction, il peut être condamné à une amende de 30 à 300 euros (article 323 du code de procédure pénale).

L'opportunité d'entendre un témoin et de le contraindre à témoigner relève de l'appréciation souveraine des juges du fond qui combinent les nécessités de manifestation de la vérité et de protection des témoins.

2.10

Lorsque des personnes vulnérables doivent être entendues en tant que victime ou témoin, il appartient à l'autorité en charge de la phase judiciaire (parquet, juge d'instruction, tribunal) d'apprécier le risque que cela leur fait encourir.

Pour ce faire, l'avis d'un expert peut être sollicité (généralement un expert psychologue) qui se prononcera sur l'opportunité notamment de confronter la victime ou le témoin vulnérable à l'auteur. L'expert se prononcera sur le risque pour sa santé (physique et psychique).

L'avis de la personne vulnérable est sollicité mais n'a pas de caractère contraignant.

L'article 37-2 du code de procédure pénale prévoit la possibilité pour le Procureur général, dès le stade de l'enquête, dans des affaires de violences et d'atteintes sexuelles, d'ordonner une expertise médico-psychologique de la victime, destinée à apprécier la nature du préjudice subi et à établir si celui-ci rend nécessaire des traitements ou des soins appropriés.

2.11

Lorsque l'intérêt du mineur victime de faits de menaces, violences ou atteintes sexuelles, le justifie, l'enregistrement de son audition par le juge d'instruction peut être uniquement sonore (article 268-3 du code de procédure pénale).

Une procédure de témoignage anonyme existe (article 147-1 du code de procédure pénale).

Elle se déroule durant la phase d'instruction.

Elle est prévue pour les infractions punies d'un emprisonnement au moins égale à cinq ans.

Elle est mise en œuvre si l'audition est susceptible de mettre en danger la vie ou la sécurité physique du témoin ou celle des membres de sa famille ou de ses proches.

2.12

Afin d'éviter que les victimes ne subissent à nouveau des faits infractionnels de la part de leurs auteurs, il existe différents outils de protection.

La victime, ou une association de défense de victimes de violences avec l'accord de la victime, de faits de menaces, violences ou viol, peut solliciter du président du tribunal de première instance une ordonnance de mise sous protection qui interdit à l'auteur des faits d'entrer en relation avec la victime ou de paraître ou résider en certains lieux.

En outre, le juge peut autoriser la résidence séparée des époux ou attribuer le logement conjugal à la victime. (article 24-1 du code civil)

En phase d'enquête : (article 37-1 du code de procédure pénale)

Pour les victimes de menaces, violences ou viols, le Procureur peut interdire à l'auteur des faits d'entrer en contact avec la victime ou de résider ou de paraître en certains lieux. Il peut également mettre à disposition de la victime et des membres de son foyer une solution d'hébergement d'urgence de nature à assurer sa sécurité.

Ces mesures d'urgence doivent être confirmées dans les 24 heures par une ordonnance de protection du Président du tribunal de première instance (cf article 24-1 du code civil).

En phase d'instruction :

L'inculpé peut être placé en détention provisoire pour garantir la sécurité de la victime ou sous contrôle judiciaire avec interdiction d'entrer en relation avec sa victime ou de paraître en certains lieux.

Lors de la phase de jugement :

Le tribunal peut condamner l'auteur à une peine d'emprisonnement avec placement sous le régime de la liberté d'épreuve (article 396 du code pénal). Deux obligations de ce régime permettent d'éviter la réitération des faits : établir sa résidence dans un lieu déterminé et s'abstenir de recevoir ou d'héberger à son domicile certaines personnes, notamment la victime (ordonnance n° 3.960 du 12 février 1968).

Les coupables de faits de menaces, violences ou viols peuvent en outre être condamnés, à titre complémentaire, à l'interdiction d'entrer en relation avec la victime ou de paraître en certains lieux, et ce pendant une période déterminée, sous peine d'un emprisonnement de un à six mois et de l'amende prévue au chiffre 3 de l'article 26 (article 37-1 du code pénal).

2.13

Il n'existe pas de distinction dans les droits des personnes quant à leur nationalité.

3. Rôle des procureurs dans la protection des droits des victimes, des témoins et des personnes vulnérables

3.1

Le paquet général de Monaco est composé de 5 magistrats (Procureur Général inclus). Un de ses membres est le référent victime et est en charge de leur protection.

Ce référent est en contact direct avec l'association d'aide aux victimes d'infractions pénales, il est notamment en charge de lui adresser les victimes qui ont besoin de son intervention.

3.2

Le procureur général reçoit les dénonciations et les plaintes et est chargé de la recherche et de la poursuite des infractions (article 34 du code de procédure pénale).

3.3

Dans la pratique le Procureur général dispose de pouvoirs d'enquête pour rechercher les infractions ou leurs auteurs et faire cesser le trouble.

Il peut mettre en œuvre des mesures de protection en urgence : ordonnance de protection pour les victimes (article 37-1 du code pénal), placement en urgence d'un mineur en danger ; qui doivent ensuite être entérinées par un juge.

Il peut saisir les juges pour la protection : des mineurs, requête en assistance éducative, des majeurs incapables, requête en mise sous protection judiciaire.

Le Procureur demeure constamment en lien étroit avec les services sociaux, de protection sociale, de l'éducation nationale.

3.4

Oui

Les victimes peuvent déposer plainte directement auprès du Parquet général.

Les personnes vulnérables peuvent demander leur mise sous protection judiciaire.

3.5

Oui.

Le parquet enquête sur tout fait porté à sa connaissance, même sans plainte.

Le parquet peut prendre d'office toutes les mesures de protection développées supra.

3.6

Les procureurs sont en lien permanents et étroits avec les services étatiques (services sociaux, éducation nationale) le centre hospitalier et l'association d'aide aux victimes d'infractions pénales.

3.7

Les procureurs bénéficient d'une formation continue tout au long de leur carrière à raison, généralement, d'une formation par an. Le panel de formation proposé comprend la protection des victimes, des témoins et des personnes vulnérables.

L'article 46 de la loi n° 1.382 du 20 juillet 2011 impose qu'une formation régulière soit dispensée aux professionnels appelés à être en contact avec des victimes de violences. Cela concerne notamment les magistrats, les professionnels de santé, les agents et officiers de police judiciaire.

Depuis 2011, deux formations de ce type ont été organisées.

La mise en œuvre de cette formation est gérée par la Direction de la formation du gouvernement.

Montenegro / Monténégro

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

Answer: Yes. In Article 22 of the Criminal Procedure Code- Definition of terms it is defined that *injured parties* are persons whose personal or property right of some type was violated or endangered by a criminal offence. Witness of crime is term that is defined also within provisions of the Criminal Procedure Code as a persons who are likely to provide information regarding the criminal offence and the perpetrator and other relevant circumstances

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

Answer: Witnesses shall be examined separately and in the absence of other witnesses. Witness shall give their testimony orally. Special regimes are applied when a minor is heard, especially if a minor was injured by the criminal offence, special care shall be taken in order to ensure that the hearing would not have an adverse effect on the minor's mental condition. When necessary, the minor shall be heard with assistance of a psychologist or another expert.

Moreover, Injured parties who are victims of a criminal offence against sexual liberty, as well as children being examined as witnesses, shall be entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused person and defense attorney shall be given the possibility to view the course of hearing from other premises and to put questions to the witness, after having been duly instructed by the court thereon. The court may decide that this regime be also applied to the testimony of the injured party who is the victim of discrimination.

- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

Answer: Term of vulnerable persons is used in Montenegro within provisions of laws, but not within the framework of the criminal legislation. Criminal Procedure Code doesn't contain this definition.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Answer: Yes.

- 2.2 If yes, are they established in the law or other legal instruments?

Answer: They are established in the law- Criminal Procedure Code.

- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Answer: According to general provisions of the Criminal Procedure Code all parties in criminal procedure must be treated fairly and with dignity, must be notified, to be present and to be heard, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights.

State Prosecutor and other public authorities participating in the proceedings shall instruct all participants in the proceedings, who are likely to omit to perform an action in the proceedings or fail to exercise their rights because of that, of the rights they are entitled to pursuant to the present Code as well as of the consequences of the failure to act

In the course of investigation, injured parties shall be entitled to call attention to all facts and to offer evidence important for the criminal case and for their claim under property law.

At the main hearing, the injured party shall be entitled to offer evidence, to examine the defendant, witnesses and expert witnesses and to put forward remarks and explanations as regards their statements as well as to make other statements and proposals.

The injured party shall be entitled to inspect files and objects serving as evidence. The inspection of the files may be denied to the injured party until an order on the conduct of investigation has been made or until s/he has been examined as a witness. The injured party who is the victim of a criminal offence against sexual freedom shall have the right to be heard and to have the procedure be conducted by a judge of the same sex, if so allowed by the staff composition of the court. In cases when the criminal procedure is conducted for a criminal offence punishable by an imprisonment sentence exceeding three years and the injured party can not bear representation expenses according to his/her financial standing, s/he may be appointed a proxy at his/her request if the representation of the injured party by the proxy is in the interest of fairness. If the injured party is a minor, during the entire criminal procedure the court shall by virtue of office assess whether s/he needs to be appointed a proxy.

Regarding witnesses if reasonable concern exists that by giving a statement or answering certain questions witnesses would put in danger their spouse's, close relative's or a close person's life, health, physical integrity, freedom or property of great value, witnesses may withhold, answering certain questions or giving the statement altogether until their protection is secured. Witness protection shall consist of special ways of participating and hearing witnesses in the criminal procedure. At their request, whistle blowers heard as witnesses may also be provided protection. Protection of witnesses and other persons may be secured beyond the criminal procedure as well, in line with the law regulating witness protection.

Also, juveniles in criminal procedure are subjects of specific regime, providing them respect of the best interest of juveniles, prohibition of discrimination on any grounds, respect of juvenile privacy in all stages of the proceedings as well as obligatory training and specialization of judges, prosecutors, defense lawyers participating in criminal proceeding where juvenile is involved.

If witnesses are persons with speech or hearing impairment, they shall testify with the help of professional staff.

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

Answer: They are informed of their rights by State Prosecutor or court depending on the stage of the criminal proceeding. They are informed in formal manner followed by their signature confirming that they are informed of their rights and that they understand those rights all of which shall be entered in the record. Also, relevant information concerning their rights they can find on the official website of the State Prosecutor's Office.

- 2.5 What kind of penalties and sanctions are established for violation of these rights?

Answer: Failure to inform them of their rights in a formal way is reason for inadmissibility of the evidence obtained in a unlawful manner. Also, that could be a basis for initiating a disciplinary proceeding against prosecutor for not exercising his function in a proper manner.

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Answer: See above for juveniles. Witnesses who are in another country and witnesses who can not obey the summons due to their old age, illness or disability (physical or mental) may be heard in their residence, and in exceptional cases by means of technical devices for the transmission of image or sound, so the parties can ask them questions even though they are not present in the same premises as the witness. For the needs of such a hearing, expert assistance can be provided depending on specific situation of the victim or witness.

- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

Answer: Yes. In juvenile proceedings the guardianship authority shall have the right to be informed about the course of proceedings, and notified about the right to file motions during the proceeding, and point to facts and evidence that are of significance to rendering the right decision. The juvenile prosecutor shall notify the guardianship authority of any proceeding against a juvenile. If prosecutor fails to do so, that duty shall be borne by the court for the rest of the proceeding. In other cases depending on specific situations other bodies dealing with the rights of that persons shall be informed.

- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

Answer: Testimony of juvenile persons shall be carried out in the presence of the juvenile's legal custodian and, as a rule, with the assistance of professional support staff, except where it is contrary to the interest of juvenile. In our criminal procedure code it is stated that Every person summoned as witness shall answer the summons and, unless otherwise prescribed by the law, shall testify as well. Exceptions are, inter alia, minors who, taking into consideration their age and mental development, are not capable to comprehend the importance of the right that they are not obliged to testify. Also, provisions of the Criminal Procedure Code governing sanctions for refusing to give testimony shall not apply to a juvenile under 14 years of age (child).

2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

Answer: Yes as regards children (persons under 14 years of age). Criminal Procedure Code prescribe that the following persons shall not be examined as witnesses: 1) persons who would by giving testimony violate the duty of keeping the data secret within the meaning of regulations prescribing data secrecy, until the competent authority releases them from that duty; 2) defense attorneys may not testify with regard to information accused persons have confided to them in their capacity as defense attorneys; 3) persons who would by giving testimony violate the duty of keeping a professional secret (religious confessors, attorneys-at-law, medical professionals and other health system employees, journalists, as well as other persons) unless they are relieved from this duty by a special regulation or statement of a person who benefits from the secret keeping; 4) minors who, taking into consideration their age and mental development, are not capable to comprehend the importance of the right that they are not obliged to testify. Moreover, following persons shall be exempted from the duty to testify: 1) the accused persons' spouses and their extra-marital partners; 2) accused persons' direct blood relatives, collateral blood relatives up to the third degree as well as and their relatives by marriage up to the second degree; 3) Accused persons' adopted children or adoptive parents, or accused persons' foster parents and foster children. Exemption from the duty to testify referred to above shall not relate to persons that were invited to testify in the procedure for the criminal offence of neglecting and abusing a minor, domestic violence or violence in a family community and incest, when a minor person is the injured party.

The instruction and the answer shall be entered in the record. If grounds exist for a person to refuse to testify with regard to one of the accused persons, that person shall be exempted from the duty to testify with regard to other accused persons as well if his/her testimony may not, by nature of the matter, be limited only to other accused persons.

Regarding mentally disabled persons law refers only it is forbidden to take an oath before testimony from persons who due to their mental conditions are unable to comprehend the importance of the oath.

2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

Answer: See above.

2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

Answer: All actions taken during the course of criminal proceedings shall, as a rule, be recorded by audio or audiovisual recording devices. Previously, this shall be made known to the person examined, who shall be advised of his right to request the copy of the record in order to check the deposition given. A recording shall be kept with court as long as the respective criminal file is kept.

For the purpose of protecting witnesses when needed special ways of participating and hearing witnesses in the criminal procedure are: hearing of witnesses under pseudonym, hearing with assistance of technical devices (protective wall, voice simulators, devices for

transmission of image and sound) and alike. If special ways of participating and hearing witnesses in the procedure consists of withholding personal data as well as of hiding the face of the witness, hearing shall be done through technical devices for transmission of image and sound. The specialist shall operate a technical device. During the hearing, face and voice of the witness shall be changed. During the hearing, witnesses shall be in the room other than the one where the investigating judge and other persons present at the hearing are. The investigating judge shall ban all the questions which could lead to revealing the identity of witnesses. After the hearing has been completed, witnesses shall sign the record using pseudonym only in the presence of the investigative judge and court reporter.

2.12 How is the prevention of repeated victimisation ensured?

1. Answer: Prevention of repeated victimisation is ensured by a number of measures contained in the Criminal Procedure Code including taking actions urgently especially when the victims are juveniles and rendering decisions, ensuring safety of victims and witnesses when approaching prosecutor's office premises, ensuring of the separate room for the victim or witness in order to avoid meeting with accused person, inform victim and witness of their rights, in certain cases inform welfare service or invite a person with special relevant knowledge to assist victim or witness. when the victim or witness is juvenile premises for conducting hearing must be adapted to juvenile in order to feel comfortable and where juvenile will feel safe, language of the prosecutor must be adapted to be understandable for juvenile, always when possible using technics for audio visual recording and video link, also victims and witnesses especially juveniles must be protected from possible media abuse.

2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

Answer: Those rights are foreseen for all persons who are under Montenegrin jurisdiction when participating in criminal proceedings on the territory of Montenegro.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

- 3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

Answer: Rights of victims, witnesses and vulnerable persons are foreseen within the provisions of the Criminal Procedure Code as well as enforcement of those rights and consequences for not abiding those rules by State Prosecutor. State Prosecutor shall inform all participants in criminal proceeding of their rights during preliminary investigation and investigation and make official records of those actions.

- 3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

Answer: This role of prosecutors is established in the Criminal Procedure Code and in Code of ethics as well.

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

Answer: State prosecutors are leading preliminary investigation and investigation. They have supervisory functions over other state authorities which are all obliged to help state prosecutor and provide him with all necessary support, information and data upon his/her request for assistance.

3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Answer: Yes.

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Answer: Yes.

3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Answer: Yes. In every specific situation prosecutors interact with relevant state bodies when needed and civil societies and NGOs in order to better fulfil his/her functions.

3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Answer: It is a right and a duty of all state prosecutors to obtain specific training on this issues and to be well educated. This duty also involve prosecutorial staff and law enforcement agencies. Certain trainings are carried out by senior or experienced prosecutors with relevant knowledge to share.

3.8 Any other relevant point you wish to raise.

Poland / Pologne

1. Définitions

- 1.1 Existe-t-il dans votre pays **une définition** de la victime ou du témoin d'un crime ? Si oui, est-elle inscrite dans la loi, dans d'autres instruments juridiques ?

Une définition de la victime est intégrée directement dans le Code de procédure pénale. Les dispositions définissant la victime stipulent que la victime est la personne physique ou morale dont les intérêts juridiques ont été violés ou menacés par un crime. Les mêmes dispositions déterminent par la suite un large catalogue d'entités lesquelles, dans des conditions bien déterminées, peuvent être reconnues comme victimes.

Par contre, le Code de procédure pénale ne définit pas la notion de témoin dans la procédure pénale.

La notion de témoin est en revanche définit indirectement, en indiquant son rôle et ses droits et devoirs – tous ces régimes sont décrits dans la loi, à savoir, dans le Code de procédure pénale.

Dans la doctrine la notion de témoin a deux significations :

- témoin de fait - personne étant le témoin des faits faisant l'objet de procédure pénale,
- témoin de procédure – personne appelée à témoigner par une autorité chargée de la procédure.

- 1.2 Existe-t-il dans votre pays **des régimes spéciaux** pour les victimes de certains types de crimes, par exemple la violence domestique, les abus sexuels, la traite d'êtres humains ? Si oui, pouvez-vous les énumérer ?

Oui, la procédure pénale polonaise prévoit les régimes spéciaux pour les victimes de certains types de crimes, tant en ce qui concerne la violence domestique que les abus sexuels et la traite d'êtres humains.

- 1.3 Existe-t-il dans votre pays **une définition** des personnes vulnérables, en général ou notamment dans le cadre de la procédure pénale ? Si oui, est-elle inscrite dans la loi, dans d'autres instruments juridiques ?

