



# The place of victims in "exceptional" criminal proceedings: the investigation phase

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## Information sheet no. 4: **Hearing victims' testimony**

The last few decades have seen the judicial systems of European countries afford more and more recognition to victims and take more account of their rights. On 14 November 2012, the Official Journal of the European Union published [Directive 2012/29/EU](#) establishing minimum standards on the rights, support and protection of victims of crime. In so-called "mass" criminal proceedings, respect for victims' rights becomes more complex on account of the large number of victims, the multiplication of parties involved and the complexity of the cases to be examined.

The aim of this practical information sheet, focused on the question of hearing the victims' testimony in "exceptional" criminal proceedings, is to set out a number of good practices that can be implemented to ensure that victims' rights are better respected during this investigation phase.

### **Challenges**

- To determine the number of victims to be interviewed and the arrangements for hearing their testimony, depending on the type of case, the imperatives of the investigation and the victims' wishes;
- To ensure they can speak freely whilst meeting the requirements of the investigation;
- To take account of the trauma suffered by the victim and avoid re-victimising them.

## 1. Hearing victims' testimony in "exceptional" proceedings: general principles

### A. Adapting the hearing of victims' testimony to the means and objectives of the investigation

In "exceptional cases", the victims are numerous and sometimes expect to have their voice heard during the investigation phase. Nevertheless, the choice of the scale and format of the hearings must take account of the resources – material and human – available and the issues specific to the pre-trial investigation and the criminal charges.

#### Challenges

- To prioritise the hearing of victims according to the needs of the investigation and the specific requests of victims;
- To adapt the format of the interviews to the means available.

#### Good practices identified

1. It is not always necessary to hear all the victims in a large-scale case, in particular when the content of the interviews becomes **repetitive** and does not add anything that could affect the classification of the offences. It can even be **counter-productive** in situations where resources for the investigation are limited and are used up by these interviews.
2. The decision to interview victims – in particular when they request it - or to prioritise certain interviews, can be made on the basis of **objective criteria**, such as the victims' status (for example the direct victims who were physically injured or those close to people killed in a terrorist attack), or the likelihood that what is said in an interview will constitute evidence to prove the offence. Other considerations of a more "human" type can also apply, such as the decision to interview a victim who is close to death or a victim considered as "emblematic".
3. In some cases **alternative investigative methods** to victim interviews can be deployed to gather evidence from victims systematically without complicating the proceedings too much (see box a).
4. The victims, who may see the fact that they are not interviewed as a lack of regard for them, must be **kept informed** of the choices made in this respect and the reasons for them. **The civil parties' lawyers and victims' groups** can play a valuable role in passing on information and explaining such decisions.

### **(a) The management of victim testimony in several public health cases in France**

In the case of the victims of excess doses of radiation at Épinal hospital (due to incorrect use of radiotherapy equipment on patients) and the Mediator case (involving the sale over a 30-year period of the drug of the same name which was later identified as causing heart disease), the investigations department of the Public Health division of the Judicial Court of Paris chose to limit the number of interviews of the thousands of victims in order to progress more efficiently with the classification of the criminal offences.

Nonetheless, "standard questionnaires" were gradually formalised and adapted to each case as it arose. These documents, designed to be easy to use and adapted to different victim profiles (including those that do not have a lawyer), were intended to gather evidence via systematised questions: over what period they took the drug, which doctor prescribed it, for what symptoms, etc. Specialised assistants, healthcare professionals seconded to work full time alongside the judges and prosecutors, played a valuable role in drawing up the questionnaires.

### **Good practices: FOCUS**

- A volume of interviews to be conducted, modulated according to the types of cases;
- Objective criteria for establishing which interviews to prioritise;
- Alternative investigative methods to victim interviews;
- Transparent communication with victims.

## **B. Guaranteeing the freedom to speak in a secure environment**

Victim interviews are a way of gathering evidence. It is therefore necessary to ensure victims feel free to speak and that the procedure is impartial, whilst taking account of any trauma suffered or the particular vulnerability of certain victims.

### **Challenges**

- To allow the victims to speak freely and authentically in line with the rules applicable to criminal evidence;
- To guarantee a secure setting and pay attention to victims' vulnerabilities.

### **Good practices identified**

5. Before each interview, efforts must be made **to ensure the victims are confident in the process**, which will mean, in particular, explaining how the interview will be conducted, reminding them of the principle of professional secrecy applicable to the investigators and the secrecy of the

pre-trial investigation. The specialised investigators in charge of these interviews may have been trained in the **techniques of hearing victims of sexual offences or minors**, whose particular methodologies may seem to be particularly suited to these cases. Other **experiments** with trying to reassure victims have been deployed in certain cases, such as judicial assistance dogs which can be brought into interviews to soothe and secure victims.

