The Rights of Alleged Victims in Penal Procedures in France

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Abstract

In the context of the publication in France of the report submitted in 2021 by the Independent Commission on Sexual Abuse in the Church (CIASE), it is important to examine victims' rights in French criminal procedure in order to stress the margin for improvement in the consideration of victims in a canonical trial. French criminal procedure is indeed particularly protective of victims: victims are informed, supported, protected, involved in the trial and repaired. Minors are given special attention.

Keywords: *commission indépendante sur les abus sexuels dans l'Eglise (CIASE); right to information; right to protection; right to participation; notion of victim; right to reparation; minor victims.*

1. Context

The report submitted in October 2021 by the Independent Commission on Sexual Abuse in the Church (*Commission indépendante sur les abus sexuels dans l'Eglise*) (CIASE), chaired by Jean-Marc Sauvé, was a real thunderclap in France and beyond.[1] Beyond the heavy state of affairs,[2] the report denounces the inadequacy of the Church's legal responses, which are centred on the sinner and hide the fate of the victims. Victims are not involved in the legal procedure, not having the status of a party to the procedure but simply of a third-party intervener, a status which in theory gives them

1 Commission indépendante sur les abus sexuels dans l'Eglise, Les violences sexuelles dans l'Eglise catholique. France (1950–2020). Rapport de la Commission indépendante sur les abus sexuels dans l'Eglise. October 2021 (Report); Christine Lazerges, La politique criminelle implicite de la Commission indépendante sur les violences sexuelles dans l'Eglise catholique, *Revue de science criminelle et de droit pénal comparé (RSC 2022)*, 141.

2 The estimated number of minor victims of sexual assault by priests, deacons, religious men and women is 216,000 over the period 1950–2020 and 330,000 if the analysis is extended to include all persons connected with the Church (staff in Catholic schools or boarding schools, lay people providing catechism or chaplaincy services and leaders in scouting or other Catholic youth movements) (§ 0066 of the Report [n 1]).

the possibility of requesting reparation as soon as they are informed of the procedure, which in practice is never the case.[3] In response to these offences, CIASE proposes, for the past, putting in place "an ambitious system of recognition and compensation that is not purely internal to the Church, that relies on significant means and uses a range of restorative justice tools"[4] and, for the future, remedying the dysfunctions observed by opening up canonical criminal procedure to the rights of victims.[5] On the first point, CIASE seems to have been heard since, following the French bishops' conference in Lourdes in November 2021, two independent commissions for reparation were created: the Independent National Instance for Recognition and Reparation, (*Instance nationale indépendante de reconnaissance et de réparation*) (Inirr), created by the French bishops, and the Independent National Commission for Recognition and Reparation (*Commission nationale indépendante de reconnaissance et de réparation*) (Cnirr), created by the religious men and women of France. On the question of victims' rights in the canonical process, the page has yet to be written.[6]

2. *General Presentation of the French Criminal System*

Historically, the French criminal system is an inquisitorial system. French criminal law procedure is traditionally presented as written, secret and non-adversarial.

This did not change for a long time; now the preliminary article of the code of criminal procedure (which came into force in 1958) provides that

3 Report (n 1), § 0813 s.

4 Report (n 1) 389.

5 Ibid. 450.
It should be noted that the Vatican is not a member of the Council of Europe and is not a party to the European Convention on Human Rights. However, it has had observer status with the Council of Europe since 1970. While it is not possible to verify the extent to which observer states must respect the Council's human rights standards and values, it should be noted that the Holy See has a clearly stated position in favour of human rights and fundamental freedoms (see Pope Francis' visit to Strasbourg on 25 November 2014).
The European Court of Human Rights recently considered that the dismissal of a civil action against the Holy See in Belgium, because of the immunity of jurisdiction it enjoys, is not contrary to Article 6 § 1 of the Convention of Human Rights (ECHR, 12.10.2021, J.C. *et autres contre* Belgique).

6 In doctrine, although there are no developments on this point as such, there is an interesting PhD thesis by Elsa Déléage, Les droits de la personne selon l'Eglise catholique de 1891 à 2013, Institut universitaire Varenne, Collection des thèses 2014.