La procédure pénale polonaise ne définit pas directement le type de personnes vulnérables. Cela ne signifie pas que ce terme reste inconnu dans la procédure pénale. Ce type est bien défini dans la doctrine en mettant en valeur que les enfants, les victimes d'abus sexuels et les handicapés sont les victimes particulièrement vulnérables. La loi polonaise prévoit des traitements spéciaux réservés pour les victimes de certains types de crimes. Il s'agit en particulier de mineurs, victimes d'infractions contre la liberté sexuelle et contre les mœurs et contre la famille et la tutelle. La Pologne a mis en œuvre la norme établie par la directive du Parlement européen et du Conseil établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité. En transposant la directive du Parlement européen et du Conseil concernant la prévention de la traite des êtres humains et la lutte contre ce phénomène ainsi que la protection des victimes, la Pologne a adopté que le type de

protection des victimes et des personnes les plus proches devrait être déterminé en fonction du menace réel, ce qui veut dire que toutes les victimes de traite des êtres humains n'entrent pas dans le type des personnes vulnérables. L'évaluation d'application des mesures spéciales de protection dépend surtout de la prise en considération des besoins spécifiques de la victime (p.ex. lié au degré de l'impuissance en fonction de l'âge, de l'état de la santé ou de la menace). Il a été admis que l'extension excessive du catalogue des victimes risque la fragmentation des dispositions de protection des victimes des certains types et son traitement illégal.

2. Les droits des victimes, des témoins et des personnes vulnérables

- 2.1 Existe-t-il dans votre pays des droits spécifiques pour les victimes, les témoins et les personnes vulnérables dans le cadre de la procédure pénale, en plus des droits de l'homme en général ?

Oui. Le Chapitre 4 du Code de procédure pénale porte exclusivement sur les victimes et les droits des victimes sont également inscrits dans d'autres parties du Code de procédure pénale et dans d'autres lois.

La situation juridique des témoins est décrite dans le chapitre 21 du Code de procédure pénale. La loi relative à la protection et à l'assistance aux victimes prévoit les mesures de protection et d'aides suivantes : la protection pour la durée de l'acte de procédure, la protection individuelle et le soutien pour la réinstallation, et éventuellement, l'aide financière pour des biens les plus élémentaires pour assurer leur subsistance, leur besoin de logement et leurs soins de santé.

- 2.2 Si oui, sont-ils inscrits dans la loi ou dans d'autres instruments juridiques ?

Les droits des victimes et ceux des témoins sont actuellement inscrits dans les lois sur la base desquelles les dispositions d'application sont définies. L'absence d'un acte juridique complexe a été autrefois avancée, un acte ayant pour objectif la protection des témoins et des victimes dont la vie et la santé auraient pu être menacées par leur témoignage contre l'auteur des faits ou par un seul fait d'intervenir à la procédure pénale. Il n'y avait pas non plus d'acte normatif déterminant les moyens et les mesures d'aide que l'État aurait pu assurer à ces personnes.

Les dispositions antérieures en vigueur concernant la protection témoins et des victimes étaient inscrites dans plusieurs actes juridiques de différents rangs – des lois aux décrets du Commissaire générale de la Police. Le plus souvent, ces actes ne traitaient qu'une partie de la question, ne relevant que de certaines règles concernant le danger pour la vie et la santé. La situation a changé après l'adoption de la Loi du 28 novembre 2014 relative à *la protection et de l'aide aux victimes et aux témoins*. Cette loi a modifié le Code de procédure pénale pour élever le niveau des normes de procédure dans le cadre de la protection des témoins et des victimes. Cette loi a mis en œuvre la directive du Parlement européen et du Conseil du 25 octobre 2012 *établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité*. Dans de certains aspects, les dispositions en vigueur dépassent les normes minimales prévues par la directive. La loi évoquée a mis également en œuvre la directive du Parlement européen et du Conseil du 13 décembre 2011 *relative à la décision de protection européenne dans la procédure pénale dans les situations transfrontalières*. Les solutions autonomes ont été inscrites dans la loi pour assurer l'aide et le soutien distincts de la codification pénale. Les dispositions mises en vigueur par la loi évoquée n'ont pas d'envergure institutionnelle du point de vue des règles et de l'économie de la procédure pénale ; elles accompagnent plutôt la procédure dans le domaine non réglementé par les normes prévues

dans les codes. Par ailleurs, les mesures de protection et d'aide peuvent être appliqués également avant l'ouverture et après la clôture de la procédure et non seulement au cours de la procédure.

Actuellement, le Code de procédure pénale mentionne *expressis verbis*, parmi les principaux objectifs qu'elle vise la prise en compte des intérêts de la victime protégés par la loi.

2.3 Veuillez énumérer brièvement ces droits spécifiques (ex. le droit à la protection, à être traité équitablement et avec dignité, à être informé, à être présent et entendu lors des procédures judiciaires, à demander réparation, le droit au respect de la vie privée, à porter plainte contre la violation ou le déni de leurs droits).

Les témoins

La situation du témoin au cours de la procédure est régie par le catalogue des devoirs et des droits dont il dispose. S'il s'agit de ses droits, il convient d'indiquer : le droit de se taire pour les personnes les plus proches à l'accusé et aux témoins accusés de complicité dans une autre procédure ; le droit de s'abstenir à répondre à la question, si cette réponse est susceptible d'exposer le témoin ou la personne qui lui est la plus proche à la responsabilité pour l'infraction ; le droit de demander de l'entendre lors d'une audience à huis clos si ses dépositions pouvaient exposer lui-même ou la personne qui lui est la plus proche à un déshonneur ; le droit de demander d'exempter une personne restant en relations personnelles particulièrement étroites avec l'accusé de témoigner ou de répondre à une question ; le droit de réserver les renseignements concernant le lieu de domicile du témoin à l'information exclusive du tribunal ou du procureur ; le droit de se faire représenter le conseil ; le droit le droit de se faire rembourser des frais supportés.

Les victimes

Le Code de procédure pénale reconnaît les intérêts des victimes protégés par la loi comme un des objectifs de la procédure pénale, tout en respectant sa dignité.

Compte tenu du fait que la victime peut intervenir au procès en qualité de témoin, le catalogue des droits des témoins reste pertinent également pour les victimes.

Le Code de procédure pénale contient, en outre, des règles supplémentaires pour les victimes. C'est non seulement la conséquence de l'approche de code de la directive de tenir en compte les intérêts des victimes protégés par la loi au cours de la procédure, mais également de sa situation spécifique dans la procédure. La victime, partie de la procédure, bénéficie des droits suivants : la possibilité de présenter une offre de preuve et la participation à l'acte demandé, la participation à d'autres actes, le droit de consulter le dossier, le droit d'attaquer des décisions judiciaires, p.ex. celle de refus d'ouvrir ou de classer sans suite l'enquête ou celle portant sur les preuves de conviction. Au cours de la procédure devant le tribunal, la victime peut, en outre, se constituer partie civile ou accusateur privé. La victime a également droit de soulever une objection contre le jugement de condamnation sans audience, de participer à l'audience, de demander de dresser la motivation du jugement rendu à la séance sur le non-lieu conditionnel ou de déposer un recours contre le jugement.

Nonobstant de ce qui précède, le Code de procédure pénale introduit des règles engageant ou habilitant les autorités à rendre des décisions ayant une incidence sur la sécurité des victimes. Cela inclut des interdictions et des ordres pour l'auteur, tels que : interdiction des contacts avec la victime, ordre de quitter le logement qu'il s'occupe avec la victime. Outre, une obligation est

prévue d'informer la victime, son représentant légal ou une personne sous la garde de laquelle la victime reste de l'annulation, du non-maintien de la détention provisoire ou du remplacement de la détention provisoire contre une autre mesure préventive et outre de l'évasion de l'accusé de la maison de détention, à moins que la victime déclare avoir renoncé à ce droit.

L'obligation d'informer la victime, mentionnée ci-dessus, s'applique également, si cela est justifié, au témoin.

Si cela est justifié, ces personnes peuvent, dans une telle situation, bénéficier de la protection de la police.

2.4 Comment les victimes, les témoins et les personnes vulnérables sont-ils informés de leurs droits ? Existe-t-il des mécanismes formels ou informels, un accès gratuit aux informations et bases de données pertinentes, etc. ?

Le Code de procédure pénale prévoit que l'autorité chargée de la procédure est obligée d'informer la victime et le témoin de leurs droits. Avant la première audition la victime et le témoin doivent recevoir une information sur les droits et devoirs, jointe en annexe au procès-verbal, ce qu'ils sont tenus de confirmer en apposant leur signature. De même, le code impose une obligation de fournir des renseignements supplémentaires. Il est regrettable que dans la pratique, cette obligation soit souvent traitée de manière trop formelle.

Des brochures et des dépliants présentant les droits et devoirs des victimes et des témoins, de manière accessible sont mis à leur disposition, également sous forme électronique.

2.5 Quelles sont les sanctions prévues pour la violation de ces droits ?

Le Code de procédure pénale prévoit les conséquences de l'absence d'information. Le code stipule que l'autorité chargée de la procédure est obligée d'informer les intervenants de la procédure de leurs droits et l'absence de cette information ou une information erronée ne peut pas avoir de conséquences juridiques négatives pour l'intervenant à la procédure ou pour un tiers concerné. De même, l'autorité chargée de la procédure doit, au besoin, fournir les informations aux intervenants de leurs droits, même en cas où la loi ne prévoit pas de telle obligation.

Un tel manquement peut, au cours de l'enquête, constituer un fondement d'attaquer une décision judiciaire rendue dans l'affaire dans laquelle ce manquement a eu lieu. Dans la procédure devant le tribunal, cela peut constituer une condition d'attaquer le jugement devant la juridiction de deuxième instance ou être le motif dit relatif de la cassation du jugement.

2.6 Existe-t-il dans votre pays des droits spécifiques pour les personnes vulnérables en raison de leur âge (enfants, personnes âgées) ou d'un handicap (physique ou mental), en tant que victimes ou témoins ?

Le droit polonais prévoit des règles spécifiques, en particulier, pour les enfants apparaissant dans la procédure pénale comme victimes ou témoins ; les handicapés et les personnes âgées en sont moins touchés. Pour ces derniers, il s'agira de leur assurer un conseil juridique.

Le Code de procédure pénale a introduit des règles spécifiques concernant l'audition de l'enfant en tant que victime ou témoin. Le code prévoit les règles de l'audition de la victime qui, au moment de l'audition n'a pas atteint l'âge de 15 ans et qui vise un type spécial de crimes, à

savoir des crimes avec emploi de violence ou de menace d'un préjudice grave, des infractions contre la liberté, contre la liberté sexuelle et contre les mœurs et des infractions contre la famille et la tutelle.

L'enfant peut être entendu, lorsque ses dépositions peuvent avoir une importance pour trancher l'affaire et cela ne peut avoir lieu qu'une seule fois. Cet acte peut être réitéré si les circonstances importantes se révèlent et l'éclaircissement de ces circonstances demande une nouvelle audition ou lorsque l'accusé n'ayant pas son avocat au cours de la première audition en demande. Le juge, accompagné d'un psychologue expert, est chargé de cette audition qui se déroule en audience. Le procureur, l'avocat et le conseil juridique de la victime, ainsi que son représentant légal ou la personne sous la garde de laquelle la victime reste ou bien la personne adulte choisie par la victime peuvent assister à l'audition, si cela ne restreint pas la liberté d'expression de l'enfant. La reproduction de sons et d'images d'une telle audition a lieu à l'audience de fond et la lecture du procès-verbal est faite. Le mineur qui n'a pas atteint l'âge de 15 ans peut être également entendu dans ces conditions, s'il y a une crainte qu'une audition dans d'autres conditions puisse avoir des conséquences négatives pour sa santé mentale. Ces auditions doivent se dérouler dans des locaux appropriés aux sièges des tribunaux ou ailleurs.

- 2.7 Lorsqu'une décision, rendue en matière pénale, est susceptible d'affecter les droits ou la situation d'une personne vulnérable, celle-ci est-elle portée à la connaissance des autres instances traitant des droits de cette personne (par ex. une mesure d'interdiction de contact avec sa femme pour un mari en cas de violence domestique à l'instance chargée de statuer sur la garde des enfants)?

Le Code de procédure pénale introduit les règles engageant ou habilitant les autorités à rendre des décisions ayant une incidence indirecte à la sécurité des victimes et celles concernant les mesures préventives. L'interdiction de contacter la victime et l'ordre de quitter le logement occupé avec la victime en font partie.

S'il s'agit d'enfants, une décision rendue est sans délai portée à la connaissance du juge aux affaires familiales.

- 2.8 Ces personnes vulnérables peuvent-elles témoigner seules ou uniquement après avoir été autorisées par leurs représentants légaux et, dans ce dernier cas, dans quelles conditions ?

Les parents doivent convenir aux auditions de leurs enfants. L'autorité chargée à une telle audition sera bien sur tenue de s'assurer si le développement cognitif et socio-émotionnel de l'enfant le permet.

Dans le cas des handicapés mentaux, ils peuvent témoigner sans accord préalable de son représentant légale, à moins qu'ils sont entièrement incapables juridiquement.

- 2.9 Le refus de témoigner est-il possible, par exemple en ce qui concerne les enfants ou les handicapés mentaux ? Dans quelles conditions ?

Une question d'une audition de l'enfant est complexe. Les dispositions du Code de procédure pénale stipulent qu'une information en ce qui concerne les droits de l'enfant victime est donnée aux personnes exerçant les droits de l'enfant. La doctrine critique cette approche trop formelle et attire attention au besoin d'informer l'enfant au cours de la procédure le concernant et de lui apporter des explications concernant les actions entreprises et ses droits. Cela vaut avant tout pour les droits dont l'enfant ne peut bénéficier que personnellement. C'est surtout le droit de refuser de témoigner et de répondre à des questions. Les psychologues et les juristes s'opposent sur la question comment l'enfant doit être informé sur ses droits, pour que sa décision de témoigner soit prise consciemment. Dans ces débats, ils insistent, entre autres, que la capacité de déduction se développe à l'âge de 11-12 ans, ce qui permet de comprendre une information qui lui est donnée. Certains auteurs soulignent qu'à l'âge de 13 ans l'enfant est capable de bénéficier pleinement de ces droits.

La méthodologie des procédures avec la participation des enfants attire l'attention sur le fait qu'il convient d'expliquer à l'enfant non seulement son droit, mais aussi les conséquences en découlant.

S'il s'agit d'handicapés mentaux, leur intervention à la procédure dépend de l'avis d'un psychologue ou d'un psychiatre.

- 2.10 Qui procède à l'évaluation des personnes vulnérables et comment le risque est-il évalué ?
La personne vulnérable peut-elle avoir un rôle dans l'évaluation de ce risque ? Quelles sont les mesures de protection qui peuvent être adoptées et par qui ?

S'il s'agit d'enfants, le tribunal familial, des experts psychologues et les procureurs, accompagnés des institutions spécialisées pour la protection des droits d'enfants seront chargés de l'évaluation. S'il s'agit d'autres personnes vulnérables, cette évaluation sera faite par un expert psychologue ou le procureur.

Toutes les personnes intervenant au procès pénal en tant que victimes et témoins doivent être perçues comme les personnes et par conséquent, leurs opinions doivent être prises en compte.

- 2.11 Existe-t-il dans votre pays des procédures spéciales permettant les témoignages filmés, enregistrés et/ou cachés derrière un écran ? Si oui, dans quelles circonstances ?

Auditions des témoins et des victimes en cas de tous les crimes

Il est possible de procéder à une audition durant laquelle un équipement technique est utilisé permettant de le faire à distance et avec la transmission directe de l'image et du son (à savoir, une vidéoconférence).

Cette voie d'audition permet d'entendre le témoin ou la victime sans contact direct avec l'accusé. Par contre, cette procédure est restreinte à des situations où le témoin se trouve dans un autre lieu que le lieu d'audition. Il n'est pas donc possible d'avoir recours à cette voie d'audition dans les cas où la présence physique de l'accusé aurait pu gêner le témoin ou la victime. Dans les cas exceptionnels, lorsque la présence de l'accusé aurait pu gêner le témoin ou la victime, le juge pourra ordonner que l'accusé quitte la salle d'audience et après son retour, la lecture du contenu des dispositions lui est donnée.

Il est possible d'avoir un recours à la voie d'audition du témoin ci-dessus mentionnée, sans limites liées à un lieu où le témoin se trouve, aux mineurs qui, au moment de l'audition, n'ont

pas atteint l'âge de 15 ans, lorsque la présence de l'accusé pourra avoir des conséquences négatives sur son bien-être psychologique ou sur son témoignage.

La criminalité violente et les abus sexuels

Le mineur, n'ayant pas atteint l'âge de 15 ans ne peut être entendu qu'une seule fois dans la procédure. Cette audition se déroule en séance et le mineur est accompagné d'un psychologue. Le témoignage d'un tel témoin peut être enregistré et filmé. L'enregistrement est annexé au procès-verbal. Le témoignage est reproduit à l'audience de fond et la lecture du procès-verbal est donnée.

En cas d'abus sexuels, l'audition de la victime en qualité de témoin se déroule à l'audience au tribunal dans laquelle le procureur, l'avocat et le conseil juridique de la victime peuvent participer. L'enregistrement de sons et d'images est reproduit à l'audience de fond et la lecture du procès-verbal est donnée. Lorsque la nouvelle audition de la victime en qualité de témoin est nécessaire, sur sa demande, l'audition est conduite à l'aide d'un équipement enregistrant de l'image et du son, s'il y a lieu de croire que la présence de l'accusé lors de cette audition aurait pu gêner la victime ou avoir des conséquences négatives sur son bien-être psychologique.

2.12 Comment la prévention de la victimisation répétée est-elle assurée ?

La protection des victimes de la victimisation répétée est assurée dans de nombreux domaines.

L'adoption des dispositions pertinentes de la procédure pénale et des mesures d'organisation appropriées est le premier élément essentiel qui élabore des règles à suivre par les autorités répressives et judiciaires à l'égard des victimes de certains type de crimes et des personnes vulnérables, de sorte que ces victimes ne soient pas exposées à la victimisation répétée.

Ces dispositions sont inscrites non seulement dans le Code de procédure pénale ou dans d'autres lois relatives aux victimes de certains types de crimes, mais aussi dans les lignes directrices du Procureur Général ou dans celles du Commissaire Général de la Police ou dans un ensemble de règles éthiques des procureurs et de la police.