6. Generally speaking, the interviews must take the form of a **continuous free narration**, followed once it is complete by **targeted questions to classify the crimes**. Certain special cases can nevertheless require a **more formal framing of the victim's account**, which can raise questions as to impartiality (see box b).

#### **(b) The gathering of victim testimony in the "France Télécom" case in France**

In 2010 an investigation began into the conditions of management at the French company France Télécom and the dozens of suicides and attempted suicides associated with it.

35 departments all over the country were tasked with conducting the interviews, in order to avoid a single department imposing its reading of the case. One of the investigators, a police officer, reported the difficulty he faced interviewing victims who were sometimes very confused and, in certain cases, sedated. The officer set to work structuring what was said in the interviews better so that it could be used by the judge at a later stage. In particular he was able to draw on his experience working with minors, by organising preliminary interviews or "pre-discussions" – which were not recorded/transcribed – via email.

The lawyer of one of the accused seised the investigation appeals chamber (*chambre de l'instruction*), which oversees the decisions of the investigating judge, to have it rule certain acts invalid due to the supposed partiality of the investigator, the breach of the adversarial principle and the unfairness of the method used, considering that the victims had been coached to give their evidence. In the end the investigation appeals chamber found in favour of the police officer.

7. The possibility for the victim giving a deposition to benefit from **psychological support** after the interview would be a good thing, although generally limited resources do not allow for it. The interview can nonetheless be a moment when **victims can be guided towards specialist services** to deal with physical suffering (such as pain clinics) and psychological suffering.

#### **Good practices: FOCUS**

- Efforts to increase victims' confidence in the process and appropriate professional practices;
- Guarantee that victims can give a free narration before being asked specific questions;
- Psychological support or orientation towards specialist services.

## 2. The special case of the victims of war crimes, genocide or crimes against humanity committed abroad

- A. The work of identifying and gaining access to victims dependent on European international cooperation systems

The judicial systems of the European States may have to investigate war crimes, genocides or crimes against humanity committed abroad. The role of European and international cooperation is fundamental, not only for the identification of the victims, but also to organise the hearing of their testimony by European investigators.

### Challenges

- To identify the numerous victims living abroad and very often unable, for multiple reasons, to make themselves known to the judicial authorities;
- To meet all the logistical, security-related and diplomatic conditions to be able to organise victim interviews.

### Good practices identified

8. In war crimes, genocide or crimes against humanity cases, most often it is **journalists or NGOs** that work on **identifying victims** and **gathering the initial witness accounts** locally, due to the security situations in the countries or areas concerned and/or the impossibility for victims of reporting the crimes they have suffered (the Rwandan case may be considered an exception here, see box c). The work they do is fundamental and can lead to the **opening of judicial investigations**.
9. The justice system will nevertheless need to conduct **its own face-to-face interviews** for the purposes of the judicial proceedings. The **security environment** in the countries of residence of these victims generally means it is necessary to conduct the **interviews in Europe**. These conditions imply **negotiations** with the Ministries of Foreign Affairs and the Interior for the issuing of visas, which are often refused. The possibility of **conducting interviews in a third country** can get round the difficulty of obtaining visas, but requires the agreement of the other European countries involved with regard to the level of security in the country identified.
10. The participants highlighted the existence of **international cooperation schemes**, such as the United Nations **IIM** (International, Impartial and Independent Mechanism) set up in December 2016 to "assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011", or the **UNITAD** (Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL), effective as of 2018 to document the crimes committed by Da'esh in Iraq. These mechanisms can play an **important role in identifying victims and gathering their testimony** but their effectiveness is limited by institutional obstacles and delays. In addition to diplomacy and informal negotiations, the appointment of an **intermediary**, at European Union level for example, may facilitate cooperation and dialogue between the national judicial actors and international investigators.

### **(c) The organisation of victim interviews in the genocide of the Tutsis in Rwanda**

In Rwanda, the Victims and Witness Protection Program set up by the country's national public prosecution authority stands out as an exception. Previously investigating judges or police officers from the States dealing with the case had to travel to the country to identify the victims concerned and organise the gathering of their testimony. Now it is through this service that the victims of the 1994 genocide are identified and the interviews with them coordinated.

Depending on the agreements signed, the foreign investigators may be accompanied by local investigators to ensure Rwandan procedure is followed. Often young, these investigators can be valuable assets to the conduct of the interviews, in particular due to their understanding of the cultural codes at play. They can thus help to better transcribe certain victims' testimony and encourage them to speak freely.