"Criminal procedure should be fair and adversarial and preserve a balance between the rights of the parties". Now a trial is without doubt oral, public and adversarial.

But these remarks apply only to the trial as it is strictly understood. In contrast, the pre-trial is always written,[7] secret[8] and rather not adversarial. But under this last aspect, it is necessary to distinguish between the two possible frames of investigation in French criminal procedure:

- On one hand, the inquiry (*enquête*), which is the investigation conducted by judicial police officers under the supervision of the district prosecutor (*procureur de la République*). The inquiry is actually the common frame of the investigation in France.
- On the other hand, the judicial investigation (*instruction*), which is the investigation made by an investigating judge (*juge d'instruction*), who is an independent magistrate. The judicial investigation is required for the most serious offences (criminal offences) and possible for other offences, in particular for complex cases.

The choice of the frame for investigating has important effects. During the inquiry, neither the suspect nor the victim is considered a party. It is only after the public prosecution has been initiated (by referral to an investigating judge or to the trial judge) that the persons concerned (suspect, victim) can become parties and then acquire all the rights associated with this status. The victim, in particular, sees the full deployment of these rights from the moment he or she becomes a civil party. However, even without becoming a party, the victim benefits in France from a certain number of rights.

3. General Presentation of Victims' Rights in French Criminal Procedure

Victims are treated well in French criminal proceedings. In accordance with *Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, which was transposed into

7 Each act of the investigation must be written in an official report.

8 Art. 11 CCP: 'Except where the law provides otherwise and subject to the defendant's rights, the inquiry and investigation proceedings are secret'.

French law by *Law n°2015–993 of 17 August 2015 adapting criminal procedure to European Union law*, they have rights to information, to active participation in the criminal trial and to reparation.[9] When the victim is a minor, a number of these rights are reinforced.

A. Rights Common to All Alleged Victims

Consideration of the rights of victims in French criminal procedure appears in the preliminary article of the code of criminal procedure, which states that "criminal procedure must be fair and adversarial and preserve the balance of the rights of the parties" and that "the judicial authority shall ensure that victims' rights are informed and guaranteed in the course of all criminal proceedings". This preliminary article is followed by a preliminary title, a sort of introduction to the code of criminal procedure, which is composed of three subtitles, the first relating to penal and civil proceedings, the second to restorative justice and the third to victims' rights. In line with the 2012 directive, the victim thus clearly has a right to information, support and protection (A) but also a right to participation in a French criminal trial (B) and a right to reparation (C).

a. Right to Information, Support and Protection

In the same way as the defendant, victims must be informed, according to Article 10–2 of the Code of Criminal Procedure (CCP), of their right:

- To obtain compensation for the harm suffered by any appropriate means, including a restorative justice measure.
- To be a civil party, i.e., to become a party to the criminal proceedings (and consequently to have access to the file of the proceedings, to be able to make observations and to exercise remedies under certain conditions).
- To be assisted by a lawyer, if they are a civil party.
- To be assisted by a victim support association.

9 For a comparative (Spain, France, Italy) and European approach to the issue, see Luca Lupària (ed), Lo statuto europeo delle vittime di reato. Modelli di tutela tra diritto dell'Unione e buone pratiche nazionali, Coll. Giustizia penale europea, Wolters Kluwer / CEDAM, 2015.

- To refer the matter to the Commission for Compensation of Victims of Crime (Commission d'indemnisation des victimes d'infractions: CIVI) for serious personal injury or certain property offences.
- To be informed of the protection measures available to them.
- To be assisted by an interpreter or translator.
- To be accompanied at all stages of the procedure by their legal representative and by the adult of their choice, unless the competent judicial authority decides otherwise.
- To declare the address of a third party as their place of residence if the third party agrees.
- To be given the medical examination certificate verifying their state of health that is required by a judicial police officer when the person claims to have been a victim of violence (Art. 10–5–1 CCP).