Le fait d'assurer le respect de la dignité et des intérêts des victimes par les personnes chargées de la procédure est le deuxième élément important. Lors des formations initiales et continues, l'accent est mis sur la capacité de nouer des contacts interpersonnels avec les victimes, sur les questions de la qualité de l'approche au plaignant, sur le respect de la dignité et de la vie privée des victimes, sur la capacité d'aider les victimes de façon professionnelle, y - compris de les informer comment demander le soutien auprès d'autres autorités ou organisations et de les informer de leurs droits. Une place importante est accordée à la capacité de se communiquer avec les victimes de manière compréhensible pour elles, pour expliquer clairement les raisons de certains actes ou certaines décisions. Les procureurs sont également sensibilisés pour ne pas contribuer à la victimisation répétée de la victime, par des contacts imprudents avec les médias.

Si dans le premier cas, la pratique, en raison des limites des dispositions procédurales, est dans une large mesure correcte, dans le deuxième cas, nous sommes souvent confrontés au non-respect de la dignité de la victime et à la négligence de la « politique d'information » à l'égard de la victime. En théorie, il n'y aurait aucun doute quant au fait qu'il est nécessaire

d'assurer le « style » de travail des autorités judiciaires et des institutions qui coopèrent avec elles qui garantirait le respect de l'intégrité de la victime et de ses besoins, dans la pratique, cela n'est pas si évident.

Les dispositions particulières portant sur la prévention de la victimisation répétée (violence domestique et les infractions contre la liberté sexuelle)

Violence domestique

La loi sur la lutte contre les violences conjugales et familiales a introduit le devoir d'aider les personnes touchées par les violences consistant à leur fournir des conseils médicaux, psychologiques, juridiques, sociales, professionnelles et familiales ; à intervenir dans des situations de crise et soutenir les victimes des violences ; de les protéger contre les violences en empêchant aux personnes exerçant les violences de vivre dans le logement occupé avec d'autres membres de famille, en lui interdisant de contacter et de approcher la victime ; d'assurer à la victime le refuge aux centres spécialisés de soutien aux victimes des violences conjugales et familiales, lui assurer un examen médical gratuit en vue d'établir la raison et le type de blessures dues aux violences conjugales et familiales et finalement l'aider à trouver un logement si la victime n'a pas le droit de propriété pour un logement occupé avec l'auteur des violences

Les communes ont été soumises à créer des systèmes communales de lutte contre les violences conjugales et familiales. Les groupes interdisciplinaires et les groupes de travail assurent les actions coordonnées par les communes dans ce domaine. Par contre, des interventions indirectes à l'égard d'une famille qui subit les violences se fait selon la procédure dite « *Carte bleue* ». La loi a également obligé le Procureur Général d'élaborer et publier tous les deux ans au minimum des lignes directrices concernant les règles d'agir au sein des parquets dans le cadre de la lutte contre la violence domestique.

Les infractions contre la liberté sexuelles

Les abus sexuels sont extrêmement drastiques et portent atteinte à la vie privée et à la dignité de l'homme. Par conséquent, les dispositions ont été introduites dans la procédure pénale polonaise qui prévoient un régime particulier d'audition des personnes en qualité de témoins et de victimes d'abus sexuels quel que soit leur âge. Les victimes et les témoins adultes sont entendus de manière proche à celle appliquée pendant l'audition des mineurs. L'enregistrement de sons et d'images est reproduit à l'audience de fond et la lecture du procès-verbal est donnée. Lorsque la nouvelle audition de la victime en qualité de témoin est nécessaire, sur la demande de la victime, l'audition est conduite de sorte que la victime et le témoin ne soient pas exposés au contact direct avec l'auteur des faits à la condition toutefois qu'il y ait lieu de croire que la présence de l'accusé lors de cette audition aurait pu gêner la victime ou avoir des conséquences négatives sur son bien-être psychologique. Cela signifie qu'une audition du témoin peut avoir lieu à l'aide d'un équipement technique permettant de le faire à distance et avec la transmission directe de l'image et du son. Si une audition se tient en présence d'un expert, sur demande de la victime, un expert du même sexe que la victime doit être assuré, à moins que cela entrave la procédure.

2.13 Les droits des victimes, des témoins et des personnes vulnérables sont-ils prévus uniquement pour les citoyens ou aussi pour les étrangers? Dans quelles circonstances ?

Aucun obstacle n'empêche que dans la situation où une infraction relève de la compétence des juridictions polonaises, les mesures de protection soient appliquées aussi pour un étranger séjournant en Pologne.

La Pologne a mis en œuvre la directive du Parlement européen et du Conseil 2011/99/UE du 13 décembre 2011 relative à la décision de protection européenne. La directive s'applique aux mesures visant à protéger une personne contre une infraction commise par une autre personne, susceptible de mettre en danger, de quelque manière que ce soit sa vie ou son intégrité physique, psychologique ou sexuelle. Elle vise aux mesures suivantes :

- a) une interdiction de se rendre dans certains lieux, dans certains endroits ou dans certaines zones définies où la personne bénéficiant d'une mesure de protection réside ou qu'elle fréquente,
- b) une interdiction ou une réglementation des contacts, quelle que soit leur forme, avec la personne bénéficiant d'une mesure de protection, y compris par téléphone, par courrier électronique ou ordinaire, par fax ou par tout autre moyen,
- c) une interdiction d'approcher la personne bénéficiant d'une mesure de protection à moins d'une certaine distance, ou une réglementation en la matière.

Le droit polonais connaît toutes ces mesures et elles peuvent être prononcées dans toutes les phases de la procédure pénale, à savoir au cours de l'enquête, au cours de la procédure judiciaire et au cours de la procédure d'exécution de la peine. Conformément au droit polonais, une interdiction de se rendre dans certains lieux peut être prononcée comme un élément de mesure préventive telle qu'une surveillance ou comme une mesure pénale ou bien une obligation de probation ou une obligation liée à la libération conditionnelle de la personne condamnée.

Tel est le cas, s'il s'agit d'interdiction des contacts avec la victime ou avec d'autres personnes et d'interdiction d'approcher la victime ou d'autres personnes.

La directive se base sur le mécanisme typique pour l'Union européenne de la reconnaissance mutuelle des décisions pénales. Ces types d'instruments ont été de nombreuses fois mis en œuvre par le droit polonais en complétant des chapitres suivants régissant des procédures internationales. Ces dispositions régissent une question de demande d'exécution de la décision européenne émise par le tribunal polonais ou par le procureur en vertu de la mesure préventive, la mesure pénale ou la peine probatoire ou l'obligation liée à la libération conditionnelle prononcées contre un accusé ou bien une question de demande d'exécution d'une telle décision adressée aux autorités polonaises.

Grâce à ces réglementations, les personnes bénéficiant d'une mesure de protection peuvent, au moment de leur déplacement à un autre état membre, demander d'émettre « une décision de protection européenne, ce qui permettra aux autorités d'une nouvelle résidence de ces personnes de reconnaître et exécuter les mesures de protection (p.ex. une décision de quitter le logement, une interdiction d'approcher la personne). Actuellement, cela n'est bien évident possible qu'entre les États membres de l'UE.

3. Rôle des procureurs dans la protection des droits des victimes, des témoins et des personnes vulnérables

3.1 Comment les droits des victimes, des témoins et des personnes vulnérables sont-ils appliqués et garantis dans le cadre de la procédure pénale ? Quel est le rôle des procureurs en la matière ?

Conformément aux dispositions du Code de procédure pénale, une autorité chargée de l'audition, dont le procureur, est tenue d'informer la victime et le témoin de leurs droits. La victime et le témoin reçoivent cette information par écrit et accusent sa réception par leur signature. Le ministre de la Justice a émis, par le règlement, une information standardisée, préparée de manière à ce qu'elle soit compréhensible sans avoir besoin d'avoir recours à l'avocat.

La Loi du 28 novembre 2014 relative à *la protection et de l'aide aux victimes et aux témoins*, à son tour, définit les règles, les conditions et le champ d'application des mesures de protection et d'aide aux victimes et aux témoins et aux personnes qui leur sont les plus proches, si à la suite de la procédure en cours ou clôturée dans laquelle la victime ou le témoin a participé, leur vie et santé sont en danger. Les mesures de protection sont ce qui suit : la protection pendant la durée de l'acte de procédure ; la protection individuelle et l'aide pour une réinstallation.

3.2 Ce rôle des procureurs est-il inscrit dans la loi ou dans d'autres instruments juridiques ?
Ce rôle est-il inscrit dans les règles de déontologie des procureurs ?

Ce rôle des procureurs est inscrit dans la loi. De même, d'autres rôles des procureurs à l'égard des victimes et des témoins de certains types de crimes sont avant tout inscrits dans les lois. Outre, ces devoirs sont précisés dans des lignes directrices détaillées. Par exemple, s'il s'agit de violence domestique, le devoir d'élaborer les lignes directrices par le Procureur Général a été directement inscrit dans la loi.

Un ensemble de règles éthiques des procureurs indique que le procureur est tenu de se comporter à l'égard de la victime, de sorte que la procédure pénale ne renforce pas encore de mauvaise impression produite par le crime. Ainsi, le Code d'éthique des procureurs énonce expressément le devoir de lutte contre la victimisation répétée. Il a été également dit comment le procureur doit y parvenir. Ainsi, le procureur est tenu de faire preuve de sa compassion, du souci pour les perspectives d'avenir dans la vie de la victime, de faire preuve de la diligence quant aux intérêts des victimes vivant en pauvreté, handicapés et incapables de chercher à obtenir réparation.

3.3 Comment ce rôle est-il exercé dans la pratique ? Comment les procureurs collaborent-ils avec d'autres organes de l'État pour remplir ce rôle ? Les procureurs ont-ils des fonctions de supervision ou de surveillance ?

Par exemple, en vertu des lignes directrice du Procureur Général sur la violence domestique, à part d'une information écrite des droits des victimes dans la procédure pénale, les procureurs sont tenus de leur fournir toutes précisions sur leurs droits découlant de la loi relative à la lutte contre la violence domestique, notamment de leur droit de bénéficier à titre gratuits de conseils médicaux, psychologiques, juridiques, sociales, professionnelles et familiales ; de leur droit à l'intervention dans de situations de crise et au soutien à la protection contre les violences en empêchant aux personnes exerçant les violences de vivre dans le logement occupé avec d'autres membre de famille, en lui interdisant de contacter et d'approcher la victime ; de leur droit au refuge aux Centres spécialisés de soutien aux victimes de violences conjugales et familiales, de leur droit à un examen médical gratuit en vue d'établir la raison et le type de blessures dues à la violence domestique et à un certificat médical à ce titre et de leur droit à l'aide à la recherche un logement, si la victime n'a pas le droit de propriété pour logement qu'elle occupe avec l'auteur des violences.

Outre, il appartient aux procureurs d'informer la victime de manière claire et accessible de toutes formes d'aides dont les victimes de la violence domestique peuvent bénéficier dans le cadre des différents programmes de la lutte contre ces violences réalisés par les autorités nationales, les collectivités locales et les ONG. Tous les parquets devraient être en possession des listes de ces organismes.

Les lignes directrices recommandent que les procureurs procèdent personnellement à des auditions des victimes et des témoins de ces types de crimes.

Dans tous les cas, le procureur devrait vérifier si une procédure spécifique dite « Carte bleue » a été ouverte et si ce n'est pas le cas et si cela est justifié, le procureur lui-même devrait ouvrir cette procédure.

Par ailleurs, dans chaque cas de violence domestique, le procureur devrait se demander si l'ordre de quitter le logement par l'accusé ne serait justifié. Outre, s'il constate au cours de la procédure que la vie et la santé de l'enfant est en danger, il devrait mettre en œuvre la procédure tendant à retirer l'enfant et le placer dans une famille d'accueil ou dans un établissement de soins thérapeutiques et éducatifs.

Les procureurs sont aussi tenus d'informer la victime qui se rend dans un autre pays membre que sur, sa demande, une décision de protection européenne peut être appliquée

Les procureurs peuvent remplir ces deux rôles, à savoir, être chargé de la procédure et la surveiller. Lorsqu'il s'agit de la surveillance des enquêtes menées par la police, ils devraient examiner les éléments de preuves recueillis par la Police de manière approfondie. Outre, ils devraient décider avec une prudence et un soin particulier de renvoyer des affaires concernant la violence domestique à la médiation.

3.4 Les victimes, les témoins et les personnes vulnérables peuvent-ils saisir directement le procureur pour la protection de leurs droits ?

Oui, ils peuvent saisir directement le procureur. Par exemple, en cas de violence domestique, la victime peut demander une assistance psychologique gratuite qui peut être fournie sur demande du procureur.

3.5 Les procureurs peuvent-ils agir de leur propre initiative pour protéger les droits des victimes, des témoins et des personnes vulnérables ?

Oui, ils peuvent agir de leur propre initiative, c'est même leur obligation. Par exemple, en cas de victime qui n'a pas atteint l'âge de 15 ans ou en cas de mineur qui au moment de l'audition a atteint 15 ans, s'il s'agit de crimes avec emploi de violence ou de menace d'un préjudice grave, des infractions contre la liberté, contre la liberté sexuelle et contre les mœurs et des infractions contre la famille et la tutelle, le procureur est légalement tenu de saisir le tribunal d'une demande d'appliquer une voie spécifique d'audition ci-dessus mentionnée pour ces types des victimes et des témoins.

Le procureur peut de sa propre initiative informer le tribunal des affaires familiales d'irrégularités révélées au sein d'une famille.

Au cours de procédures pénales ouverte pour violence domestique et dans lesquelles les mineurs sont les victimes et les représentants des victimes ne sont pas en mesure de représenter dûment leurs intérêts dans la procédure en cours, le procureur saisit le tribunal d'une demande de désigner un curateur.

3.6 Pour l'assistance aux victimes, aux témoins et aux personnes vulnérables, les procureurs coopèrent-ils avec d'autres organes de l'État, des instances privées ou des ONG ?

Oui, par exemple, en cas de violence domestique, en vertu de la loi sur la lutte contre la violence domestique, le procureur est tenu de participer aux travaux d'un groupe interdisciplinaire pour la lutte contre ces violences. Ce groupe est formé au niveau des collectivités locales et composé des organismes suivants : unités d'assistance sociale ; organe d'action sociale de la municipalité pour remédier aux problèmes d'alcool, la police, l'éducation et la protection de la santé publique et des ONG.

Pareil, s'il s'agit de traite des êtres humains, le procureur participe aux travaux de groupes interdisciplinaires dans lesquels les ONG participent également.

En cas de crimes avec emploi de violence, le procureur, si nécessaire, après un accord préalable de la victime ou du témoin saisit le commissaire de Police compétent pour assurer des mesures de protection et d'aide prévues par la loi sur la protection et l'aide aux victimes et aux témoins. En cas de ces types de crimes, les procureurs évaluent la nécessité de la demande de compensation nationale aux personnes autorisées qui est accordée en vertu de la loi particulière sur la compensation nationale aux victimes de certains actes.

3.7 Les procureurs bénéficient-ils d'une formation spécifique concernant la protection des droits des victimes, des témoins et des personnes vulnérables ? Cette formation implique-t-elle également le personnel du Parquet et les services de police ? Les procureurs jouent-ils un rôle dans la mise en œuvre de cette formation ?

De telles formations sont organisées. Toutefois, il convient de remarquer que leur nombre n'est pas suffisant et leurs effets ne sont pas satisfaisants.

3.8 Tout autre point que vous voulez soulever.

Portugal

1. Definitions

- 1.1 Is there in your country a **definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

1.1 Yes and they are established by Law. There is a formal definition in the Code of Criminal Procedure (Article 67.º-A). A "victim of crime "means a natural person who has suffered damage, including an assault on his or her physical or mental integrity, emotional or moral damage, or property damage, directly caused by action or omission, in the context of the commission of a crime".

There is no legal definition of witness in the Code of Criminal Procedure. However, in the specific legal regime for the application of measures to protect witnesses in criminal proceedings (Law no. 93/99, of 14/7), there is a legal definition of witness for the purposes of that law.

The concept identifies "any person who, whatever his status under procedural law, has the information or knowledge necessary for the disclosure, perception or assessment of facts that are the subject of the proceedings" (Article 2 (a));

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

1.2 Yes. In the Portuguese legal system there are the following legal regimes that regulate the specific treatment for victims of crime.

The Code of Criminal Procedure and the Statute of the Victim (Law no. 130/2015, of 4/9) apply to victims of any crime.

Law no. 112/2009, of 16/9 applies to victims of domestic violence.

In addition to these three concrete regimes, the witness protection law is applicable to all witnesses and victims of crimes of trafficking in human beings, criminal association, terrorism, international terrorism or terrorist organizations or, provided they are punishable with imprisonment of a maximum of eight years or more, to crimes against life, against physical

integrity, against the freedom of individuals, against sexual freedom or sexual self-determination, of corruption, of qualified swindling, of harmful administration. For victims of human trafficking, there are separate legal provisions that allow for flexibility measures aiming at granting them a residence permit (DL n.º 368/2007, de 5/11).

- 1.3 Is there in your country a **definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

1.3 Yes. In the Code of Criminal Procedure, a particularly vulnerable victim is “a victim whose particular weakness is due, namely, to his or her age, health or disability, and the type, degree and duration of the victimization has resulted in injuries with serious consequences in their psychological balance or in the conditions of their social integration”.

The Witness Protection Act also defines who especially vulnerable witnesses are. The particular vulnerability of the witness may result, in particular, from his or her youth or advanced age, health status or the fact that he or she has to give evidence or make any statements against a person of his or her own family or of a closed social group in which he or she is placed in a condition of subordination or dependency.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

2.1 Yes.

- 2.2 If yes, are they established in the law or other legal instruments?

2.2 They are established in the law. In the Code of Criminal Procedure, Code on the execution of sanctions and enforcement of measures involving deprivation of liberty (Law n.º 115/2009, de 12/7), Statute of the Victim (Law n.º 130/2015, of 4/9) and the specific legal regime concerning measures to protect witnesses in criminal proceedings (Law n.º 93/99, of 14/7).

- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

2.3 In addition to the procedural intervention as an assistant, which guarantees the right of the victim (including the particularly vulnerable ones) of any crime to participate in the investigation, by providing evidence, requiring diligence and lodging an appeal, in the position of collaborator of the Public Prosecution Service, several laws enshrine in various norms the direct or indirect intervention of the victim, the defense of their interests and rights.