11. **Cooperation between European judicial systems** on these aspects also appears fundamental, in particular as regards the coordination and pooling of testimony gathered. It is mainly structured through Eurojust, the European Union Agency for Criminal Justice Cooperation. The **opening of structural investigations "against X"** by several European countries is another example of the possibilities for judicial cooperation between national systems. The opening of such "proactive" cases, allows national investigation services to gather victims' testimony without always being sure of being able to connect it to a perpetrator who is a national of the country. The information gathered in one country can then be sent to others in order to **optimise the chances of identifying the suspected perpetrators and avoid victims having to be heard several times.**

#### **Good practices: FOCUS**

- Attention paid to the work done by journalists and NGOs involved in identifying victims;
- A security situation requiring that victims be heard on European soil or in third countries considered as safe;
- International cooperation mechanisms to which cases can be referred in parallel to negotiations intended to improve their effectiveness;
- Practices involving the pooling of testimony gathered via the European judicial cooperation system.

## B. Trauma that effects victims' ability to speak and the conduct of interviews

In these cases, interviewing victims involves particularities linked to the nature and timeframe of the crimes committed, victims' profiles and the extent of the trauma suffered, which must be taken into account when considering the objectives of the investigation.

### Challenges

- To guarantee victims can be heard in an empathetic setting favourable to the expression of their memories;
- To find a balance between the need to take account of the victim's trauma and the needs of the investigation.

### Good practices identified

12. The participants emphasised the **serious trauma** suffered by the victims of war crimes, genocide and crimes against humanity. Victim interviews can be an ordeal in any case, but all the more so in this type of case where the victims are giving their testimony in an unfamiliar setting, and recounting – sometimes for the first time – facts that may have taken place several years ago. Under these conditions, the interview must offer the victim the **best conditions in which to express their thoughts and memories**, even if certain cases appear to be particularly complex (see box d). Apart from the need to create an atmosphere of trust and empathetic listening, the advice given included the need to take the time to hear the full account before interrupting with questions, as well as to organise the inclusion of long breaks. As the **traumatic memory** can often be very **precise and chronological**, allowing the victim to talk without interrupting them allows them to testify in their own time at their own pace, but it is also an **investigative act**. After the free narration, questions will be asked in a funnel sequence to arrive at the classification of the alleged crimes.
13. The victim's account that is elicited must be **recorded as faithfully as possible**: to achieve this, the investigator or the investigating judge is accompanied by a clerk or other officer able to **transcribe the testimony** in direct speech. They may also be accompanied by an interpreter.
14. **Limiting the number of interviews** would appear to be generic good practice, in light of the risk of re-activating trauma and the difficulties involved in accessing victims who live abroad. **Filming the interviews** may be considered with this in mind, especially as it allows the court judging the case on the merits to see the silences, hesitations and emotions that punctuated the testimony. However, because the victim is often also a **witness to the crimes**, in certain cases it will be necessary for them to be heard again, in particular to test their account by repetition, to confront it with previous declarations or those of the accused.
15. Ideally, **psychological support** will be offered to the victim before, after and even during the interview. Although the judicial authorities are often faced with a lack of resources to provide such support, working in cooperation with associations or NGOs may be envisaged.

#### (d) Victims who stay silent: the case of the Yazidis

The participants highlighted the fact that many victims may refuse to talk. This may be the case for those who have lived under a dictatorial regime and still feel afraid of being under surveillance. Likewise, severe trauma can also be an obstacle that stops victims speaking out, as is illustrated by the case of the Yazidis.

This religious minority who mainly live in northern Iraq were subjected to a policy of systematic persecution by the Islamic State, recently recognised as a genocide by the United Nations. For many Yazidis, the despair is such that giving their testimony to the justice authorities has little sense for them. In these cases, it is necessary to take a strategic approach (although this may not suffice), which will involve, for example, choosing interpreters or lawyers who are familiar to the victim, as well as ensuring a secure and empathetic setting.

16. In the absence of very effective systems of protection for victims who come forward to give their testimony, it is important **not to facilitate the possible taking of reprisals** against those who join criminal proceedings as civil parties. The use of the lawyer's address to contact the victim or the non-inclusion of email addresses in the deposition are just some of the good practices to adopt in this respect.
17. Finally, the scale and seriousness of the crimes committed against the victims can also **indirectly affect the investigating judges and or investigators in charge of the case**. Offering them psychological assistance would be a way of limiting any indirect psychological harm and therefore guaranteeing the conditions for an impartial investigation.

#### Good practices: FOCUS

- Optimum conditions for hearing traumatic memories, often expressed chronologically;
- Testimony recorded as faithfully as possible;
- Repeat interviews limited to cases where it is absolutely necessary;
- Psychological support offered to accompany the interview;
- Possibility of psychological support offered to judges and investigators.

#### Useful resources:

- [European Directive 2012/29](#)



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