Information

Information is generally provided through the distribution of a guide to victims' rights.[10] More specifically, on a case-by-case basis, information is provided mainly by the victim support offices (Bureaux d'aide aux victimes: BAV, art. D. 47–6–15 CCP) near the courts. The BAVs are created by an agreement between the president of the court of appeal and associations and are composed of representatives of one or more victim support associations. The aim of these offices is to inform victims and respond to the difficulties they may encounter throughout the criminal proceedings. At the request of the victim, the BAV informs him or her of the course of the criminal proceedings and assists him or her in his or her efforts. The BAV can inform the victim about the status of the proceedings (whether or not the victim is a party to the proceedings): before the public prosecutor, about investigations by the judicial police, about the investigation, about the closure of the case, about the court in which the case is pending, about the date of the hearing, about the date of the judgement and about the appeal by the public prosecutor or the convicted person. The BAV can also take responsibility for providing the victim with all the information he or she should receive in accordance with the Code of Criminal Procedure

10 Ministère de la Justice et des Libertés, Les droits des victimes (2012), available on http://www.justice.gouv.fr/art_pix/guide_enrichi_des_victimes.pdf, access 09.09.2022.

(Article 41 CCP). It can also help the victim to obtain the compensation due to him or her.

Support

Support is provided through the possibility of being assisted by a victim support association and through assistance with the application for compensation.

Protection

Protection involves, first of all, a personalised assessment of the victim (Art. 10–5 CCP), which must be carried out early in the proceedings and which must, in particular, make it possible to assess whether the victim needs specific protection measures (such as removal of or a ban on approaching the person suspected of having committed an offence against him or her). This personalised assessment is carried out by the judicial police officer, in particular, in the light of the extent of the harm suffered by the victim, the circumstances of the commission of the offence, resulting, in particular, from a discriminatory motive or the links existing between the victim and the accused, the particular vulnerability of the victim (due to his or her age, pregnancy or the existence of a disability), and the existence of a situation of control exercised over the victim by the accused. In cases of sexual violence, the victim is heard by an investigator of the same sex if he or she so requests (Art. D. 1er-3 s. CCP).

b. Right to Participation

In application of the 2012 Directive, the victim must be able to participate, or at least be heard, in the criminal trial. The victim can thus be heard at any time during the proceedings, including by using audio-visual means of communication (art. 706–71 CCP). Furthermore, in France, the opportunity given to the victim to participate in the proceedings is very important insofar as the victim can constitute a civil party. Indeed, in parallel with the proceedings (criminal action also known as public action) brought by the public prosecutor's office, which requires the application of criminal law and, where appropriate, the conviction of the accused person, the victim

may decide to act before the criminal court by means of a private action, which does not require the application of criminal law or the conviction of the person, but damages and therefore the recognition of a civil fault committed by the accused person. This action brought by the victim is called a civil action. It is defined in Article 2 of the Code of Criminal Procedure: "The civil action for compensation for damage caused by a crime, offence or contravention belongs to all those who have personally suffered damage directly caused by the offence".

Right of action

Article 2 of the Code of Criminal Procedure means *firstly* that the victim's role can take the form of an action, in the common sense of "right to sue". This is a right, not an obligation (so the victim may well decide not to take legal action).

Civil action presupposes a minimum of formalisation of the victim's complaint, so that he or she can become a party to the criminal proceedings, so that he or she can claim compensation, but also so that certain effects can be achieved (in particular, the interruption of the limitation period).

In other words, *a simple complaint* is not enough and does not meet the conditions for becoming a party. A (simple) complaint is the act by which a person who considers himself or herself to be the victim of an offence informs the public prosecutor, either directly or through a police or gendarmerie service. It can be filed against an identified person or against X if the identity of the perpetrator is unknown. Anyone can file a complaint, including a minor who can even file alone. The complaint can be sent directly to the public prosecutor, but in most cases, it is filed with the police or gendarmerie. In 2019, the possibility of filing a complaint online was also created (Art. 15–3–1 CCP, but the system has not yet fully entered into force).

Once a complaint is filed, it is forwarded to the public prosecutor. Every complaint is recorded in a report, a copy of which is given to the victim (Art. 15–3 CCP). The person may withdraw the complaint at any time, but this does not mean that the criminal proceedings are stopped, which remains the prerogative of the public prosecutor. This simple complaint is not enough for an alleged victim to become a party to the criminal proceedings; it is in some ways similar to a denunciation and the victim is treated in a way similar to a witness.

