



Published on 28 April 2021 by **Thomas Caveng**, Legal Translator / Marketing Director

[t.caveng@soulier-avocats.com](mailto:t.caveng@soulier-avocats.com)

Tel.: + 33 (0)4 72 82 20 80

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## French Supreme Court puts a final end to the Barbarin case

It is with immense satisfaction that our founding partner **André Soulier** learnt that the appeal filed by certain members of the association *La Parole Libérée* against the January 30, 2020 decision of the Lyon Court of Appeals of Lyon to acquit Cardinal Barbarin<sup>[1]</sup>, former Archbishop, had been dismissed.

It is fortunate and salutary to see that the *Cour de cassation* (French Supreme Court) recalled the importance of the concept of personality and the strict interpretation of criminal law.

In a book entitled “*Mes mille et une vies*” published by Cherche Midi in early February 2021<sup>[2]</sup>, André Soulier wrote:

“The question then arises as to how a man can be convicted for not having substituted himself for another man, a direct victim of the actions of which Bernard Preynat is accused, whereas the claimant was in full possession of his mental and physical abilities – not being a minor nor a vulnerable or endangered person – to refer the matter to the public prosecutor of Lyon.”

Any other interpretation of the law would have been a danger to our freedom.

We know that the question of freedom on other subjects is on the agenda of our society.

The communiqué of the Cour de cassation is reproduced below and an unofficial courtesy English translation follows.



COMMUNIQUÉ

## Non-dénonciation d'agressions sexuelles sur mineurs de quinze ans (Texte applicable avant la loi du 14 mars 2016)

Mercredi 14 avril 2021 - Pourvoi P 20-81.196  
Rejet du pourvoi

La Cour de cassation apporte des précisions importantes sur les conditions dans lesquelles le délit de non-dénonciation d'agression sexuelle sur mineur de quinze ans peut être constitué, en particulier lorsqu'une personne acquiert la connaissance de faits anciens ou que l'absence de dénonciation est elle-même ancienne.

### L'article 434-3 du code pénal, dans sa version applicable à cette affaire

Une personne ayant eu connaissance de privations, de mauvais traitements ou d'atteintes sexuelles infligés à un mineur de quinze ans ou à une personne qui n'est pas en mesure de se protéger en raison de son âge, d'une maladie, d'une infirmité, d'une déficience physique ou psychique ou d'un état de grossesse commet un délit si elle n'en informe pas les autorités judiciaires ou administratives.

### Les faits et la procédure

En 2017, plusieurs victimes ont fait citer un évêque devant le tribunal correctionnel pour, notamment, ne pas avoir dénoncé les agressions sexuelles commises par un prêtre dans les années 1980 et 1990 et dont l'évêque a eu connaissance en 2010, puis en 2014 et 2015.

S'agissant des faits portés à sa connaissance en 2010, l'évêque a été relaxé par la cour d'appel en raison de la prescription de l'action publique.

S'agissant des faits portés à sa connaissance en 2014 et 2015, l'évêque a été relaxé en l'absence de caractérisation de l'infraction. La cour d'appel a considéré, d'une part, qu'il n'existait plus d'obligation de dénonciation car les agressions commises dans les années 80 et 90 étaient elles-mêmes prescrites, d'autre part, que les victimes, âgées de 34 à 36 ans, insérées au plan familial, social et professionnel, sans maladie ou déficience les empêchant de porter plainte, étaient en mesure de dénoncer les faits.

### La décision de la Cour de cassation

#### S'agissant des faits dont l'évêque a eu connaissance en 2010

Selon une jurisprudence déjà établie, le délit de non-dénonciation d'agression sexuelle sur mineur de quinze ans, tel qu'il était défini dans la version du texte applicable à l'époque, était commis de façon instantanée, dès que la personne avait connaissance des faits et qu'elle ne les dénonçait pas. Ce délit était prescrit au bout de trois ans, délai alors applicable, à compter de la date à laquelle la personne avait connaissance des faits.

Dès lors, le délit de non-dénonciation des faits portés à la connaissance de l'évêque en 2010 était déjà prescrit lors du premier acte d'enquête de 2016.

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Contact presse : Guilborme Fradin / Tél. : +33 (0)1 44 32 65 77 / +33 (0)6 61 62 51 11 / couriel : [scm.courdecassation@udf.lcg](mailto:scm.courdecassation@udf.lcg)

#### S'agissant des faits dont l'évêque a eu connaissance en 2014 et 2015

Question 1 : L'obligation de dénonciation cesse-t-elle en cas de prescription des faits dénoncés ?

Réponse : Non

L'obligation de dénonciation persiste même si les mauvais traitements paraissent prescrits au moment où celui qui a l'obligation de les dénoncer en prend connaissance.

En effet, l'article 434-3 du code pénal n'impose pas que les agressions à dénoncer ne soient pas prescrites.

De plus, les règles relatives à la prescription sont complexes et ne peuvent être laissées à l'appréciation de la personne qui reçoit l'information et qui peut, en particulier, ignorer l'existence d'un acte qui serait de nature à interrompre cette prescription.

Question 2 : L'obligation de dénonciation cesse-t-elle si les victimes sont en état de dénoncer les faits ?