Concerning the right to information:

A) on the possibility of requiring compensation for damages and on the formalities to be complied with (Article 75 of the Code of Criminal Procedure);

B) on the date of release of the accused person subject to pre-trial detention, when this release could entail danger (Article 217, paragraph 3 of the Code of Criminal Procedure);

C) on the release of the agent, when the judge considers that there is a danger to the victim, this release being also reported to the police entity in the victim's area of residence (article 23, paragraph 3 – Code for Execution of Sanctions);

D) on the escape or unauthorized absence of the agent (article 97, paragraph 3 of the Code for Execution of Sanctions);

E) on the news of a crime having been committed, whenever the Public Prosecutor has reason to believe that the victim does not know it (Article 247, paragraph 1 of the Code of Criminal Procedure);

F) on the presentation of an anonymous complaint (the information to be given to the holder of the right of complaint) Article 246 (6) of the Code of Criminal Procedure;

Special right to compensation and compensation

G) Reparation of the victim in special cases, when he / she has not filed a civil request and particular exigencies of protection of the victim so impose, compensation that is further obligatory in the case of especially vulnerable victims (article 82 A of the Code of Criminal Procedure and article 16 of the Victims' Statute);

H) The regime for granting compensation to victims of violent crime and domestic violence (Law 104/2009, of 14/9);

Other cases of special consideration of victim's interests and rights:

(I) Exclusion of disclosure of procedural acts in cases of trafficking in human beings or sexual offenses and for all cases in which there are particularly vulnerable victims (Article 87 (3) of the Criminal Procedure Code and Article 21 of the Statute of the Victim);

(J) Special protection of their identity in specific cases, including in cases of particularly vulnerable victims, the disclosure of such identity by the media being prohibited without the victim's consent, under penalty of disobedience – (Article 88 (2) © of the Code of Criminal Procedure and Article 27 of the Statute of the Victim);

K) Assistance by a lawyer who has to inform him of his/her rights, whenever he/she gives evidence, which is extended to all witnesses who are not victims of crime – (Article 132 (4) of the Code of Criminal Procedure);

L) Possibility of limiting the communication to the defendant of the elements of the case, whenever this communication is liable to create danger for the victim (Article 141, paragraph 4, letter b), of the Code of Criminal Procedure;

M) Possibility of interception and recording of communications, through their actual or presumed consent (Article 187, paragraph 4, letter c), of the Code of Criminal Procedure);

(N) Provision of forward-looking statements for victims of certain crimes (trafficking in human beings, domestic violence, sexual crimes) and for especially vulnerable victims – (Article 271 (1) of the Code of Criminal Procedure and 21. of the Victims' Statute);

O) The right of victims who are particularly vulnerable to being accompanied by a specially qualified technician in certain procedural acts, such as declarations for future memory (Article 271 (4) of the Code of Criminal Procedure)

P) Possibility of influencing the procedure in case of domestic violence, requiring its provisional suspension – Article 281 (7) of the Code of Criminal Procedure;

(Q) The victim has the right to be heard in an informal and reserved environment, and appropriate conditions must be created to prevent secondary victimization and to avoid any pressure (Article 17 (1) of the Victim's Statute);

(R) For particularly vulnerable victims, the following measures of protection exist:

a) The victim's inquiries must be carried out by the same person, if the victim so wishes, and provided that the criminal proceedings are not jeopardized;

b) The examination of victims of sexual violence, gender-based violence or violence in intimate relations, unless it is done by a Public Prosecutor or by a judge, must be carried out by a person of the same sex as the victim, if he/she so wishes, as long as the criminal proceedings are not jeopardized;

c) measures to prevent visual contact between victims and defendants, namely when giving evidence, through appropriate technological means (Article 21 of the Victims' Statute);

S) All witnesses in any criminal proceedings have the right to refuse to give evidence, when they are descendants, ascendants, siblings, are in the same line up to the second degree, adopters, adoptees or spouse of the accused, or when being of the other or of the same sex, has lived with him or her in circumstances similar to those of the spouses, in relation to facts that occurred during the marriage or cohabitation (Article 134 (1) (a) and (b) of the Code of Criminal Procedure);

(T) Certain witnesses have the right not to give evidence if the facts are covered by professional or religious secrecy (Article 135 of the Code of Criminal Procedure);

2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

2.4 Victims, including those who are particularly vulnerable and witnesses are informed of their rights by criminal police officers, court officials, prosecutors and judges throughout the proceedings.

It is a question of putting into practice the legal and formally foreseen mechanisms.

There are also other mechanisms, non-formal, through institutional publicity and, simultaneously, through websites of governmental and non-governmental organizations that make this disclosure.

There is free access to complete information on this subject.

2.5 What kind of penalties and sanctions are established for violation of these rights?

2.5 It depends. There are procedural consequences, such as the nullity of the act and the evidence acquired.

There are also criminal, civil and disciplinary responsibilities, for those who, being obliged to enforce these rights, fail to do so.

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

2.6 Yes, as was pointed out in answers 1.1, 1.2, 1.3 and 2.3.

In the Code of Criminal Procedure, in the Statute of the Victim and in the Law on the Protection of Witnesses, there are specific rights for especially vulnerable victims and for witnesses whose particular weakness derives, in particular, from their age (including children and elderly people), their state of health and disability, as well as the fact that the type, degree and duration of victimization have resulted in injuries with serious consequences for their psychological balance or conditions of social integration.

- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

2.7 Yes. *In the concrete example of the crime of domestic violence, there is an express obligation established in Law no. 112/2009 (article 37-B), that there should be a communication of decisions handed down by criminal courts to those courts dealing with family and children cases, aiming to harmonize the adopted measures, relating for instance to the application of coercive measures involving contacts between the perpetrator and the victim.*

The same law also identifies that whenever there are children at stake, the regime of visits of the aggressor must be evaluated, and may be suspended or conditioned, according to the applicable law.

There is no equal rule for Family and Juvenile Courts.

At present, in Portugal, amendments to the Criminal Procedure Code and Law nº. 112/2009 are in the legislative process, aiming to extend the scope of sexual offenses and also to establish the obligation in these cases for the Prosecution Service to urgently initiate proceedings to regulate the exercise of parental responsibilities.

The judicial practice has revealed that in some cases there are deficiencies in communication between the Courts which can lead to incompatibilities in the exercise of the right and visits and at the same time endanger the protection of victims.

- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

2.8 Any person who is not barred by insanity has the capacity to be a witness and can only refuse to bear testimony in the cases provided by law (article 131 of the Code of Criminal Procedure). Portuguese law thus enshrines the rule of ample witnessing capacity, which does not even exclude persons who do not offer guarantees of impartiality, which, if it is to happen, is only of interest in assessing the merits of the evidence and, not for assessing the capacity to bear testimony.

The only absolute cause of inability to bear testimony is the interdiction of the person due to insanity, decreed by judicial decision.

It should be noted, however, that Judgment of the Constitutional Court no. 359/2011, dated 12-7-2011, found "unconstitutional, for violation of Articles 13 (1) and 20 (4) of the Constitution of the Portuguese Republic, the rule contained in Article 131 (1) applicable by reference to Article 145 (3), both of the Code of Criminal Procedure (CPP), when interpreted to entail the inability to make statements at a trial hearing for a person who, having in the proceedings the quality of offended party (victim), and as such is an assistant, was declared insane."

It is the responsibility of the Public Prosecutor or the Court to determine the physical or mental fitness of any person to bear testimony. In the case of witnesses under 18 years of age in cases relating to sexual offenses, personality assessment may be determined (Article 131 (2) of the Criminal Procedure Code).

Particularly vulnerable witnesses may be accompanied during their testimony (Article 27 of the Witness Protection Act).

Vulnerable persons do not need the authorization of their legal representatives to bear testimony.

2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

2.9 They may refuse to bear testimony as witnesses:

a) Descendants, ascendants, siblings, those that are in the same line up to the second degree, adopters, adoptees and the spouse of the accused; And

(b) who has been the spouse of the accused or who, being of the other or of the same sex, lives with or has lived with him/her in circumstances similar to those of the spouses, in relation to facts that occurred during the marriage or cohabitation. The entity competent to receive the testimony warns, under penalty of nullity, the persons referred to in the previous number of the faculty that assists them to refuse to bear testimony.

If witnesses who have the right to refuse testimony are under age (below 18) or suffer from some type of incapacity, problems can (and should) arise, however, as to the exercise of that right. In Portugal, like in many other legal orders, there is no express regulation on the subject in the Criminal Procedure Code.

The Statute of the Victim (Article 7) provides that whenever an adult person, under the law, is deprived, by reason of limitation or alteration of physical or mental functions, illness or other similar reason, of the capacity to consent to an intervention, this intervention cannot be effected without due authorization or assistance being provided under the law, or in the absence thereof or, if he/she is the perpetrator, of a person designated by law. If the victim is a child and there is a conflict of interests between the victim and those that hold parental responsibilities, which prevents them from representing him/her or if the child victim is not accompanied by his family or is separated from it, a representative must be appointed to the child victim, in accordance with the law.

The practice of our Courts has been to require that the right to refuse to bear testimony for vulnerable victims according to age (including children and young people) should be exercised by their legal representatives and, in cases where there is a conflict of Interests, through the appointment of a representative.

What is being still discussed is whether the exercise of the right of refusal should be effective in cases where the witness or victim, depending on his/her age, is not in a position to understand the meaning of the refusal.

2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

2.10 Once a crime has been reported, the Public Prosecution Service or the competent criminal police may, after an individual assessment of the victim, give him / her the status of a particularly vulnerable victim. In the same act, the victim is given a document proving the said status, with his/her rights and duties. In practice, risk assessment is carried out by the police through the preparation of an analysis form with the direct participation of the victim.

The special protection measures are as follows:

A) The victim's inquiries must be carried out by the same person, if the victim so wishes and provided the criminal proceedings are not jeopardized;

B) The investigation of victims of sexual violence, gender-based violence or violence in intimate relations, unless it is done by a Public Prosecutor or by a judge, must be carried out by a person of the same sex as the victim, if he/she so wishes and provided the criminal proceedings are not jeopardized;

(C) measures to prevent visual contact between victims and defendants, in particular when bearing testimony, through appropriate technological means;

D) Making of statements for future memory;

E) Exclusion of publicity from trial hearings;

F) The judge or, during the investigation phase, the Public Prosecution Service must determine, whenever this is necessary for the protection of the victim and he/she has given his/her consent, that he / she is assured psychosocial support and protection through tele-assistance, for a period not exceeding six months, extendable if justified by circumstances associated with the protection of the victim;

G) The provisions of the preceding paragraphs shall not affect the application of other solutions included in the special regime for the protection of witnesses, in particular with regard to the protection of the victim's next of kin.

Risk assessment is one of three levels, "low", "medium" and "high" and is subject to reassessment, within 3/7 days in cases of high risk, up to 30 days in cases of medium risk and up to 60 days in cases of low risk.

2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

2.11 The Code of Criminal Procedure in conjunction with the Victims' Statute, the Domestic Violence Victims Protection Act and the Witness Protection Act allows witnesses to be questioned through special protection measures, including registration recorded in audio and on film. And it is also possible to use videoconferencing with recourse to image concealment or distortion of the voice and even the concealment of the victim's identity.

Testimony and statements of the victims and witnesses, when they involve the presence of the accused, are provided by videoconference or teleconference, by determination of the Public Prosecution Service, either on its own initiative or at the request of the victim, during the investigation phase, Or by determination of the court, either on its own initiative or at the request of the Public Prosecutor or the victim, during the investigation (instrução) or trial stages, if this proves necessary to guarantee the presentation of statements or testimony without any restrictions.

Not disclosing the identity of the witness may take place during some or all stages of the proceedings if all of the following conditions are met:

(A) The testimony or statements relate to crimes of trafficking in human beings, criminal association, terrorism, international terrorism or terrorist organizations or, subject to imprisonment for a maximum of eight years or more, crimes against life, against physical integrity, against liberty of persons, against sexual freedom or sexual self-determination, of corruption, of qualified swindling, of harmful administration that causes damages of more than 10 000 units of account, or committed by those who are part of a criminal association in the context of the purpose or activity of such association;

(B) a witness, his next of kin, a person living with him in conditions similar to those of the spouses or other persons who are close to them, are in grave danger of being attacked on their lives, physical integrity, liberty or assets of a considerably high value ;

(C) The credibility of the witness is not reasonably questioned;

(D) The testimony or statements constitute a significant probative contribution.

2.12 How is the prevention of repeated victimisation ensured?

2.12 The victim shall have the right to be heard in an informal and reserved environment, and appropriate conditions should be created to prevent secondary victimization and to prevent pressure being exerted on him/her.

The interrogation of the victim and his / her eventual submission to medical examination must take place without undue delay after the crime has been reported, only when strictly necessary for the purposes of the investigation and criminal proceedings and their repetition should be avoided.

2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

2.13 In Portugal, all victims, including the most vulnerable and witnesses, regardless of their ancestry, nationality, social status, sex, ethnicity, race, language, age, religion, disability, political or ideological convictions, sexual orientation, culture and educational level, enjoy the fundamental rights inherent to the dignity of the human person, and are guaranteed equal opportunities to live without violence and to preserve their physical and mental health.

All rights established by law are equally guaranteed to national and foreign citizens.

In addition, citizens residing in Portugal, who are victims of crimes committed in other Member States, shall be entitled to lodge a complaint with the national authorities, if they have not been able to do so in the Member State in which the crime was committed, in which case the national authorities shall promptly transmit it to the competent authorities of the territory where the crime was committed, in accordance with the applicable legislation.

The transmission of the complaint shall be communicated immediately to the victim who submitted it.

Citizens residing in other Member States, victims of crimes committed in Portugal, shall be ensured:

(A) the taking of evidence immediately after the complaint has been lodged with the competent authority;

B) The application, as far as possible, of the provisions regarding the hearing by videoconference and teleconference, for the purpose of providing testimony.

It is also ensured the appointment of interpreters and the translation of some procedural documents.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

3.1 The rights of victims, witnesses and vulnerable persons are guaranteed and enforced since they are laid down in the law. They are exercised ex officio or at the request of victims, witnesses and especially vulnerable victims. It is the responsibility of the Public Prosecution Service, as the owner of criminal action, to ensure the exercise of these rights, either by supervising police activity or by requesting the Court to uphold the said rights. The Public Prosecution Service may also lodge an appeal against judicial decisions denying victims or witnesses the exercise of their rights.

3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

3.2 It is established in the law and the Organic Statute of the Public Prosecution Service (Statute of the Public Prosecutor's Service – Law n.º 60/98, 27/8)

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

3.3 As pointed out in 3.1, during the investigation phase, the Public Prosecutor's Service supervises the activity of the police and, in particular see to it, that the rights of victims and witnesses are respected during the investigations that have been delegated to them. During the investigation phase (initial stage of the procedure), it is the responsibility of the Public Prosecution Service to ensure that all rights of victims and witnesses are enforced. For example, the Public Prosecution Service must ensure that witnesses have been warned about the possibility to refuse to testify when this right is applicable to them. In addition, the Public Prosecution Service must ensure that both the victim and the witness are informed of their right to be accompanied by counsel in the procedural acts in which they participate.

In later stages of the proceedings, under the supervision of a judge (instruction and trial), the Public Prosecution Service must promote before the Court that the rights are respected and, if there are judicial decisions to the contrary, may lodge an appeal against those decisions.

The Public Prosecutor's Service liaises with all governmental and non-governmental institutions for the protection of victims through formal and informal contacts, whether established by law or not.

3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

3.4 Yes, they can.

Whether through contact with the competent prosecutor in the course of the proceedings, or through contacts to be established within the Public Prosecution Service's general activity.

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

3.4 Yes, they can. This special initiative is duly established in the Law.

3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

3.6 Yes.

3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

3.7 Yes, for all issues listed.

The training of prosecutors, both initial and ongoing, includes the protection of all victims of crime, witnesses and vulnerable persons, especially those in need of protection measures.

3.8 Any other relevant point you wish to raise

The role of the Public Prosecution Service in criminal proceedings also includes two specific issues that are relevant to victim protection: criminal mediation and the coordination of the Retrospective Analysis of Homicides in the context of domestic violence.

Criminal mediation is established in Law n°. 21/2007, of 12/7 and assigns to the Public Prosecution Service the decision whether to submit the case to criminal mediation. Once an agreed mediation is reached, the case is closed.

Criminal mediation is only possible for crimes whose initiation depends upon a private complaint or accusation and when it is a crime against persons or a crime against property.

Mediation is not possible for criminal offenses punishable by imprisonment for more than 5 years, in the case of crimes against sexual freedom or sexual self-determination, embezzlement, corruption or influence peddling, and when the victim is under 16 years of age.

Mediation presupposes, however, both the consent of the victim and the suspect.

Law n°. 112/2009, since 2015, on victims of domestic violence, establishes in Article 4a the creation of a multi-disciplinary team, coordinated by a prosecutor, which analyzes cases of homicide in the context of domestic violence which have already been the object of a final court decision or a decision to close the case, seeking to draw conclusions that allow for the implementation of new preventive methodologies for future cases of domestic violence.

Romania / Roumanie

1. Definitions

- 1.1 There are definitions established in the *Code of criminal procedure* and special laws such as the *Law on witness protection*, the *Law on the prevention and fight against trafficking in human beings*, etc.
- 1.2 There are special regimes for victims of family violence, victims of crimes of trafficking in human beings, persons against whom was committed an attempt to homicide crimes, serious bodily injury, an intentional crime leading to the victim's serious bodily injury, a crime of rape, sexual intercourse with a minor and sexual perversion, etc.
- 1.3 The Code of criminal procedure establishes special regulations on the hearing of minors, protected witnesses, as well as definitions and special provisions as regards "vulnerable witness", "threatened witness."

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Yes, there are.
- 2.2 Yes, they are set out in the Code of criminal procedure and in special laws, such as those listed at par. 1.1.
- 2.3 Any injured persons has the right to be informed as to his/her rights, to be advised as to the development of the procedure, the right to file a prior complaint, the right to bring a civil action, the right to be assisted by a lawyer, and in some cases the right to be granted a publicly appointed lawyer, the right to resort to a mediator in the cases the law allows it, etc., and for certain categories of victims the following are distinctly regulated: the right to the respect of the personality, dignity and private life, the right to be informed as to the exercise of their rights, the right to special protection that should cope with the situation and the

needs, the right to counseling, rehabilitation, social reinsertion, as well as free medical assistance, the right to free legal counseling and assistance, the right to financial compensation, etc.