In order to be a party to the trial, the victim must register as a civil party. There are two ways to do this:

- Firstly, it can be done once the public prosecutor has initiated the public prosecution: this is known as constituting a civil party by way of intervention; the victim then joins the public prosecution initiated by the public prosecutor.
- It can also be done (this is a formidable power available to the victim, which has existed since a 1906 decision by the Court of Cassation) even if the public prosecutor has not yet initiated the public prosecution or has refused to do so. In this case, the civil party's constitution forces the public action to be set in motion: this is known as the constitution of a civil party by way of action.

The effect of filing a civil action is therefore to make the victim a party to the criminal proceedings but also, when it is done by way of action, to set in motion the public action.

Formally, a complaint with civil party status is not subject to any particular formality. Most of the time, the complaint is made in a simple letter addressed to the investigating judge in which the complainant expresses a formal and unequivocal desire to be a civil party. Following the filing of the complaint, the victim must declare an address (Art. 89 CCP) and pay a deposit (except in the case of legal aid), the amount of which will be determined by the investigating judge, and which is intended to guarantee payment of the civil fine that may be imposed (Art. 88 and 88–1 CCP) in the event of an abusive or dilatory civil party (Art. 177–2 CCP).

The constitution of a civil party

This allows the victim to become a "party" to the criminal proceedings and therefore:

- to be regularly informed of the progress of the proceedings and to have access to the file through their lawyer;
- to appeal, if necessary, against certain decisions taken in the course of the proceedings if their interests are prejudiced;
- to make observations and requests for additional investigations during the course of the judicial investigation;

– to be directly summoned before the court as a civil party during the trial;
– to claim damages as compensation for the harm suffered.

It is best for a victim to register as a civil party as soon as possible, so as to be involved in the proceedings from the outset. However, it is always possible for him or her to do so at any time during the proceedings up to the day of the hearing at first instance (Art. 418, 419, 420 CCP). On the other hand, it is not possible for a victim to constitute a civil party on appeal for the first time (Crim., 20 April 2017, n°16–83199).

A victim who is a civil party may seek the advice of a lawyer, even if his or her assistance is not compulsory (conversely, if the victim is not a civil party, he or she may not be assisted by a lawyer at the hearing).

Action for damages

Article 2 of the Code of Criminal Procedure means, *secondly*, that a person can ask the criminal court for compensation for damage suffered, but only for damage caused by an offence. The civil action is therefore an action for damages (which most of the time takes the form of damages), but an action for damages brought before the criminal court (which may seem strange insofar as the action for damages is normally the prerogative of the civil court and the criminal court is, in principle, called upon to pronounce on the sentence).

The civil action is above all an action for compensation for the personal damage caused by the offence. It is therefore a claim for damages, an action whose aim is "*to re-establish, as accurately as possible, the balance destroyed by the damage and to put the victim back in the situation in which he or she would have been if the harmful act had not occurred*" (Civ. 2, 9 July 1981, Bull. n°156). In the case of a civil liability claim, the victim can always decide to act before the civil court. In other words, the victim can always choose to file for compensation for the damage caused by an offence, either before the criminal court or before the civil court. He or she is said to have the choice between the civil and criminal options. Each of the two options has its advantages. The civil option has the advantage that it is less easy and less burdensome to incur liability for an action that proves to be abusive or dilatory; moreover, it is more discreet. The criminal option, on the other hand, is quicker and allows the benefit of the evidence that the criminal procedure (the investigations carried out by the judicial police) makes it possible to discover.

However, while civil action before the criminal court is an action for compensation, it also often has a vindictive purpose: seeking the conviction of the offender. Indeed, by bringing a civil action, the person who claims to be the victim of an offence automatically initiates the public prosecution. In addition, he or she participates in the search for the truth by exercising the rights conferred on him or her by being a party to the criminal proceedings. Lastly, the victim may be a civil party without claiming damages. Article 418(3) of the Code of Criminal procedure provides that: "The civil party may, in support of his or her claim, request damages corresponding to the harm caused to him or her". It follows that the request for damages is 'a simple option which the civil party is free not to use' (Crim., 10 October 1968, Bull., n°248).