Réponse : Oui

Selon un principe général du droit pénal, la loi qui crée une infraction doit être interprétée de manière stricte. Par ailleurs, il n'existe pas, en droit pénal, de principe général qui oblige une personne ayant connaissance d'une infraction à la dénoncer.

Il faut donc interpréter de manière stricte les dispositions, peu nombreuses, qui créent l'obligation de dénonciation, en tenant compte de la raison pour laquelle elle a été instituée.

L'article 434-3, qui est inséré dans une section du code pénal intitulée « Des entraves à la saisine de la justice », a pour but de lever l'obstacle aux poursuites pouvant résulter de ce que l'âge ou la fragilité de la victime l'ont empêchée de dénoncer les faits.

Ainsi, lorsque cet obstacle est levé, l'obligation de dénonciation disparaît.

Par conséquent, dans cette affaire, la cour d'appel a pu retenir que l'évêque n'était pas tenu de dénoncer les agressions, car, en 2014 et 2015, les victimes, âgées de 34 à 36 ans, insérées au plan familial, social et professionnel, sans maladie ou déficience, étaient en mesure de porter plainte. Ce seul motif suffit à justifier la relaxe de l'évêque.

Le pourvoi formé par les parties civiles est donc rejeté.

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*Communiqué*

**Failure to report sexual assault on minors under fifteen years of age**

**(Text applicable before the law of March 14, 2016)**

Wednesday, April 14, 2021 - Appeal No. P 20-81.196

Dismissal of the appeal

**The *Cour de Cassation* (French Supreme Court) provides important clarifications on the conditions under which the offence of failure to report sexual assault on a minor under fifteen years of age can be established, in particular when a person acquires knowledge of old facts or when the failure to report itself dates back to a long time ago.**

**Article 434-3 of the French Criminal Code, as applicable at the material time**

Any person who, having knowledge of mistreatment, deprivations, or sexual assaults or abuses inflicted upon a minor under fifteen years of age or upon a person unable to protect himself/herself due to his/her age, sickness, disability, physical or psychological impairment or pregnancy, commits an offense if he/she fails to report this to the administrative or judicial authorities.

**Facts and procedure**

In 2017, several victims had a bishop summoned before the criminal court for, among other things, failing to report sexual assaults committed by a priest in the 1980s and 1990s of which the bishop became aware in 2010, and then in 2014 and 2015.

With regard to the facts brought to his knowledge in 2010, the bishop was acquitted by the Court of Appeals because the prosecution was time-barred.

With regard to the facts brought to his knowledge in 2014 and 2015, the bishop was acquitted because the offence was not characterized. The Court of Appeals considered, on the one hand, that there was no longer an obligation to report because the assaults committed in the 1980s and 1990s were themselves time-barred, and on the other hand, that the victims, aged between 34 and 36, socially and professionally integrated, with no illnesses or deficiencies preventing them from lodging a complaint, were in a position to report the facts.

**The decision of the *Cour de Cassation***

**Regarding the facts of which the bishop became aware in 2010.**

According to an established case-law, the offence of failure to report sexual assault on a minor of fifteen years of age, as defined in the Article applicable at the material time, was committed instantly, as soon as the person had knowledge of the facts and did not report them. The applicable limitation period was three years from the

date on which the person had knowledge of the facts.

Therefore, the prosecution of the offence of failure to report the facts brought to the attention of the bishop in 2010 was already time-barred at the time of the first investigations in 2016.

### **Regarding the facts of which the bishop became aware in 2014 and 2015**

*Question 1:* Does the obligation to report cease if the reported facts are time-barred?

*Answer:* No

The obligation to report continues to exist even if the mistreatments appear to be time-barred at the time the person who has the obligation to report such facts becomes aware thereof.

Indeed, article 434-3 of the [French] Criminal Code does not require that the assaults to be reported must not be time-barred.

Moreover, the rules governing statutes of limitations are complex and cannot be left to the discretion of the person who receives the information and who may, in particular, be unaware of the existence of an action which would be likely to interrupt the applicable statute of limitations.

*Question 2:* Does the obligation to report cease if the victims are able to report the facts?

*Answer:* Yes

According to a general principle of criminal law, the law that creates an offence must be interpreted in a strict manner. In addition, there is no general principle in criminal law that obliges a person who has knowledge of an offence to report it.

The few provisions that create the obligation to report must therefore be interpreted strictly, taking into account the reason for which they were instituted.

Article 434-3, which is incorporated in a Section of the [French] Criminal Code entitled "*Obstacles to bringing a case to court*", is intended to remove the obstacle to prosecution that may result from the fact that the age or fragility of the victim has prevented him/her from reporting the facts.

As such, when this obstacle is removed, the obligation to report ceases.

Therefore, in the case at hand, the Court of Appeals was able to find that the bishop was not obliged to report the assaults because, in 2014 and 2015, the victims, aged between 34 and 36, integrated on the family, social and professional levels, without illness or deficiency, were able to file a complaint. This reason alone is sufficient to justify the acquittal of the bishop.

The appeal lodged by the civil parties is, therefore, dismissed.

[1] See our article entitled [Acquittal of Cardinal Philippe Barbarin: A victory for Soulier Avocats](#) published on our Blog in January 2020

[2] See our [news on the upcoming release of the book authored by our founding partner André Soulier entitled “Mes mille et une vies”](#) published in January 2021

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