2.4 The judicial bodies have the obligation to inform the victims, the injured persons and the witnesses as to the rights they have. The compliance with this obligation shall be put down in a minutes of proceedings. The information relating to the rights of victims shall be published on the web pages of the Ministry of Justice and Ministry of Administration and Interior. The courts of law, the prosecutor's offices attached to courts of law and the police units can publish on their web pages relevant information. Useful information shall also be published on the site of the National Agency for Gender Equality within the Government of Romania and there is also a hotline for special assistance.

2.5 For the failure to observe some of the rights the law sets out procedural, contraventional or criminal liabilities.

2.6 Yes, there are, especially with regard to minors.

2.7 There is a public database, easily accessible and permanently updated allowing easy identification of the convictions delivered against a person. The courts of law are obliged to enter the information necessary to update it. There is also the obligation of communicating the adoption of certain measures (such as provisional arrest or the issuance of a protection order etc.) to bodies or authorities with responsibilities aiming at protecting minors, persons under interdiction, or who, due to their age, sickness or any other reasons, are in need of assistance, or at preventing acts of domestic violence etc.

2.8 The hearing of the witness minor aged under 14 takes place in the presence of one of the parents, of the tutor or the person or representative of the institution to which the minor's rearing and education is entrusted. If these persons cannot be present or they have the qualification of suspect, defendant, injured person, civil party, civilly responsible person or witness in the case or if there is a reasonable doubt that they may influence the statement of the minor, his/her hearing shall

take place in the presence of the tutelary authority or a relative with full capacity of exercise, according to the ruling of the judicial body. If necessary, upon request or *ex officio*, the criminal investigation authority or the court shall rule that a psychologist be present during the minor's hearing. The hearing of the underage witness must avoid having any negative effect upon his/her mental state. The underage minor who has not turned 14 by the time of the hearing shall not take an oath, but he/she will be warned to tell the truth.

2.9 The persons who find themselves in a situation that reasonably raises questions as to their capacity of being a witness can bear testimony only after the judicial body has ascertained that the person was capable of consciously reporting facts and circumstances which describe reality. In order to decide as to the capacity of a person to be a witness, the judicial body shall rule, upon request or *ex officio*, any necessary examinations by way of the means stipulated under the law.

2.10 See answer to question 2.10.

Additionally:

The prosecutor or, as the case may be, the court can decide to grant the quality of vulnerable witness to the following categories of persons:

- a) the witness who suffered a trauma as a result of the crime being committed or as a result of the subsequent behaviour of the suspect or defendant;
- b) the underage witness.

Together with granting the status of vulnerable witness, the prosecutor and the court can rule the following protective measures:

- accompanying and ensuring protection to the witness or to their family members during travels;
- hearing of a witness without them being physically present, through audio-video transmission devices, with their voice and image distorted, when the other measures are not sufficient.

- not making public the court session during the hearing of the witness;
- protecting the identity data of the witness, by issuing a pseudonym under which he/she shall testify.

Voice and image distortion is not mandatory.

2.11 Such procedures are regulated for witnesses who are granted the status of threatened or vulnerable witness. Also, protected witnesses can be interviewed under another identity than their real one or by special means of image and voice distortion.

2.12 The court of law can order, as an ancillary penalty, the interdiction to exercise, among others, the following rights:

- the right to communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or the right to go near such persons;
- the right to go near the domicile, workplace, school or other locations where the victim carries social activities, in the conditions established by the Court.

2.13 The law does not distinguish between Romanian and foreign citizens.

3.Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 The rights are set out in the Code of criminal procedure or in special laws governing the conditions and the obligation to take the measures which should ensure compliance.

More specifically, the prosecutor may order measures to protect the threatened witness, the vulnerable witness, he/she may order or propose the inclusion of a witness in the "Witness protection program", etc. See also answer to question 2.9. and so on.

Generally speaking, the Code of Criminal Procedure provides that the prosecutor should directly run and control the criminal investigation activity carried out by the judicial police and the special criminal

investigation bodies set out by the law. The prosecutor also sees that the criminal investigation acts be performed in compliance with the legal provisions.

3.2 Yes, as I have already mentioned, there are provisions in the Code of criminal procedure and in special laws. *The Code of ethics for judges and prosecutors* generally stipulates that judges and prosecutors are bound to respect the equality of citizens before the law, by providing them a non-discriminatory legal treatment, to respect and protect the dignity, bodily and moral integrity of all persons involved in the judicial proceedings, irrespective of their capacity.

3.3 Prosecutors fulfill their tasks set out by the law, collaborating with other agencies involved in the enforcement of the rights of these persons and which have the possibility to notify and sanction / remedy any deficiencies that may be identified in the act of performing, managing or supervising the criminal investigations.

3.4 Yes, such a possibility exists. The prosecutor shall take all the appropriate measures under the law or initiate steps for their implementation by other relevant authorities.

3.5 Yes, it is possible.

3.6 Prosecutors collaborate with the courts, the Ministry of Interior, other ministries, central and local public administration authorities or non-governmental organizations and civil society representatives when the situation requires it.

3.7 During the professional training sessions of prosecutors organized by the National Institute of Magistracy there are seminars dedicated exclusively to these issues. At the same time, the Public Ministry organizes seminars, conferences, scientific sessions, study visits, round-tables inviting representatives of police or other special investigation bodies, as well as of non-governmental organizations, events dedicated to these topics alone or during which aspects related to the protection of

these categories of persons are also raised. When invited, prosecutors participated in various professional training meetings / sessions for the police or other special inquiry authorities, offering their expertise on certain subjects / topics, including those mentioned above.

Slovak Republic / République slovaque

1. Definitions

1.1 Is there in your country a definition of a victim or witness of crime? If yes, is it established in the law or other legal instruments?

Slovak legal regulation defines victim and witness under aggregate legal term "injured party". Pursuant to Slovak Code of Criminal Procedure any person injured/harmed by a criminal act i.e. bodily injury, property damage, moral/ethical harm or any other damage or whose legitimate rights of liberties were endangered or breached, is injured party.

The term/concept "victim of criminal act" will be introduced by the Act on victims of criminal acts as amended, which is currently under preparation. It is presumed that the Act will come into effect 1st January 2018.

1.2. Are there, in your country special regimes for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

Prior to questioning/interview, witness/injured party is completely informed of their rights including the possibility to contact NGOs (established under separate law in order to provide assistance to injured persons). NGOs provide assistance to victims of domestic violence, children in danger/critical situations etc. NGOs services are free of charge. Please see the list below.

Unincorporated association "Assistance to victims of violence" – provides psychological, legal and social consultancy and assistance to victims of crime, domestic violence, road accidents and other serious incidents; assistance is provided to their families as well.

Unincorporated association "Arms - help for children in crisis" – for victims of maltreatment, abuse and neglect, as well as assistance to women victims of domestic violence and families endangered by domestic violence.

Unincorporated association "Alliance of women of Slovakia" – in their Crisis Centre, they provide legal, psychological and social consultancy, assistance and help to victims of domestic violence.

Unincorporated association "Help for children in danger - Centre Hope" - provides legal, social and psychological consultancy and therapy.

All these institutions have established hot lines for help to victims.

The General Prosecutor's Office of the Slovak Republic established e-mail address for maltreated women; also regional and district prosecution offices have published call numbers for those women. They evaluate received calls on regular basis and adopt necessary measures to solve the cases where there are indications that violence and maltreatment/abuse has been committed in a family.

Furthermore in the very moment of receipt of any Criminal Complaint concerning violence and ill-treatment and sexual abuse the special approach to victims had been introduced. Since the first contact with a victim of domestic violence, the Police are obliged to **assess the risk** and if necessary, to adopt measures in order to protect the victim in accordance with internationally recognized questionnaire SARA.

If there is suspected **sexual abuse or ill-treatment, an adult victim can be placed in a crisis center**. If a child is victim, a judicial decision can be issued to place the child in an establishment/shelter for children.

If there is suspected **trafficking in human beings**, a victim can be placed in a crisis centre.

1.3 Is there in your country a definition of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

Not yet; the definition shall be introduced by the Act on victims of crime as amended. It is under preparation currently. Presumed coming into effect is 1st January 2018.

2. The rights of victims, witnesses and vulnerable persons

2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Injured person has the standing/position of a party to criminal proceedings. Injured party may be represented by a person with power of attorney; this can be, inter alia, authorized representative of an organization for help to injured parties. If an injured party claims damages and can prove that he has not enough financial means to cover related costs, he is entitled to be represented by attorney to have their interests protected. Representative has identical procedural standing like person with power of attorney. On behalf of injured party, the person with power of attorney is entitled to file motions and submit requests/applications and remedial measures or participate in all acts where injured party has right to participate as well.

2.2 If yes, are they established in the law or other legal instruments?

The rights are regulated in the Code of Criminal Procedure of the Slovak Republic. Compensation of damages caused by crime (consequences of a bodily harm resulting from intentional criminal act) is regulated in the Act on compensation of damages to persons injured by violent crime.

2.3 Please enumerate these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Injured party has the following rights in criminal proceedings:

- to express their consent with criminal prosecution in cases listed in the law
- to claim for compensation of damages
- to move the court to impose, in the judgment of conviction, on the convict obligation to compensate damage; the motion has to be made prior to termination of investigation/summary investigation and it has to include clear grounds and amount of compensation; motion is not possible if claim had been decided on within civil or other proceedings.
- to move for securing claim for damages (including approximate amount thereof) caused by the crime if there are reasonable grounds to believe that implementation of such claim could be made difficult or frustrated
- to move for conciliation of the dispute/agreement with the accused also by means of a probation or mediation officer
- to move to produce, supplement, submit evidence; to comment evidence
- to inspect files and move for supplementing investigation
- to participate in trial and public session on appeal
- to closing speech
- to be served judgment if he claimed for compensation in accordance with law
- to file remedial measures in the extent specified in the Code of Criminal Procedure
- if his claim for compensation was admitted even partially, to oblige the convict (who was imposed obligation to compensate damage) to reimburse costs of criminal proceedings including engagement of person with power of attorney; even in the case that his claim for compensation was not admitted he has right to move the court to impose the convict the obligation to reimburse all or some costs related with injured party's participation in criminal proceedings
- in any moment of investigation, to request the prosecutor to remove delays or any other defects concerning the Police procedure within investigation/summary investigation
- to express his consent with approval of conciliation.
- **If according to information gathered by law enforcement bodies, the injured is exposed to any risk related with accused or convict in large, injured party has right to request the prosecutor within preparatory proceedings or the court within proceedings before a court, to be notified (injured needs to indicate his address for this purpose) of release/escape of accused from custody or from service of sentence of deprivation of liberty.**
- If he suffered bodily harm as result of intentional crime, to claim for compensation according to terms specified in the Act on compensation of damages for persons injured by violent crime as amended.

Within the meaning of the Code of Criminal Procedure, the law enforcement bodies and the court ensure that no protected personal data or facts of private nature are disclosed especially as regards family life, dwelling and address if they are not directly connected with the criminal

activity. **Special care is ensured in relation to interests of minors, juveniles and injured parties whose personal data are not published/disclosed.**

2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

During the first interview injured persons are informed of their rights (in writing and orally).

2.5 What kind of penalties and sanctions are established for violation of these rights?

Disciplinary proceedings come into question if such violation was committed by competent authorities.

2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

If witness under 18 year is heard and reminder of the facts could negatively affect his mental or moral development, interview is carried out with special care and understanding and with the aim to avoid repeated interview. Expert in psychology or any other expert with respective experience is engaged as well and also a representative of social and legal protection of children unless a guardian is present. In some cases statutory representative or pedagogist is invited if it can contribute to correct course of the interview.

In situation where witness is heard under 18 years who was victim of crime committed against a close person or person in foster care and circumstances of the case indicate that repeated testimony could be influenced or it might negatively impact mental and moral development of the witness, interview is carried out by technical means **(video)** with the aim to avoid hearing within further proceedings or to carry out such interview only exceptionally. If repeated hearing is necessary after charge with accusation, it can be implemented within preparatory proceedings only upon consent of the statutory representative or a guardian.

Witness/injured party may be provided special protection under the Code of Criminal Procedure if there are reasonable grounds to believe that that person or close person are in risk because of indication of their address. Thus witness is allowed to indicate address of place of work or any other address for service of summons.

Witness may be allowed not to provide personal data if there are reasonable grounds to believe that his life, health, physical integrity are in risk or life, health and physical integrity of his close person because they stated their identity, address etc. However, in the trial, the witness needs to explain how he learned facts he testified of. Documents that include information about witness identity are stored in the prosecution service and with presiding judge within proceedings before court. The documents are inserted into file after risk ceased to exist. Witness may be asked questions regarding circumstances concerning his trustworthiness and his relation with accused or injured party.

Protection of witness: prior to interview of witness whose identity should be undisclosed, the competent authority and court adopts necessary measures e.g. modification of appearance and voice; as the case may be the interview is carried out by video.

Pursuant to the Act on protection of witness, they can be included in the program for protection of endangered witness or protected witness.

Persons can be heard by means of video if they are unable to appear for testimony due to their age, illness, mental or physical disability or for any other serious reason.

According to the Code of Criminal Procedure, injured party has right to be accompanied by his trustworthy person within acts of criminal proceedings.

Trustworthy person close to the witness: this is a natural person with legal competence, chosen by injured party. He provides necessary assistance to the injured especially psychologically. Trustworthy person can be also the person with power of attorney for the injured but this may not be judge, prosecutor, accused, defense lawyer, witness or expert or interpreter within criminal proceedings.

2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

If according to information gathered by law enforcement bodies a victim is in danger because the accused or convict is at large, was released/escaped from custody, or was released/escaped from service of sentence of deprivation of liberty, **victim has right to be informed thereof** (to the address he indicated for this purpose). The victim's application for information is sent to a prosecutor within preliminary proceedings or to the judge within proceedings before a court.

Pursuant to the Act on Police Forces, the Police have power to forbid a person to enter a specific place; or to order that he stays at a specific place if it is necessary for the protection of life and limb or for protection of right and liberties.

In addition the Police have power to compel a person to leave a flat/house or any other premise where such person lives with person in risk; to prohibit a person to approach endangered person in situations where according to gathered facts it is expected that attack to life and limb, liberty or dignity could be committed especially with regard to previously committed similar attacks. If person is compelled to leave a common dwelling he is not allowed to return back before 10 days. The Police have authority to compel to leave an absent person as well.

Within judicial proceedings, the court can impose such restrictions.

2.8 Can such vulnerable persons bear testimony alone or only following authorization by their legal representatives, and in this latter case, in what conditions?

As regards persons younger than 18 years, please see par. 2.6.

Other victims of crime are free to decide whether they will protect their rights themselves or they will choose a legal representative. If legal representative is engaged, persons are heard in his presence.

2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

Persons with right to refuse to testify are as follows: accused person's relative in the direct line, his brother/sister, adoptive parent, adoptive child, spouse and common-law spouse. If there are several accused persons, and the witness has relation only with some from among them, he has right to refuse testimony only in case if testimony can not be divided/difference cannot be made between those related and those who have no relation.

Witness has right to refuse to testify if his testimony could bring the danger of criminal prosecution to himself, his relative in the direct line of descent, his sibling, adoptive parent or child, spouse or common-law spouse or other persons to whom he is related by family or similar ties and whose harm he would justly perceive as his own. Witness has right to refuse to testify also if his testimony could breach confessional secrecy or the secrecy of information entrusted to him in writing or verbally under the seal of secrecy as to a person entrusted with pastoral care.

Testimony may not be refused in any other conditions.

2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such risk? Which protective measures may be adopted and by whom?

Please see par. 1.2.

2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

Please see par. 2.6.

2.12 How is the prevention of repeated victimization ensured?

Issue of repeated victimization shall be regulated by Act on victims of crime as amended. Currently the Act is under preparation.

2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for national or also for foreigners? Under which circumstances?

Rights do not depend on nationality. They apply equally, in the identical extent, to all injured parties regardless of their nationality.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons.

3.1. How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

Rights are guaranteed by the Code of Criminal Procedure and ensured by strict observance thereof by law enforcement bodies.

Prosecutor has the role to supervise the observance of laws/legality of preparatory proceedings. If necessary prosecutor carries out himself the acts of preparatory proceedings or actively participates therein.

3.2 Is the role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

Prosecutor proceeds pursuant to the Act on Public Prosecution Service, Code of Criminal Procedure and the Code of Ethics.

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

Please see par. 3.1 and 3.2.

3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Injured party has right to contact directly the prosecutor and request for protection of rights.

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Prosecutor can adopt measures in order to protect injured party.

3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Prosecutor shall inform the injured party within the meaning of the answer in par. 1.2. Prosecutor does not directly communicate with NGOs regarding a specific matter.

3.6 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Sporadically, the Judicial Academy of the Slovak Republic ensures seminars for judges and prosecutors regarding victims' rights.

Public Prosecution Service organizes at least twice a year a nation-wide seminar for prosecutors regarding rights of victims. Seminars are prepared within the framework of national working meetings or workshops e.g. regarding the issue of victims of domestic violence, vulnerable persons – minor aged victims, victims of ill-treatment and sexual abuse.

3.7 Any other relevant point you wish to raise.

NO.

Slovenia / Slovénie

1. Definitions

1. Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

Definitions of victim of crime on one side and witness of crime on the other are separated in our criminal procedure law. However, at the same time one can be a victim and a witness of the crime. At this point relevant articles for both apply.

According to Criminal Procedure Act (hereinafter CPA) the comparable expression used to define a victim is *the injured party*. This term denotes the person whose personal or property rights have been violated or jeopardised.

The witness of crime is a person likely to give some information about criminal offence, the perpetrator and other material circumstances. Such person shall be summoned as a witness and shall testify, except in circumstances defined by CPA.

2. Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

In criminal procedures which are taking place due to criminal offences against sexual inviolability, the criminal offence of neglect of children and cruel treatment and the criminal offence of trafficking in human beings, the child – injured party must from the initiation of the criminal procedure have an authorised person to care for their rights, particularly in connection with the protection of their integrity during examination before the court and during the exercising of property law- demands. Children - injured parties who have no authorised person shall be assigned one from among lawyers by the court ex officio. In a preliminary and criminal procedure the child injured may be accompanied by a trusted person. Other injured party may also be accompanied by such person when he or she is a victim of violence.

3. Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

Within the framework of Slovenian criminal law there is no legal term as “vulnerable persons”. However, children, elderly persons and persons with physical or mental disability could be identified under mentioned term. Special regimes are provided for those categories when they appear before court as witnesses and will be outlined further below.