Who can claim to be a victim?

Thirdly, Article 2 of the Code of Criminal Procedure states that this action "belongs to all those who have personally suffered damage directly caused by the offence". Any natural person of legal age may bring a civil action if he or she has an interest in acting, i.e., if he or she has suffered personal and direct damage:

- *The immediate victim* is the first to be affected by the offence and obviously has an interest in acting. This is, for example, the person who has suffered a sexual assault.
- Moreover, the Court of Cassation increasingly accepts compensation *for damage not directly caused by the offence* (flexible assessment of the need for direct damage), based in particular on Article 3(2), which provides that civil proceedings 'shall be admissible for all types of damage, whether material, personal or moral, arising from the facts which are the subject of the proceedings' (for example, the reduction in a company's activity following the accidental death or another offence suffered by its director).
- In addition, the Court of Cassation is increasingly admitting *compensation of the victim's relatives*, i.e., "less" personal damage. The principle on this point was the inadmissibility of a civil action brought by a third party. However, for heirs and relatives, the Court of Cassation has evolved.

It accepts that relatives may bring a personal action for compensation for personal injury suffered as a result of damage caused to the direct victim of the offence. The victim's relatives may bring a personal action for compensation for the material and moral damage they have suffered personally as a result of the damage suffered by the victim (death, injury, sexual assault, etc.). Some recent examples of this flexible conception of vicarious damage by the Court of Cassation can be given. In the particular case of a child born of rape, the Court of Cassation has recognised that the civil action by the child, a victim by ricochet of the incestuous rape committed on its mother, is admissible, and that the harm suffered, which does not result solely from its birth, but also from the knowledge that the child will have of the facts when it grows up, from the difficulty of constructing it, and from the impossibility of establishing its link to paternal filiation, is compensable (Crim., 4 February 1998 and Crim., 23 September 2010). This is also the case for parents whose two daughters were raped when they were minors (Crim., 26 February 2020).

The Court of Cassation also accepts, but only for heirs, that they can exercise a succession action for compensation for the damage suffered by the deceased. The Court of Cassation considers here that the civil action by the deceased is transferred to their heirs by succession. If proceedings were initiated while the victim was alive, the heirs can pursue the civil action before the criminal court; if no proceedings were initiated before the victim's death, only the civil court can be seized.

A legal entity (i.e., one that has legal personality) may also bring a civil action if it has an interest in acting, i.e., if it has suffered direct personal injury (e.g., an association that has suffered theft). However, in certain cases, it is also considered that a legal person defending a collective interest that has been harmed (e.g., a trade union) may have an interest in bringing an action. As regards associations, they do not have a general authorisation to intervene, but the legislator has increased the number of special permissions by means of authorisations (Art. 2–1 s. CCP) given to associations for combating discrimination (Art. 2–1), combating sexual and domestic violence (Art. 2–2), defending children at risk and abused children (Art. 2–3), combating crimes against humanity and war crimes (Art. 2–4), defending the moral interests and honour of the Resistance and deportees (Art. 2–5), the fight against gender discrimination (art. 2–6), the fight against discrimination due to illness, disability or age (art. 2–8), assistance to victims of crime (art. 2–9), the fight against social and cultural exclusion (art. 2–10), defence of the moral interests and honour of veterans (Art. 2–11) and the

fight against road crime (Art. 2–12). In particular, Article 2–3 of the Code of Criminal Procedure states:

- Any association that has been duly registered for at least five years on the date of the events and whose statutory purpose includes defending or assisting children who are at risk and victims of all forms of abuse may exercise the rights recognised as civil parties in respect of deliberate attacks on life and limb, assaults and other sexual offences committed against a minor and offences of endangering minors punishable under Articles 221–1 to 221–5, 222–1 to 222–18–1, 222–23 to 222–33–1, 223–1 to 223–10, 223–13, 224–1 to 224–5, 225–7 to 225–9, 225–12–1 to 225–12–4, 227–1, 227–2, 227–15 to 227–27–1 of the Penal Code, when the public prosecution has been initiated by the public prosecutor's office or the injured party.
- Any association, registered with the Ministry of Justice under conditions set by decree in the Council of State, is admissible in its action even if the public prosecution has not been initiated by the public prosecutor or the injured party in respect of the offence mentioned in Article 227–23 of the Criminal Code. The same applies when the provisions of the second paragraph of Article 222–22 and Article 227–27–1 of the said code are applied.

In other words, an association for the defence of minors who are victims of abuse (including sexual assault) may act before the criminal court once the matter has been referred to it by the public prosecutor. Furthermore, once the victim has been constituted as a civil party, he or she may exercise the remedies associated with his or her action (Art. 497 CCP). In other words, he or she can appeal on the question of reparation, but only on this question (and in no case on the question of the defendant's guilt).

c. Right to Reparation

Compensation

The victim, who is a civil party, can obtain reparation, i.e., compensation through damages before the criminal court. This compensation will be paid by the convicted person or, in certain more limited cases, by national solidarity. Although, in principle, in order to obtain compensation for the damage caused by an offence, the victim must take action against the offender after the public prosecution has been initiated and since 1977, in certain

cases and under certain conditions, even before criminal proceedings have been initiated or even if the prosecution has not resulted in sufficient effective reparation or compensation, the victim may bring an action for compensation before a jurisdictional commission set up within the jurisdiction of each judicial court (CIVI: Commission d'indemnisation des victimes d'infraction). This action is available to victims of bodily injury, rape or material damage resulting from certain offences against property (theft, fraud, breach of trust, etc.), which place the victim in a serious material or psychological situation (Art. 706–3 and Art. 706–14 CCP.). In addition to this commission, mention should be made of the Guarantee Fund for Victims of Terrorism and Other Offences (Fonds de garantie des victimes des actes de terrorisme et d'autres infractions: FGTI) created in 1986, which provides compensation for victims of terrorist acts (Art. L. 126–1 and L. 422–1 of the Insurance Code).

Restorative justice

In addition, and also because compensation is not always reparation,[11] at any stage of the criminal procedure (including during the execution of the sentence) and therefore in parallel with the criminal trial, any victim (whether a civil party or not) may, since 2014, be offered a restorative justice measure. Article 10–1 of the Code of Criminal Procedure states:

> "During any criminal proceedings and at all stages of the proceedings, including during the execution of the sentence, the victim and the perpetrator of an offence, provided that the facts have been acknowledged, may be offered a restorative justice measure.
>
> A restorative justice measure is any measure that enables a victim and the perpetrator of an offence to participate actively in resolving the difficulties resulting from the offence, and in particular in repairing the damage of any kind resulting from its commission..."

In other words, criminal proceedings could be an opportunity to restore, i.e., to help the victim and the offender (note that the text refers to the meeting between the victim and an offender and not the offender) to

11 Christine Lazerges, L'indemnisation n'est pas la réparation, in Geneviève Giudicelli-Delage / Christine Lazerges (eds), La victime sur la scène pénale en Europe, Puf 2008, 228ff.

resolve the difficulties arising from the offence, through reconciliation and dialogue. For this to happen, the facts must have been recognised, but also the victim and the offender must have been fully informed about the measure and must have expressly consented to participate in it.

B. Specific Rights for Minor Victims

Minor victims benefit from the rights provided for all victims. However, due to the fact that they do not have full legal capacity and that their young age makes them vulnerable, minors benefit from specific provisions aimed at ensuring their protection.[12] These specificities can be seen in the question of the statute of limitations for public action (*prescription*),[13] but also in the various specific procedural mechanisms for detecting offences and conducting investigations.

a. Detection of Offences Committed Against Minors.