As the term “vulnerable persons” implies for that persons to be more protected in procedure, it is important to mention Article 141a of CPA that refers to obligation of providing personal security of witnesses who face real danger for their life or body, for their close relatives and other endangered persons. On this ground the Witness Protection Act which regulates the

conditions and procedures for the protection of witnesses and other persons who are endangered due to co-operation in criminal procedures was adopted. Protection is guaranteed in pre-trial, during and after criminal procedures for determined criminal offences.

2. The rights of victims, witnesses and vulnerable persons

1. Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?
The injured party (victim) has following rights:

- to use the language he/she understands;
- to be accompanied with trusted person of his/her own choice;
- to be notified of the course of the proceedings;
- to be notified of their role in the proceedings;
- to petition property rights claim;
- to be notified of provisions of Compensation to Crime Victims Act;
- to be notified of the right to appeal;
- to provide themselves an assistance of a lawyer;
- to be notified with governmental /non-governmental organisations for helping and supporting victims of crimes;
- to be notified with provisions of Family Violence Act;
- other rights explained further below.

The witnesses do not have such wide scope of rights. The rights of a witness comply with their role in procedure and are in more detail described below.

2. If yes, are they established in the law or other legal instruments?

Some of them are fundamental rights established in the Constitution of RS, some of them originate from sectoral laws.

3. Please enumerate briefly these specific rights (e.g., the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Please see the answer under 2.1.

4. How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases, etc.?

The victims, witnesses and vulnerable persons can be informed of their rights in two ways; formal and informal.

Every competent authority shall inform victims of their rights before performing an action. The police has to, for example, prevent further jeopardising of a victim of other persons, ensure the victims get needed help, provide sufficient information for victims also on different possibilities and competent institutions they can get help from, inform them of the rights they have according to the Family Violence Act and inform them of

the consequences of the false reporting of the crime. Because the state prosecutor does usually not have the first contact with a victim, the police provides all those information in all matters. After the criminal matter is put before the court, the judge is responsible to take care of a victim's rights.

The informal ways of informing are leaflets and web sites of different organisations (competent authorities, NGO's,...).

5. What kind of penalties and sanctions are established for violation of these rights?

The penalty/sanctions depend on the seriousness of the violation and the type of the violated rights.

The violation of human rights and basic freedoms provided by the Constitution results inadmissibility of evidence gained on such basis. The same rule applies when some of the provisions of criminal procedure are violated. In these situations the court is not permitted to base its decision on such evidence.

Victims or witnesses whose rights were violated are entitled to bring an action before civil court to claim compensation.

6. Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Within the criminal procedure a special regime is provided for children and elderly people when they are requested to testify:

- minors under the age of sixteen shall be summoned as witnesses through their parents or legal representative, except where that is not possible for reasons of urgency or some other circumstances (Art. 239/II of CPA);

- witnesses who by reason of old age, illness or serious disability are unable to comply with the summons shall be examined in their dwelling places (Art. 239/III of CPA).

Furthermore, according to Article 240/IV of CPA, a person under age, especially if that person has suffered damage from the criminal offence at issue, should be examined considerately to avoid producing harmful effect on his state of mind. If necessary, a pedagogue or some other expert should be called to assist in the examination of a minor. When interrogating witnesses younger than 14 years, a person whom the witness trusts may be present. For children Article 65 of CPA, as explained above, also applies.

If the witness is deaf he shall be asked questions in writing, and if he is dumb he shall answer questions in writing. If the interrogation cannot be carried out in that way, a person who knows how to communicate with the person shall be invited to act as interpreter.

7. When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g., a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

None of the competent authorities in criminal procedure inform other bodies of decisions in criminal matters on their own initiative. If a decision-making body needs information on the matter it has to officially ask for them.

8. Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

If a person is called to testify he or she has to do so. There is no provision in our criminal law that would excuse a person from testifying on a basis of that person's vulnerability. However, there are special provisions on examination of children at the main hearing that can be seen as a way to protect children from exposure and secondary victimisation:

- if a person is under fourteen the panel may order that the public be excluded from the examination;
- if a minor participates in the main hearing as a witness or the injured party, he shall be removed from the courtroom as soon as his presence is no longer required;
- direct questioning of persons under 15 years of age who are victims of criminal offences referred to in the third paragraph of Article 65 of this Act shall not be permitted in the main hearing. In such instances, the court shall decide that the records of previous questioning of such persons be read.

In instances from the above, parties may pose indirect questions. If the panel recognises that the questions are reasonably grounded and necessary for clarification of the factual situation, the panel may decide to request that investigating judge perform particular actions necessary for elucidation of certain facts if the performance of such actions at the main hearing would entail a considerable delay of proceedings or other serious difficulties. When the investigating judge acts under such a request of the panel, the provisions relating to investigative acts shall apply.

9. Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

No refusal to bear testimony is admissible except in cases prescribed by CPA:

- according to Article 235 of CPA the following may not be examined:

- o a person who, by giving testimony, would violate the obligation to keep an official or military secret, until the competent body absolves him of that obligation;
- o defence counsel, on matters confided to him by the accused, unless the accused himself requests so.

- according to Article 236 of CPA the following shall be exempt from the duty to testify:

- 1) the spouse of the accused or the person with whom he lives in domestic partnership;
- 2) persons related to the accused by blood in direct line, persons related to him collaterally

at three removes and persons related to him by marriage at two removes;

3) the adopter or adoptee of the accused;

4) a father confessor, on matters confessed to him by the accused or by another person;

5) lawyer, doctor, social worker, psychologist or another person, on facts he came to know in the exercising of his profession, if bound by the duty to keep secret what he learns of in the exercising of his profession, except in instances referred to in the third paragraph of Article 65 of this Act, or if statutory conditions are fulfilled under which such persons are absolved from the duty to keep secret or are bound to disclose confidential information to competent bodies;

- according to Article 238 of CPA a witness shall not be obliged to answer those questions by which he would be likely to disgrace, inflict considerable material damage or make liable to criminal prosecution himself or his close relatives as defined above.

With reference to the question of mental ability of a witness the court itself has the obligation to ensure that witnesses is capable of understanding the legal instruction (duty to speak the truth and that he or she may not withhold anything, whereupon he or she shall be warned that a false testimony is a criminal offence, witness shall also be instructed that he or she need not answer questions referred to in Article 238 of this Act (see above)) and capable of testifying. The court shall proceed in this manner regardless of whether a witness is a child or an adult. Only experts - specialists possessing the necessary expertise, can be engaged for determination or assessment of proper mental ability of a person.

10. Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

Current legislation does not provide for the evaluation of vulnerable persons.

11. Are there, in your country, country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

According to CPA the investigating judge may order that an act of investigation be recorded by a sound recording or video recording device. The investigating judge shall inform thereof the person to be interrogated in advance. The recording shall immediately be reproduced and corrections and explanations shall also be recorded in case the interrogated person requests so. The investigating judge may order that the sound recording be completely or partly transcribed on paper. The transcription shall be examined and certified by the investigating judge and enclosed with the record of the act of investigation performed. This article applies also for the main hearing.

The examination of a witness is performed, using modern technical devices that include computer technology, electronic communications networks and other devices for the transmission of images and sound:

1. if a witness has a status of endangered person under provisions of Witness Protection Act and a real danger to his/her life or body, or the life or body of another endangered person exists;

2. if a witness's identity is concealed and a real danger to his/her life or body, or the life or body of another endangered person exists in case he/she would come to the authority that conducts investigatory measure;

3. other circumstances that excuse a person to appear before court and testify.

12. How is the prevention of repeated victimisation ensured?

The prevention of repeated victimisation is ensured:

- audio - video recording;
- examination with assistance of an expert;
- deletion of all or certain data from the criminal file;
- the marking of all or some of the data from the preceding point as an official secret;
- the issuing of an order to the defendant, his counsel and the injured party or his legal representative and counsel to keep certain facts or data secret;
- the assignment of a pseudonym to the witness;
- the taking of testimony using technical devices (protective screen, devices for disguising the voice, transmission of sound from separate premises and other similar technical devices);
- video conference;
- exclusion of the public from trial;
- if the victim is under age and the victim of domestic violence the authorities are not allowed to publicly disclose any information that may reveal victim's identity irrespective of parents' consent.

13. Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

Nationality cannot be a factor for being treated differently in proceedings. There are some additional rights to facilitate the participation of the foreigner in the investigation. Foreigners have the right to use the language they understand. An interpreter free of charge will be provided to assist them when they attend investigative actions. Documents and other pieces of evidence will also be translated for them free of charge.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

1. How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

The rights of parties in criminal procedure shall be enforced and guaranteed in all phases of procedure. Depending on the phase, the competent authority shall safeguard the rights constantly

2. Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

There are no special legal provisions for prosecutors for this role. The Code of Ethics of State Prosecutors contains only general provisions. The Code stipulates that in performing duties, a state prosecutor is independent of any direct or indirect illegal instructions,

influences, incentives, threats, pressures or interference in their decision-making process, irrespective of from where, and for what reasons, such unauthorised interventions originate and shall protect fundamental human rights and freedoms, and the human dignity and personality of all participants in proceedings in all actions.

3. How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

Vigilance of the state prosecutor is required to make sure all actions in all phases of procedure are legal. In case of violation of any provision the prosecutor is obliged to eliminate the violation by himself if possible, warn the court of violation or file a motion for exclusion of illegally obtained evidence.

4. Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

They can but it is not specially regulated.

5. Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Under current provisions the State Prosecutor General shall file applications for the admission of the endangered witness into the protection programme with the Commission on the proposal of the competent state prosecutor. This legal action is the only one regulated for now in our criminal procedure law.

6. Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

There is no direct cooperation between prosecutors and other state bodies, private entities or NGO's. The major role concerning assistance to victims, witnesses and vulnerable persons play the police officers who first come in touch with those persons.

7. Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

There are no such activities planned for prosecutors.

8. Any other relevant point you wish to raise.

Legal provisions mentioned above are those currently in force. It is expected that within a short period of time the Amendment CPA will be adopted. With reference to the subject matter of this questionnaire we can report that proposed amendments are moving in the direction of a greater protection for victims of crimes, with particular focus on protection of vulnerable group of victims. The Amendment CPA implements Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

In light of the above, these are the most important changes:

- added new definition of the “*injured party with specific protection needs*”, whose personal or property rights were considerably harmed and because of personal characteristics of the victim or vulnerability, the type, nature or circumstances of the crime or because of conduct of perpetrator or injured party in pretrial/criminal procedure phase or outside the procedure, a specific need to protect their mental integrity during specific acts in the procedure exists. The terms *injured party with specific protection needs* and *injured party* refer to family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;
- not only children and victim of violence (Article 65 of CPA) but also other victims when their personal characteristics or vulnerability, the type or nature of the crime require for them to be accompanied with a person of their choice, except in cases where such assistance could be in contrary to the interests of criminal procedure or interests of injured party;
- imposes an obligation on the police and prosecution service to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact;
- wider range of information that have to be communicated to the natural person/ injured party from the first contact with competent authority in pre-trial phase or during criminal procedure. Among those also the right of injured party to be notified when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention;
- formalised procedure for assessment of victims to identify specific protection needs. The police in the first place will carry out the assessment with possibility for the prosecutors to upgrade it when necessary. This procedure aims for identification of specific protection needs and determination whether and to what extent they would benefit from special measures in the course of criminal proceedings due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. Those special measures are sound recording or video recording of an act of investigation,
 - medical examinations shall be limited and carried out only for the purposes of criminal procedures;
 - interviews with the victim being carried out in premises designed or adapted for that purpose;
 - obligatory recording of interview with the child victim (under 15) for enslavery, criminal offences against sexual integrity, criminal offences against marriage, family and youth.

Sweden / Suède

1. Definitions

- 1.1 Is there in your country a **definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

The definition of “victim” found in EU-directive 2012/29/EU 2012 establishing minimum standards on the rights, support and protection of victims of crime, is
“a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence”.

The term “victim”, as defined in the EU-directive, is relevant to policymakers, to various support services and to the Swedish Crime Victim Compensation and Support Authority¹. However, in a judicial context, the definition used is “the injured party” (“*målsägande*” in Swedish). “The injured party” is defined in law as *“the person against whom the offence was committed or who was affronted or harmed by it”.*

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

For child victims, there are special regimes for the whole preliminary investigation and the proceeding in court. There is no special regime in general for vulnerable victims. Even so, certain regulations provide support for them. There are for example legal provisions enabling certain vulnerable victims to have legal representation.

- 1.3 Is there in your country a **definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

There is no legal definition of vulnerable persons. Even so, certain groups of persons (such as victims of sexual violence, children and trafficked persons) have in various documents been identified by the Swedish government as vulnerable (for example in the Action plan for the fight against men’s violence against women and in the Action plan against prostitution and trafficking for sexual purposes).

¹ The overall aim of the Crime Victim Compensation and Support Authority is to look after the rights of all crime victims and to draw public attention to their needs and interests. The Crime Victim Compensation and Support Authority is nationally responsible for three areas of activities: dealing with matters concerning criminal injuries compensation; administering the Crime Victim Fund; and serving as a Centre of Competence

2. The rights of victims, witnesses and vulnerable persons

2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Yes.

2.2 If yes, are they established in the law or other legal instruments?

Yes, most of them are established in the law.

2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

- *The right to respect*

The need to treat victims with respect is underlined in various Swedish authorities' guidelines and handbooks and a great number of ventures have been carried out to improve the knowledge of professionals on this. Examples of how the right to respect is implemented in Swedish law is legal provisions stipulating that the investigation should be conducted so that no person is put to unnecessary cost or inconvenience and that interviews should be held at a time and place that cause the least possible inconvenience to the person.

- *The right to participation and to be heard*

Examples is that the victim may bring private prosecution (enskilt åtal), provided that the prosecutor has decided not to prosecute and the victim has made a complaint to the authorised authority. The injured party may appeal a judgment (both concerning the criminal liability and damages).

- *The right to legal aid*

For certain types of crimes, a crime victim have the right to a legal counsel. This applies primarily to sexual crimes and those involving violence in close relationships, but if there are special needs it also applies to other crimes. The counsel is free of charge. Also, under the Legal Aid Act, a victim is entitled to legal advice concerning all types of cases and lawsuits. A child who has been subjected to a crime may be entitled to a special legal representative, if a person who has custody of the child (usually a parent), or a person who has a close relationship with the custodian, is suspected of a crime against the child.

- *The right to protection*

An example of this is that a visiting ban may be stipulated for a person to visit or in other ways contact another person or harass this person ("*kontaktförbud*"). In the assessment of whether there is a risk that a person may commit crime against a person, it should be considered if the person against which the prohibition is targeted has previously committed a crime against the life, health, freedom.

- *The right to protection of privacy*

There are legal provisions stipulating protection of the private details concerning the injured party during the investigation. There are also provisions giving a possibility to have closed hearings in court and there is a prohibition to take photographs in Swedish courts.

- *The right to compensation*

Claims for damages are routinely brought within the framework of the criminal proceeding. As long as an offence falls under public prosecution, the prosecutor is obliged to act on behalf of the victim (provided this can be done without inconvenience and that the civil claim is not found devoid of merit). If the offender has no means to pay the damages the victim may turn to the Crime Victim Compensation and Support Authority and apply for compensation from the state. The Chancellor of Justice also has a function when a person claims compensation for actions from the state.

2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

In brief, the police and prosecutor are obliged to inform you about the following as from their first contact with a competent authority concerning their rights, for example;

- The right for you to receive damages and criminal injuries compensation and that the prosecutor, if you so request, is obliged to prepare and present your claim for damages in court.
- The right to be accompanied by a support person when being questioned by the police or in order to cope better during the hearing.
- The right to your own legal counsel if you are the victim of certain types of crimes (this applies primarily to sexual crimes and those involving violence in close relationships, but if there are special needs it also applies to other crimes).
- The rights to legal advice in accordance with the Legal Aid Act and how to apply for this.
- The possibilities for mediation.
- Authorities and organisations offering additional support and assistance.
- The regulations governing visiting bans.

There are also freely available information sources for victims, such as written leaflets and information directed to victims on different websites (the Police, the Prosecution Authority, the Swedish Crime Victim Compensation and Support Authority and the

Witness Support Service). Information about where to turn to come in contact with a witness support person is found in the court summons or on the Victim Support Sweden (BOJ) website.

According to the Victim Directive, Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact with a competent authority in the context of criminal proceedings. For this reason, there is a duty to hire an interpreter if a party, a witness or anybody else who is to be heard cannot master the Swedish language. Likewise the court has a duty to translate a document at the request of the injured party who is to be heard, if a translation is of significance for the injured party to enjoy his/her rights.

- 2.4 What kind of penalties and sanctions are established for violation of these rights? Decisions by a prosecutor may be appealed. A victim can turn to the Parliamentary Ombudsman with complaints concerning violation of his/her rights. A claim for damages from the state could be made for grave violations.

- 2.5 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Yes. There are a number of legal provisions aimed to protect child victims. An example is that an investigation in which the victim was younger than 18 years at the time of reporting the crime must be conducted expediently (if the crime is directed against life, health freedom or peace and the punishment). There is also a legal obligation to plan interviews with children so that the victim is not subjected to harm as well as regulations concerning the number of interviews and the competency of the person who interviews children.

- 2.6 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

Information of visiting bans is provided to the Social Service if children are involved. The Social Service can give this information to the court responsible for ruling on the custody of children.

- 2.7 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

No authorisation by legal representatives is needed. Children can never be heard without consent from their parents or an appointed counsel.

2.8 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

If testimony is sought from a person who is under the age of fifteen years or suffers from mental disturbance, the court shall determine in accordance with the circumstances, whether he may be heard as a witness.

2.9 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

X

2.10 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

A victim has the right to ask for the suspect to be placed in another room when the victim give his/her testimony (medhörning). Young child victims are always filmed during the preliminary investigation and the film is played during the hearing in court.

2.12 How is the prevention of repeated victimisation ensured?

The prevention of repeated victimisation is ensured among other things by means of the Act on Prohibition of Contacts according to which a prohibition may be stipulated for a person to visit or in other ways contact another person or harass this person.

2.14 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

Nationals and foreigners have the same rights.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

The rights of the victims and vulnerable persons during the criminal procedure are described above. As also described above, the prosecutor has a duty to inform the injured party of its rights at an early stage; for example about legal counselling, how to apply for a restraining order (kontaktförbud), to give information of the scheduled time for a court hearing or the right to receive the judgement or final decision in the case (see also above under 2.4). The injured party should also as soon as possible, and if necessary, be informed when a suspect is released from custody.

3.2. Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

The prosecutor's role in relation to both victims and witnesses are to a large extent regulated by law. These issues are also dealt with in the ethical guidelines of the Swedish Prosecution Authority as well as in a legal memo concerning treatment of victims issued by the authority.