The protection of minors who are victims of crime depends above all on improving the visibility of crimes committed against minors. This improved visibility is based on three points:

1) The development of a system to prevent offences against minors, and in particular ill-treatment, notably through information and raising awareness on child abuse in schools (medical visits to schools to detect such violence, training of staff dealing with children, information

12 Philippe Bonfils / Adeline Gouttenoire, Droit des mineurs, Dalloz 2021, n°1559ff.

13 In France, the statute of limitations for public action (*prescription*) is, in principle, 20 years for felonies, 6 years for misdemeanours and one year for contraventions (art. 7 s. CCP). Exceptions are made for offences committed against minors. Firstly, the limitation periods are longer for certain felonies, including sexual crimes (30 years instead of 20 years) and for certain misdemeanours, including sexual offences (10 years instead of 6 years). Secondly, the starting point of the limitation period, which in principle is set on the day the offence is committed, has been postponed to the day the victim reaches the age of majority (Art. 7 and 8 CCP). Finally, Law No. 2021–478 of 21 April 2021 aimed at protecting minors from sexual crimes and offences and incest introduced a 'sliding limitation' mechanism by providing that, from now on, the limitation period for a sexual offence is extended, in the event of the commission of a new offence against another minor by the same person, until the date on which the new offence becomes time barred.

for the children themselves: Art. L. 542–3 of the Education Code), raising awareness among a wider public, particularly through public broadcasting (art. 43–11 of the law of 30 September 1986 on freedom of communication) or by setting up a toll-free telephone number, 119, which permanently answers requests relating to situations of abuse.[14]

2) The development of the means available to the investigating authorities, whether intellectual means (training on abuse: art. L.542 – 1 of the Education Code) or structural means (creation of structures appropriate for dealing with victimised minors, creation of juvenile brigades in the police since the 1970s and creation of juvenile delinquency prevention brigades in the gendarmerie in 1997, which deal with both juvenile offenders and victimised minors).
3) The detection of offences committed against minors. Although any minor can lodge a simple complaint with the police and gendarmerie, he or she cannot lodge a civil claim on their own. This partly explains why the legislator encourages the reporting of cases to the authorities (art. L. 226–3 of the code of social action and families: "The president of the departmental council is responsible for collecting, processing and evaluating, at any time and from any source, information of concern relating to minors in danger or at risk of being so. The representative of the State and the judicial authority shall assist him/her") and judicial reporting. In terms of judicial reporting, it should be emphasised that not only is any civil servant who, in the course of his or her duties, becomes aware of the commission of a crime or offence required to inform the public prosecutor without delay (art. 40 CCP applicable to all offences and whatever the age of the victim),[15] but in addition, since 1998, so is any person who has knowledge of deprivation, ill-treatment or sexual offences inflicted on a minor or on a person who was not in a position to protect himself or herself (due to age, illness, infirmity).

14 The law of 10 July 1989 on the prevention of abuse of minors and the protection of children created a national telephone helpline for abused children, available on http://www.allo119.gouv.fr, access 09.09.2022.

15 According to Article 40 of the Criminal Procedure Code, 'The public prosecutor receives complaints and reports and decides what action to take in accordance with the provisions of Article 40–1.
Any constituted authority, public officer or civil servant who, in the exercise of his duties, acquires knowledge of a crime or offence is obliged to notify the public prosecutor without delay and to transmit to this magistrate all information, reports and acts relating to it'.

That person is required to pay a €45,000 fine for not reporting the crime, except in the case where the person is bound by professional secrecy and is therefore left with a choice of conscience (art. 434–3 c. pén.[16]).[17]

b. Specific Provisions Applicable to the Minor Victim During Criminal Proceedings.

Once an offence committed against a minor has been brought to the attention of the investigating authorities, the criminal proceedings begin in

16 According to art. 434–3 of the Penal Code, 'The fact that anyone who is aware of deprivation, ill-treatment or sexual assault or abuse inflicted on a minor or on a person who is unable to protect himself or herself due to age, illness, infirmity, physical or mental deficiency or pregnancy, fails to inform the judicial or administrative authorities or continues to fail to inform these authorities until such time as these offences have ceased, is punishable by three years' imprisonment and a fine of 45,000 euros.
Where the failure to inform concerns an offence referred to in the first paragraph committed against a minor of fifteen years of age, the penalties shall be increased to five years' imprisonment and a fine of 75,000 euros.
Except where the law provides otherwise, persons bound to secrecy under the conditions laid down in Article 226–13 are exempt from the foregoing provisions'.
In other words, this obligation to denounce is neutralised by professional secrecy and therefore allows an option of conscience between reporting the facts or keeping them secret (except in cases where the law provides otherwise and therefore obliges the official in question to report them, which does not seem to be the case in religious matters). On this point, see Marie-Elisabeth Cartier, Le secret religieux, *Revue de science criminelle et de droit pénal comparé (RSC 2003)*, 485; Bruno Py, Le secret professionnel et le signalement de la maltraitance sexuelle. L'option de conscience : un choix éthique, *Archives de politique criminelle (APC 2012),* 71; Alain Sériaux, Le secret de la confession et les lois de la République, Recueil Dalloz 2021, 2245; Laëtitia Atlani-Duault, Didier Guérin, Secret de la confession et signalement des violences sexuelles sur mineurs, *Droit pénal (6–2022),* étude n°16.

17 On this point, see the conviction of the Bishop of Bayeux by the Bayeux criminal court on 4 September 2001 with various doctrinal comments: Olivier Echappé, Le secret professionnel de l'ecclésiastique, Recueil Dalloz 2001, 2606; Yves Mayaud, La condamnation de l'évêque de Bayeux pour non-dénonciation, ou le tribut payé à César…, Recueil Dalloz 2001, 3454; see also the decision of the Criminal Chamber of the Court of Cassation of 14 April 2021 confirming the acquittal of Cardinal Barbarin (Archbishop of Lyon at the time of the events), on the grounds that the victims had come of age, which removed the obligation to denounce him (Crim., 14 April 2021, n° 20–81196 and doctrinal comments: Audrey Darsonville, La fin de la mise en cause du cardinal Barbarin et le renouveau du délit de non-dénonciation de mauvais traitements, AJ Pénal 2021, 257; Emmanuel Dreyer, Aide-toi et l'archevêque t'aidera, Recueil Dalloz 2021, 937.

earnest and the minor victim benefits from certain specific provisions (Art. 706–47 s. CCP).

First of all, the minor victim may be the subject of a "*medical and psychological assessment to evaluate the nature and extent of the harm suffered and to establish whether this makes appropriate treatment or care necessary*".

Then, the child's hearing may be conducted in the presence of a third party (psychologist, child specialist doctor or family member). The purpose of this presence is to reassure the child. The third party cannot speak, except perhaps to explain a question to the child. This presence of a third party, which is carried out by decision of the public prosecutor or the investigating judge, is in reality quite rarely admitted because of the risks of influencing the child's account of the alleged offence.

Above all, the major innovation lies in the way in which the child's word is collected. It seems normal that the child's word is not collected in the same way as the adult's word, on the one hand because it is more fragile than the adult's word (difficulty for the child to put the acts into words, difficulty for the interlocutor to interpret these words, risk of manipulation of the child...), and secondly because it is necessary to avoid adding the trauma of a sometimes repeated statement (at the level of the investigation, the inquiry, the judgement) to the child's trauma from the offence. This is why provision is made for audio-visual (or exclusively audio) recording of the hearing.

Moreover, as the minor is incapable of acting in court, he or she must be represented. This representation is, in principle, the responsibility of the legal representatives (parents, guardian). However, a problem arises when it is this legal representative who is prosecuted for an offence against the minor or when the latter is not able to protect the minor's interests properly. In this case, the minor will be represented by an *ad hoc* administrator: "the public prosecutor or the investigating judge, seized of acts committed voluntarily against a minor, appoints an *ad hoc* administrator when the protection of the minor's interests is not fully ensured by his or her legal representatives or by one of them" (art. 706–50 CCP). The appointment is at the discretion of the public prosecutor or examining magistrate and is based on a fairly broad criterion: "when the protection of [the minor's] interests is not fully ensured by his or her legal representatives or by one of them". The *ad hoc* administrator is either someone close to the child or a person from outside the family; he or she ensures the protection of the minor's interests and on the minor's behalf exercises, if necessary, the rights granted to the civil party. In other words, the *ad hoc* administrator

can bring a civil action, appoint a lawyer, etc. He or she also listens to the minor.

Moreover, associations for the defence of the collective interests of minors in danger may also, under certain conditions, bring a civil action (art. 2–3 CCP, see above).

Biography

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