3.3. How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

Prosecutors do not have supervisory or monitoring functions.

3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

Yes, if the Prosecution Authority is the competent authority to handle an application concerning the relevant issue.

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Yes, if the Prosecution Authority is the competent authority to start legal action concerning the relevant issue.

3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Yes. The Swedish Prosecution Authority cooperate with for example the police and the Crime Victim Compensation and Support Authority concerning these issues.

3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Yes. Issues of ethics and treatment of suspects, victims and witnesses are dealt with within the prosecutors' basic training provided by the Swedish Prosecution Authority. Treatment of crime victims and witnesses is dealt with also within subject-specific programs, such as within the training concerning domestic violence and in programs involving crimes against children.

3.8 Any other relevant point you wish to raise.

Turkey / Turquie

1. DEFINITIONS

1.1. "Victim" notion was not defined in law in Turkey, however, "witness" notion was defined in Law no. 5276. Accordingly, witness defines person heard as witness in criminal procedure, victims heard as witness and their relatives set out in this Law.

1.2. Regulations concerning domestic violence

1- Constitution

2- Turkish Criminal Code (Law no. 5237)

3- Turkish Civil Code (Law no. 4721)

4- Code of Criminal Procedure (Law no. 5271)

5- Law to Protect Family and Prevent Violence against Woman (Law no. 6284)

Regulations concerning sexual abuse

1- Turkish Criminal Code (Law no. 5237)

2- Measures in Article 5 of Child Protection Law (Law no. 5395)

Human Trafficking Crime

1- In Article 79 of the Turkish Criminal Code no. 5237 migrant smuggling crime was set up.

1.3. "Child in need of protection" notion in Turkey defined in Law on Social Services no. 2828. Additionally, "child in need of protection" notion was also defined in Child Protection Law no. 5395.

2. Rights of Victims, Witnesses and Vulnerable Persons

2.1. Child in need of protection;

- Measures in Article 5 of Child Protection Law no. 5395

- Measures in Law on Social Services no. 2828

Victim;

- Family Protection Law no. 6284

- Turkish Criminal Code no. 5237

Human Trafficking

- Turkish Criminal Code no. 5237

Witness

- Code of Criminal Procedure no. 5271

Rights concerning witness, victim and child in need of protection take part in these Codes.

2.2. Measures concerning victim, witness and vulnerable persons were set out by codes.

2.3. Victim rights set out in Code of Criminal Procedure are;

- Right to be informed

- Right to demand evidence collection

- Right to demand copies of documents

- Right to have investigation files, seized and confiscated properties examined

- Right to counsel/legal aid

- Right to object

- Right to be informed of trial

- Right to participate in criminal case

- Right to written or verbal self-expression in case

- Right to call evidence in trial

- Right to demand counsel nomination
- Right to appeal
- Participation in compromise

Rights concerning witnesses were set out in Law on Witness Protection no. 5726. Within the context of this Law, here are the witness protection measures that may be applied on witnesses:

- a) Recording and keeping confidential of credentials and address information and detecting a different address for notices to be served on him/her.
- b) Being heard without the ones having the right to be present in trial or being heard in a special area by altering his/her voice or image.
- c) Placing detainees and convicted ones to penal institutions or prisons appropriate for their situations.
- ç) Providing physical protection.
- d) Changing and arranging credentials and other relevant information and documents:
 - 1) Changing and arranging criminal record, military service records, social security information and similar information and records.
 - 2) Changing and arranging official documents such as identity card, driving license, marriage certificate, diploma and license of every kind.
 - 3) Carrying out proceedings concerning the use of rights on estate and asset.
- e) Providing temporary financial assistance.
- f) Changing work place or work field of employee or changing educational institution of student.
- g) Making it possible for him/her to live in a different place in country.
- ğ) Temporarily placing him/her to another country in accordance with international agreements and principle of reciprocity.
- h) Changing his/her physical appearance by plastic surgery or without plastic surgery and rearranging credentials accordingly.

Rights of children in need of protection were set out in Law on Social Services no. 2828 and Child Protection Law no. 5395;

- "Social Services" signifies overall systematic and programmed services to eliminate material, moral and social deprivations stemmed from persons or families' own nature or environmental conditions or occurred out of control and to meet their needs, prevent social problems and help resolve them and improve and raise standards and quality of life,
- b) "Child in need of protection" is child whose corporal, spiritual and moral development or personal safety is in danger;
 - 1. Orphans (without mother, without father or in cases where both are missing),
 - 2. Whose mother or father is unknown or whose parents are unknown,
 - 3. Abandoned by mother or father or both,
 - 4. Neglected child by his/her mother or father; vulnerable child against social dangers and bad habits of every kind as prostitution, mendacity, alcohol or drug use and uncared-for/unchecked child,
- "Disabled", in an unsuitable condition for life requirements from birth or due to a disease or accident causing loss of corporal, mental, emotional and social skills to various degrees; person in need of protection, care, rehabilitation, consultancy and assistance services,

- "Disabled in need of care" is highly disabled according to formal medical health report, cannot live and fulfil their own needs on a daily basis without assistance and care of another person,
- "Elderly person in need of care" is socially and economically poor and in need of care and assistance,
- Social service institutions are institutions functioning in accordance with the purpose of this Code and the rules set out in...

Protective and Supportive Measures in Law on Child Protection no. 5395;

(1) Protective and supportive measures are measures to be taken to provide protection of child firstly in his/her own family environment and with respect to consultancy, education, care, health and sheltering. Among these measures;

- a) Consultancy measure aims at guiding ones responsible of child's care in terms of child rearing and guiding children to resolve their problems related to their education and development,
- b) Education measure is to provide continuance to child's education in an educational establishment in day or boarding school; send him/her to a course to obtain a profession or learn an art for job and professional purposes or to an artisan having profession or to place him/her in public or private workplaces,
- c) Care measure is applied when person responsible of child's care cannot fulfil his/her duty for any reason and child gets benefit from public or private nursing home or foster family services or placed in these establishments,
- d) Health measure is to provide child temporary or continuous medical care and rehabilitation necessary for his/her physical and spiritual health and recovery and to treat drug users,

2.4. Within the context of the right of victims, witnesses and vulnerable persons to be informed, statement is made concerning the points set out in Article 234 of Code of Criminal Procedure. In Article 90 of the same Code, the fact that legal rights of detainee shall be immediately notified to him/her by law enforcement officers. Victims, witnesses and vulnerable persons have access to information about their rights via formal websites and publications.

2.5. Penalties are prescribed under relevant laws in case rights are not granted.

2.6. While victim children or other victims who are mentally depressed due to the effects of offense committed are testified, an expert in field of psychology, psychiatry, medicine or education is also present. Additionally, in case victim is deaf or speech handicapped, sign language interpreter is also present during testimony.

2.7. Besides measures in domestic violence cases, Family Courts decide on guardianship. Furthermore, when divorce case is heard, injunction and protection order can be given for children, if appropriate. Again, during proceedings in Juvenile Courts, injunction and protection order can be given for child in need of protection.

2.8. Persons can testify in accordance with conditions set out in Code of Criminal Procedure. Accordingly, pursuant to Article 54 of Code of Criminal Procedure, witnesses shall separately swear an oath before testimony.

2.9 Special Conditions about Testimony

- When the victim is heard as a witness, except for oath, the conditions related to testimony are applied.
- The child and the victim who is mentally depressed as a result of the infringement shall be heard only once except for the situations that constitute an obligation with regard to the disclosure of material fact in the investigation and prosecution related to this infringement.
- During the hearing of victimised children and other victims that are mentally depressed as a result of the infringement, an expert specialised in psychology, psychiatry, medicine or education is needed.
- Those who are not able to understand the importance of exemption from testimony as a result of minority, mental disease and mental defectiveness may be heard as a witness with the consent of their legal representative.
- One may abstain from medical examination and having got sample from his/her body as a result of the reasons for exemption from testimony. In the case of a child's and mentally deranged person's exemption from testimony, it is his/her legal representative who takes the decision about this matter. If the child or mentally deranged person is able to understand the legal meaning and results of testimony, his/her opinion is asked. If legal representative is also suspect or accused, at this point, the decision is taken by judge. However, the evidence obtained in such a way, cannot be used in further stages of the case without the permission of the legal representative that is not suspect or accused.

❖ **Circumstances requiring a translator**

If suspect or accused doesn't speak enough Turkish to make oneself understood; via the translator appointed by the court, the essential points of the allegation and the defence of the trial is explained. Furthermore, the essential points of allegation and defence is explained to disabled suspect or accused in a way he/she can understand. The same consideration is applied to suspect, victim and witnesses that are heard during the investigation stage.

2.10 In Criminal Procedure Code No. 5271, the matter of exemption from testimony is regulated as follows:

The following persons may use the privilege to not testify as a witness:

- a) The fiancée of the suspect or the accused,
- b) The husband or wife of the suspect or the accused, even if the link of marriage is not existing at that time,
- c) Persons related to the suspect or the accused in the ascending or descending direct line, either by blood relationship or affinity relationship,
- d) Persons lineally related to the accused within three degrees, or persons collaterally related to the accused within two degrees,
- e) Persons having a relationship to the accused

- Individuals who are not capable of understanding the importance of refraining from testimony because of their minor age, mental illness or mental weakness, may be heard as witnesses if their legal representative consents.
- The individuals who have the right of refraining from testimony shall be given notice of their privilege before being called upon to testify. These individuals may also assert their privilege at any point of the testimony during the hearing.
- The vulnerable are designated within the framework of law. The decision on this matter is taken by the institutions serving these persons. The risks about vulnerable persons is defined with the examinations carried out. The examinations on this matter is led by Ministry of Family and Social Policies and Ministry of Justice. The measures related to vulnerable children are given by Child and Family Courts.

2.11 In Criminal Procedure Code No. 5271, the voice and image recording matters are regulated. According to this, during witness-testimony, it is permissible to make voice and image recording. However, recording is required in cases, where;

- a) A child victim is the witness, or;
- b) The witness is an individual, who cannot be brought before the court because of some impossibility but their testimony is indispensable for revealing the factual truth.

2.12 Re-victimisation is prevented via Child Monitoring Centres and Judiciary Interview Rooms.

Child Monitoring Centres:

- Provides services in coordination with other public institutions of different fields such as health, education, law enforcement, law and justice needed in the examination and treatment of sexually abused children;
- Decreases the effects of trauma thanks to the safe and child-friendly environment created in the centre;
- Provides shelter, nutrition, clothing, health services and security under the conditions where protection is needed, until a setting where the child can stay is fixed;
- Interviews the family in order to better evaluate the trauma and the incident the family is going through and provides the first family consulting;
- Increases the awareness about crimes directed to children and protection from these types of crimes via education;

Bearing the following conditions, the Child Monitoring Centres are affiliated with Ministry of Health Turkish Public Hospitals Institutions:

- They are placed within a hospital of Ministry of Health
- They are not physically different from other clinics of the hospital,
- They are child-friendly environments where all legal and medical services are available so that the child is not exhausted.

Judiciary Interview Rooms

In judicial interview rooms, that has a very special environment and coordinated by Victim Rights Department in 23 cities in 26 courthouses, victims that should bear

testimony and give statements in a special environment and whose encounter with perpetrator bear a risk; children witnesses and juvenile pushed to crime; the victims of domestic violence and other vulnerable persons; bear testimony and give statements.

2.13 In Regulation on Fight against Human Trafficking and Protection of Victims, the rights of foreign victims are regulated.

Approach to Victims Guide

“Approach to Crime Victims Guide” prepared by Victim Rights Department aims to fill a gap about the protection and popularisation of crime victims’ rights in our country. This guide was prepared with the participation of well-known academicians, pragmatic judges and prosecutors, officials of law enforcement and social workers.

This guide aims; to gather basic approach standards and principles in a single document; to guide service providers in contact with crime victims; to support their respectful and sensitive approach to victims’ rights.

In universal law victim right is a fundamental human right. For this reason, the use of this guide as a guidebook and reference instrument by the officials of service providers such as law enforcement, health and judiciary to victims will create awareness from the point of victims that are subject to physical, psychological and emotional effects of the crime.

This guide aims; to gather basic approach standards and principles in a single document; to guide service providers in contact with crime victims; to support their respectful and sensitive approach to victims’ rights.

Victims within the framework of this guide are individuals whose rights are violated as a result of a crime and who appeal to judicial authority. General principles on approach to victim in judicial process and the points to which the officials of judiciary, health and law enforcement should pay attention are included in this guide.

3. The Duties of Prosecutors on the point of Protection of Victims’, Witnesses’ and Vulnerable Persons’ Rights

3.1 Victims’, witnesses’ and vulnerable persons’ rights are applied within the framework of above-mentioned legal framework.

Prosecutor’s Rights and Powers in Criminal Procedure;

- To research and to investigate
- To file a criminal case and to carry it out
- To resort to legal remedies
- To prosecute crimes
- To demand protection order and measure from child and family court about the vulnerable victim

3.2 The duties of prosecutors are regulated in detail in Criminal Procedure Code.

3.3 If the prosecutor evaluates that a measure is needed about victimised children, he/she may demand protection order and measure from child and family court.

3.4 Victims, witnesses and vulnerable persons may apply to prosecutors concerning their power and duty field.

3.5 Prosecutors may ex officio take action concerning the protection of victims', witnesses' and vulnerable persons' rights.

3.6 The respective prosecutors attend to Provincial Coordination Council that is organised province-wide. The representatives of other institutions and the representatives of NGOs participate in these councils. Via these councils, prosecutors are able to coordinate with other institutions and NGOs that provide service for victims.

3.7 Turkish Justice Academy provide education to judges and prosecutors during their internship period. Moreover, if needed, in service training programmes are organised for judges and prosecutors after having taken the office. In this framework, Victim Rights Department organised seminars for judges and prosecutors on the approach to victim. Victim Rights Department organised trainings within framework of in service training programmes.

Ukraine

1.1 *“Is there in your country a definition of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?”*

Criminal procedural legislation of Ukraine has definitions of “victim” and “witness”, which are defined by the Criminal Procedural Code of Ukraine. Special laws in the field of combating human trafficking and violence prevention separately designate a “person, who suffered from human trafficking (human trafficking victim)” and a “victim of domestic violence”.

1.2 *“Are there in your country special regimes for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?”*

Special regimes for victims of certain kinds of crimes are established by laws, which provide for a certain set of measures for protection of rights of such people by the state.

For instance, Article 14 of the Law of Ukraine “On Countering Human Trafficking” defines that a person, who suffered from human trafficking, shall have the right to receive a special status of a “person, who suffered from human trafficking” which provides for personal security, respect and the right to obtain free of charge:

1) information about his/hers rights and possibilities in the language known to such a person;

2) medical, psychological, social, legal and other necessary assistance;

3) temporary placement, if a person wishes to and has no housing, in establishments that provide assistance to persons, who suffered from human trafficking, for a period of up to three months, which may be prolonged in case of need by a decision of local state administration, in particular due to participation of a person in a criminal process as a victim or a witness;

4) compensation for non-pecuniary and material damage for account of persons, who did this damage, in the procedure laid down by the Civil Code of Ukraine;

5) one time material assistance in the procedure laid down by the Cabinet of Ministers of Ukraine;

6) assistance in employment, realisation of the right to education and professional training.

Article 17 of the Law of Ukraine “On Preventing Domestic Violence” provides that the state shall guarantee the defence of rights and legitimate interests of the

family members, in respect of whom the measures for prevention of domestic violence are being taken.

This law designates such special measures for prevention of domestic violence:

- official warning to a family member, who committed violence, of inadmissibility of committing it if there are no elements of crime in actions of such family member;
- passing a correctional program by a family member, who committed violence;
- placement of a family member, who received an official warning of inadmissibility of domestic violence, under preventive supervision;
- issue of a restraining order to a person, who committed domestic violence, by employees of competent units of the National Police upon approval by the Head of the appropriate body of the National Police and a prosecutor;
- imposing a pecuniary penalty on persons, who committed domestic violence, for reimbursement of expenses for maintaining the victims of domestic violence at specialised establishments for victims of domestic violence.

1.3 *“Is there in your country a definition of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments”*

The definition of a “vulnerable person” is absent from the Ukrainian legislation, criminal procedural in particular.

Therewith, legislative and other statutory instruments, which regulate issues of social protection of persons, enumerate socially vulnerable categories of citizens, concerning whom the state provides such protection (Laws of Ukraine “On State Social Assistance to Persons, who Have no Right to Pension, and People with Disabilities”, “On State Assistance to Families with Children”, “On State Social Assistance to Needy Families”, etc.).

As a rule, the law designates such persons as pensioners, people with disabilities, families with children, orphans, unemployed, victims of Chornobyl disaster, etc., who are in need of state assistance.

2.1 and 2.2 *“Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?”, “If yes, is it established in the law or other legal instruments?”*

In the framework of criminal process, in addition to human rights, some specifics are provided for separate categories of people.

For instance, Article 10 of the Criminal Procedural Code of Ukraine defines that in cases and in order provided for by the Code, certain categories of people (minors, foreigners, people with mental and physical disabilities, etc.) shall use additional guarantees during the criminal proceeding.

Additional amount of rights for certain categories of people is laid down by Laws of Ukraine “On Free Legal Assistance”, “On Provision of Security of Persons, Who Take Part in the Criminal Proceeding”.

Besides, the scope of the Law of Ukraine “On Procedure of Reimbursement of Damages Suffered by the Citizen from Illegal Actions of Bodies that Conduct Investigative and Search Activities, Bodies of Pre-trial Investigation, Public Prosecution Service and Court” includes all categories of people and the law provides for their right to demand reimbursement of damages from illegal actions of law enforcers.

2.3 *“Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights)”*.

The Criminal Procedural Code of Ukraine provides for conducting a criminal proceeding in a closed court session during the whole court proceeding or its part in such cases:

- if defendant is a minor;
- if a case about the crime against sexual freedom or sexual immunity of a person is heard;
- if it is necessary to prevent disclosure of information about private or family life or facts that degrade person’s dignity.

Other rights laid down by special laws we shall include:

- the right to free legal assistance (for subjects designated by law - persons, whose average monthly income is lower than the established minimum, orphans, internally displaced people, refugees, veterans, etc.);
- the right to provision of security of persons, who take part in criminal judicial proceedings (the right to protection of life, housing, health and property of these persons from illegal encroachments in order to create necessary conditions for proper administration of justice).

2.4 *“How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?”*

Criminal procedural legislation of Ukraine does not define specifics of informing vulnerable persons of their rights.

In its turn, the Criminal Procedural Code of Ukraine provides for formal ways of informing a person of his/hers rights, among the other things as a suspect, a defendant, a victim with the aim of respecting their rights as of participants of a criminal proceeding.

Under general rule, established by Article 42 of the Criminal Procedural Code of Ukraine, a suspect, a defendant shall have the right to be clearly and timely informed of his rights, provided for by this Code, and to receive their explanation. A suspect, a defendant is served with a handout about his/hers procedural rights and obligations simultaneously with being informed about them by a person, who conducts such service.

Article 55 of the Criminal Procedural Code of Ukraine defines that a victim is served with a handout about his/hers procedural rights and obligations by a person, who has accepted the statement about committed criminal offence. A victim shall have the right to know the subject-matter of suspicion and accusation, to be informed about choosing, change or cancellation of measures of support to criminal proceeding and finishing pre-trial investigation against a suspect, defendant, and victim is also obliged not to disclose without permission of an investigator, prosecutor or court the information, of which he became aware due to his participation in the criminal proceeding and which constitutes a secret protected by law.

Article 135 of the Criminal Procedural Code of Ukraine defines the procedure for serving summons against a minor, which, as a rule, are served to his/hers father, mother, adoptive parent or legal representative.

Summons against a partially incapacitated person are served to his/hers guardian.

2.5 “What kind of penalties and sanctions are established for violation of these rights?”

The Criminal Code of Ukraine contains a set of Articles, which establish a criminal liability for committing crimes in the sphere of professional activities and crimes against justice:

- Article 373 “Compelling to testify”;
- Article 374 “Violation of the right to defence”;
- Article 380 “Failure to take protective measures concerning persons taken under protection”
- Article 381 “Disclosure of information about protective measures concerning persons
- taken under protection”;
- Article 387 “Disclosure of information of investigative and search activities, pre-trial investigation”.

Most of these articles of the Criminal Code of Ukraine, depending on the aggravating elements, belong to medium grave offences that provide for sanctions in the form of imprisonment for a term up to five years.

2.6 *“Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?”*

The Criminal Procedural Code of Ukraine defines the procedure of criminal proceeding against minors (persons who have not reached 18 years of age) taking into consideration certain specifics, which include:

- conduct of the criminal proceeding against minor by an investigator, who is specially authorised to conduct pre-trial investigation against minors;
- obligation of an investigator, investigating judge, prosecutor, court to conduct procedural actions in order, which least disrupts usual way of life of a minor and corresponds his age and psychological peculiarities;
- participation of legal representative in procedural actions;
- interrogation with presence of defence lawyer;
- severance of a criminal offence committed by a minor in a separate criminal proceeding.

Moreover, Article 491 of the Criminal Procedural Code of Ukraine stipulates that by the decision of an investigator, prosecutor or court participation of a legal representative, pedagogue, psychologist or doctor may be provided during interrogation of minor suspects or defendants, who have not reached the age of 16.

The Criminal Procedural Code of Ukraine defines certain specifics of criminal proceedings with participation of minors with mental disabilities.

For instance, a complex psychological-psychiatric examination is prescribed in case of need to solve the question of existence of a mental illness or mental retardation of a minor suspect or defendant and to define his ability to understand fully or in part the meaning of his actions and to control them in a certain situation. At the same time, a psychological examination may be prescribed to define the developmental level, other social-psychological traits of a person of a minor suspect or defendant, which have to be taken into consideration when imposing a penalty and choosing a measure of pedagogical type.

2.7 *“When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?”*

Article 496 of the Criminal Procedural Code of Ukraine stipulates that representatives of a Service for Children Affairs and of a unit of internal affairs bodies, the competence of which includes issues concerning minors, shall take part in the trial of criminal proceedings against minors.

Representatives of guardianship and custodianship agencies, institutions and organisations, under whose guardianship or custodianship a disabled or partially incapacitated person is, may be involved as legal representatives.

Therewith, Article 508 of the Criminal Procedural Code of Ukraine stipulates that a court may impose such a preventive measure as placement under guardianship by guardians, close relatives or family members with compulsory medical supervision, against a person in relation to whom application of coercive measures of medical character is planned or the issue of their application was considered.

2.8 *“Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?”*

Article 44 of the Criminal Procedural Code of Ukraine defines that if a suspect, defendant is a person, who is found to be disabled or partially incapacitated in the legally established way, a person’s legal representative shall be involved in the procedural action together with the person. This Code provides that a legal representative uses procedural rights of a person, whose interests he is presenting, except for procedural rights realisation of which is performed directly by a suspect, defendant and cannot be assigned to a representative.

2.9 *“Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons?”*

Article 63 of the Constitution of Ukraine guarantees that the person shall not bear liability for the refusal to testify or provide explanations concerning himself, members of his family or close relatives, who are defined by the law. This article extends its scope on all categories of persons without exceptions.

2.10 *“Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?”*

The criminal process provides for obligation to conduct an examination to define the mental state of a suspect if there is information which casts doubt on sanity, partial insanity of a person.

According to Article 509 of the Criminal Procedural Code of Ukraine an investigator, a prosecutor is obliged to involve an expert (experts) in conducting a psychiatric examination in case, if during criminal proceeding are established such

facts which give reasons to believe that a person was insane or partially insane while committing a dangerous act or committed it in a sane state, but after committing it became mentally ill so the person is deprived of an ability to understand his/hers actions or to control them.

2.11 *“Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?”*

Article 336 of the Criminal Procedural Code of Ukraine provides for conducting procedural actions in the videoconference mode during trial from another court room, including one that is outside the court premises (trial on a distance), in particular, if it is needed to provide security of persons, interrogate minor witness, victim.

Therewith, a person who is provided with protection, may be interrogated in the videoconference mode with such changes of appearance and voice, that it is impossible to recognise the person.

2.12 *“How is the prevention of repeated victimisation ensured?”*
Complex of measures for countering domestic violence is mentioned in the answer to question 1.2.

2.13 *“Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?”*

Article 26 of the Constitution of Ukraine guarantees that foreigners and persons without citizenship, who reside in the territory of Ukraine on a legal basis, enjoy the same rights and freedoms and are under same obligations as the citizens of Ukraine, except for exemptions established by the Constitution, laws or international treaties of Ukraine.

According to meaning of Article 3 of the Criminal Procedural Code of Ukraine the criminal proceeding according to the rules of this Code is conducted against any person, except for persons who enjoy diplomatic immunity. So, the Ukrainian criminal procedural legislation covers both citizens and foreigners.

3.1 *“How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?”*

Activities of a prosecutor in the framework of a criminal process are regulated by the Criminal Procedural Code of Ukraine.

Article 36 of the Criminal Procedural Code of Ukraine, among other powers of a prosecutor, defines the right of a prosecutor to:

- to approve or deny approval of requests for application of coercive measures of medical or pedagogical character, amend indictment drawn up by investigator or mentioned requests, draw up an indictment or mentioned requests on his/hers own;

- to address to court with a request for application of coercive measures of medical or pedagogical character.

Due to the amendments to the Constitution of Ukraine, which became effective on 30.09.2016, prosecutor is deprived of the right to file a civil claim in the interest of citizens, who are unable to defend their rights on their own in the manner provided for by the Criminal Procedural Code of Ukraine and law, because of their physical or financial state, minor or great age, disability or partial incapacity.

3.2 *“Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?”*

According to Article 17 of the Law of Ukraine “On Public Prosecution Service” a prosecutor is obliged to constantly adhere to the oath of a prosecutor, for violation of which he bears liability which is established by the law.

The Code of Professional Ethics and Conduct of Public Prosecution Service Employees, approved by the Order of the Prosecutor General of Ukraine № 123 of 28.11.2012, designates respect of rights and freedoms of an individual and citizen as one of the main obligations of a prosecutor.

In relations with other participants of court proceedings a prosecutor is obliged to stick to formal style of communication, demonstrate fidelity to principles and stamina, display tactfulness, impartiality and respect to all participants of trial, and has no right to engage in any relations with them out of process.

A prosecutor has to be attentive to guaranteeing the right of a person to defence, keeping the lawyer-client privilege, does not have to interfere with legally provided communication of a suspect, defendant with a lawyer.

3.3 *“How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?”*

Cooperation of prosecutors with other state organs is conducted in order and on grounds which are defined by law.

For instance, Article 3 of the Law of Ukraine “On Public Prosecution Service” defines that activities of a public prosecution service are based, among the other things, on grounds of inadmissibility of illegal interference of public prosecution service with activities of legislative, executive and judicial authorities.

As a result of legislative alterations, the public prosecution service is deprived of authority to conduct supervision over adherence to and application of laws, which also means participation in monitoring activities of state bodies and business entities.

3.4 and 3.5 *“Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?”, “Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?”*

Article 3 of the Law of Ukraine "On Provision of Security of Persons, Who Take Part in Criminal Judicial Proceedings" lists prosecutor as one of subjects, who are entitled to take a decision on application of security measures concerning persons, who need protection.

3.6 *“Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?”*

The Law of Ukraine “On Public Prosecution Service” does not determine the procedure of cooperation of prosecutors with other state bodies, private legal entities, non-governmental organisations.

Therewith, according to Article 3 of this Law, one of the basic principles of prosecutors’ activities is independence of prosecutors, which accounts for existence of guarantees of freedom from illegal political, material or other influence on a prosecutor in relation to taking decisions by him during execution of official duties.

3.7 *“Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?”*

The question is out of competence of the Department.

3.8 *“Any other relevant point you wish to raise.”*

The measures on legislative level are being taken for preparation to ratification by Ukraine of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

United Kingdom / Royaume-Uni

1. Definitions

- 1.1 Is there in your country a **definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

A: There is a statutory code of rights for victims known as the Code of Practice for Victims of Crime¹. Within the Code a victim is defined as follows:

“• a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
• a close relative (see glossary)² of a person whose death was directly caused by a criminal offence”.

I am unaware of a parallel definition of a witness. It is not included in the Witness Charter. The Police use the definition in Black's Law, which defines a witness as 'one who sees, knows or vouches for something. One who gives testimony under oath or affirmation, in person, by oral or written deposition or by affidavit'.

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

I am not clear what is meant by special regimes but we have in place specific measures for victims of the most serious crime; persistently targeted victims; and vulnerable or intimidated victims as set out in the Victims' Code. There is a large amount of guidance to police and prosecutors on how to deal with cases in all of these categories. There is also specific support for victims of sexual abuse from police and others such as local authority employed Independent Sexual Violence Advisers (ISVAs). Similarly for victims of domestic abuse, there is particular support from the police and Independent Domestic Violence Advisers (IDVAs).

¹ The Code is issued by the Secretary of State for Justice under section 32 of the Domestic Violence, Crime and Victims Act 2004. It implements relevant provisions of the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime; Directive 2011/92/EU combating the sexual abuse and sexual exploitation of children; and Directive 2011/36/EU preventing and combating the trafficking of human beings.

² **Close relatives** This refers to the spouse, the partner, the relatives in direct line, the siblings and the dependants of the victim. Other family members, including guardians and carers, may be considered close relatives at the discretion of the service provider.

For Human Trafficking, The Convention on Action against Trafficking in Human beings was implemented on 1 April 2009. This introduced a number of provisions to improve the ability to identify victims, refer them to appropriate support and bring more cases to justice. The provisions include mechanisms for early identification of victims, national referral schemes, and the granting of recovery and reflection periods and renewable residence permits to victims.

- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

We are unaware of a general definition of a vulnerable person in law. However, in the Youth Justice and Criminal Evidence Act 1999 which sets out support for vulnerable and intimidated witnesses giving evidence in court, the following definition of eligibility is used. This definition is what is meant when we refer to vulnerable witnesses:

Witnesses eligible for assistance on grounds of age or incapacity.

(1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section—

- (a) if under the age of 18 at the time of the hearing; or
- (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are—

(a) that the witness—

- (i) suffers from mental disorder within the meaning of the Mental Health Act 1983, or
- (ii) otherwise has a significant impairment of intelligence and social functioning;
- (b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In subsection (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 19(2) in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the court must consider any views expressed by the witness.

There is cross-Government work going on that may produce a wider definition of vulnerability but this is not yet in place.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

Entitlements rather than rights are outlined in the Code of Practice for Victims of Crime and the Witness Charter (attached).

For witnesses within the criminal justice system, there is a non-statutory charter that sets out what they can expect in terms of service from criminal justice agencies. (This is also attached). This includes the rights of vulnerable and intimidated witnesses as defined under 1.3 above

- 2.2 If yes, are they established in the law or other legal instruments?

The Code is issued by the Secretary of State for Justice under section 32 of the Domestic Violence, Crime and Victims Act 2004. It implements relevant provisions of the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime; Directive 2011/92/EU combating the sexual abuse and sexual exploitation of children; and Directive 2011/36/EU preventing and combating the trafficking of human beings.

- 2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Please see the attached Code and Charter. The early chapters give summaries of the high level entitlements and expectations.

- 2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

There is a range of ways in which victims and witnesses are informed of these entitlements. A Government website (gov.uk) gives access to both the Victims' Code and Witness Charter plus a much broader range of information about support services, including for those victims of crime who choose not to report. When they contact the police and give a statement, the police should make them aware of the Victims' Code and / or Witness Charter as well as referring them to other support services.

The joint police / prosecution Witness Care Units in each police Area should also direct them towards the relevant documents throughout the life of the case and when the case ends.

- 2.5 What kind of penalties and sanctions are established for violation of these rights?

If a victim believes that they have not been afforded the entitlements that are outlined in the Code they can complain to the agency which has failed and ask for apology or reparation. If they are still not satisfied they can refer the matter to the Parliamentary and Health Service Ombudsman, through their MP. Similar entitlements are afforded to witnesses under the Charter. In both cases the Ombudsman can recommend the agency acknowledges their mistakes, apologises and/or makes a consolatory payment if he / she believes it to be appropriate.

- 2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

All child witnesses under the age of 18 are included in the definition of vulnerable as shown at 1.3 above. This entitles them to apply for special measures to support their giving of evidence as outlined in pages 4 and 5 of the attached Witness Charter. This also applies to people with physical or mental impairments. However older people are not included in the definition and therefore are not automatically accorded the rights.

- 2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of

that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

The UK has an adversarial system. In the circumstances you mention, it would be open to the lawyers representing the woman in the civil proceedings to bring to the attention of the court a criminal conviction for violence. In a decision concerning the custody of children an independent service working on behalf of the court conducts assessments of both parents' suitability. Part of that function involves checks on criminal convictions which would be referenced in the report and read by the deciding Judge.

- 2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

Yes a vulnerable person can give evidence on their own but, through the special measures, they may be offered support to enable them to do so effectively (e.g. through the use of an intermediary).

- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

Refusal to give evidence can be taken into consideration in the decision by a Jury as to culpability in certain circumstances. That applies in Youth Courts as it does in Adult courts however it is subject to considerable safeguards. Depending on the extent of the mental disability the person would not be placed before a criminal court. If he is but is deemed unfit to plead then there would be a fact finding hearing at which he would not be expected to give evidence. Vulnerable people who are not unfit could be asked questions through an intermediary. Even in normal cases, the court has to be satisfied that the Defendant is aware of the consequences of a failure to testify before it can be held against him.

- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

The witness's vulnerability will be assessed by a trained professional who makes a report to the Court. The Court will then take the appropriate measure and discuss with the advocates for either. The most obvious examples of protective measures are, an intermediary who interprets the questions for the witness, pre-recorded evidence which is played in court. There may also be a facility in due course for pre-recorded cross examination.

- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

Yes. Evidence in chief can be filmed for victims of rape and serious sexual assault and played back to the court. They are then cross-examined live, either in the court (which can be behind a screen) or over a video link (to prevent them having to be in the same room as the defendant).

Pre-recorded cross-examination is now possible for child witnesses in some cases (usually sexual offences) and some other vulnerable witnesses.

The opportunity to give video evidence or evidence from behind screens applies to all vulnerable or intimidated witnesses, subject to the approval of the court.

2.12 How is the prevention of repeated victimisation ensured?

If there is any concern expressed about, or evidence of the risk of, repeat victimisation CPS can ask for bail conditions at the first hearing of the case to prevent contact between the defendant and victim. Then police will carry out a risk assessment for the victim and put in place a proportionate response to ensure they are protected effectively.

2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

They apply to all affected by crime, regardless of their nationality, if the crime happens in England and Wales.

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

See para 2.5 above. In addition, each agency (including the prosecution) has specific responsibilities under the Code and Charter and they are held to account by their own organisational management for their provision. The national Criminal Justice Board and the Victims' Commissioner both oversee provision and make reports and recommendations for improvement.

3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

Please see paras 1.1 and 1.3 above re legal instruments. Prosecutors have specific duties under both the Code and the Charter. There is no separate prosecutor code of conduct but the CPS Values say that prosecutors will treat all with respect.

3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

All partner agencies are covered by the Victims' Code and Witness Charter and we work together to comply with their provisions. Specifically, we work closely with the police in Witness Care Units to provide timely, useful information and support. Also, we work with the courts to ensure that victims and witnesses and vulnerable people are provided with the relevant, effective support on the day they give evidence at court.

3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

For some aspects. In terms of a right of appeal against a decision by the prosecutor not to proceed with, or continue a case, a victim can apply directly to CPS for this to happen.

For other matters, prosecutors and others in the CPS will ensure that the relevant support and help is given throughout the case but not necessarily at the request of the victim. Needs assessment are carried out by the joint police / CPS Witness Care Units to ensure the relevant support is put in place.

3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

Applications can be made to secure special measures to enable vulnerable witnesses to give evidence via mechanisms described elsewhere in this questionnaire response. On a finding of guilt, Prosecutors can apply for restraining orders to protect victims of crime. However Prosecutors cannot start independent legal action to protect victims / witnesses.

Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

Yes. We work with the police, the Ministry of Justice, HM Courts Service and commissioned service providers to do so.

3.6 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

Yes. All prosecutors are trained on the Victims' Code and Witness Charter as part of their induction into the organisation. All have access to guidance on a wide range of victim and witness related issues and how they should be dealt with. In addition when a new approach is adopted or legislation changes we can, and have, built specific training courses to ensure that the staff affected are able to carry out the new duties effectively. Recent examples include training of all CPS Victim Liaison Unit staff on communicating with victims; training on how to operate the Victims' Right to Review and training on the new arrangements for Speaking to Witnesses at Court.

3.7 Any other relevant point you wish to raise.

No thanks.



witness-charter-nov-13.pdf



code-of-practice-for-victims-of-crime.PDF

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