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## COMMITTEE OF THE PARTIES

### Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (T-ES)

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#### **Explanatory report :**

#### **“Sexual abuse of children in the circle of trust”**

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## I. INTRODUCTION

- (1) The **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** [CETS No. 201, hereinafter referred to as “the Convention”] was opened for signature in Lanzarote (Spain) on 25 October 2007, on the occasion of the 28th Conference of European Ministers of Justice. The Convention entered into force on 1 July 2010.
  
- (2) By adopting the Convention, the Council of Europe considered that every child has the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the State. The Council therefore looked to achieving a greater unity between its members in this field. It observed that the sexual exploitation of children, in particular child pornography and prostitution, and all forms of sexual abuse of children, including acts which are committed abroad, are destructive to children’s health and psycho-social development. It observed that sexual exploitation and sexual abuse of children have grown to worrying proportions at both national and international level, in particular as regards the increased use by both children and perpetrators of information and communication technologies (ICTs), and that preventing and combating such sexual exploitation and sexual abuse of children require international co-operation. The Council thus considered that the well-being and best interests of children are fundamental values shared by all member States and must be promoted without any discrimination.
  
- (3) According to Article 1 the purposes of the Convention are: a) to prevent and combat sexual exploitation and sexual abuse of children, b) protect the rights of child victims of sexual exploitation and sexual abuse, and c) promote national and international co-operation against sexual exploitation and sexual abuse of children. In order to ensure effective implementation of its provisions by the Parties, Chapter X of the Convention provides for a specific monitoring mechanism in the form of the Committee of Parties (hereinafter “the Lanzarote Committee” or “the Committee”), which shall be composed of representatives of the Parties to the Convention, cf. Article 39 (1). According to Articles 40 (1) and 40 (2) of the Convention, the Lanzarote Committee shall monitor the implementation of the Convention, facilitate the collection, analysis and exchange of information, experience and good practice between the States to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children. The Lanzarote Committee shall also, where appropriate, facilitate the effective

use and implementation of the Convention, including the identification of any problems. The Committee shall express an opinion on any question concerning the application of the Convention and facilitate the exchange of information on significant legal, policy or technological developments, cf. Article 40 (3).

## **II. THEMATIC MONITORING**

- (4) During its 2<sup>nd</sup> meeting, on 29-30 March 2012, the Lanzarote Committee adopted its Rules of Procedure (hereinafter “the RoP”) pursuant to Article 39 (3) of the Convention. According to Rule 24 of the RoP the monitoring of the implementation of the Convention in the Parties shall be based on a procedure divided by rounds, each round concerning a theme decided by the Lanzarote Committee or any other approach deemed appropriate by the Committee within the scope of the Convention. The Committee will determine the length of each monitoring round in light of the themes selected and the provisions of the Convention to be monitored.
- (5) The monitoring round will be initiated by addressing a questionnaire on the implementation of the relevant provisions of the Convention with respect to the selected theme. All Parties for which the Convention has entered into force within three months from the adoption of the questionnaire shall undergo the monitoring round. Parties, for which the Convention enters into force three months after the adoption of the questionnaire, shall join in the following monitoring round. In conformity with Rule 26 (3) of the RoP, Parties shall submit their replies in one of the official languages of the Council of Europe to the Secretariat within the time limit set by the Lanzarote Committee. The replies shall be detailed, answer all questions and contain all relevant reference texts. The replies shall be made public unless otherwise requested by the Party concerned.
- (6) Based on the information collected through the questionnaire, and if need be by any other means the Lanzarote Committee deems necessary, the Committee will, according to Rule 27 (1) and (2) of the RoP, adopt reports on the implementation of the Convention with respect to the selected theme for each party. Each Party will receive a draft copy of its implementation report before it is sent to the Lanzarote Committee. This will allow the Party to comment on the draft and clarify any misunderstandings before the draft report is sent to the Lanzarote Committee for examination and adoption.

### III. THE PURPOSE OF THE QUESTIONNAIRE

- (7) As elaborated in the Explanatory Report to the Lanzarote Convention, see para. 3, there are no statistics on the total amount of sexual abuse of children in Europe. It is however well known that there is a considerable discrepancy between the number of reported cases of sexual abuse of children to the police and social services and actual cases. It is also recognised that children usually experience extreme difficulties in telling anyone about being sexually abused, because very often they are violated by a person in their close social or family circle or because they are threatened. Thus, the available data shows that the majority of sexual abuse against children in Council of Europe countries is “committed within the family framework, by persons close to the child or by those in the child’s social environment”. Furthermore, research has demonstrated, that sexual abuse of this kind is “one of the most frequent and most psychologically damaging form of child sexual violence with long-lasting consequences for the victim”, see Explanatory Report, para. 125.
- (8) International instruments have up until now mainly had regard to facts committed for commercial aims in laying down rules for the protection of children (prostitution, child pornography, child trafficking). However, as discussed in the Explanatory Report, para. 48, experience shows that this approach is too narrow for insuring protection of children against the abuse that any adult can inflict on their physical and mental well-being. Children are just as easily victims within the family as in their close social surroundings. Such cases, in which the commercial aspect is, in the majority of cases, absent are nevertheless the most frequent and statistics demonstrate that the “perpetrators of child sexual abuse are usually persons close to the victim (parents, grandparents, neighbours, teachers etc.)”
- (9) Bearing this research and data in mind, the Lanzarote Committee decided during its 2<sup>nd</sup> meeting, pursuant to Rule 24 (1) of the RoP, that the focus of the first evaluation round would be the theme: “Sexual abuse of children in the circle of trust”. This theme includes *inter alia* issues related to facilitating disclosure of the “silent crime”; detecting the signs of sexual abuse; improving reporting of suspicion of abuse by the relevant professional sectors in contact with the child victim; avoiding secondary victimisation of the child; how to best protect the interests of the child before, during and after investigation and/or judicial proceedings.

- (10) By directing its first evaluation round to this theme-specific issue, necessary data on the scope and substance of individual provisions of the Convention, having a nexus to the theme in question, will be compiled creating a general framework for future assessment and monitoring by the Committee. The Questionnaire is formulated with this purpose in mind but also against the background of a more general evaluative questionnaire presented to the Parties at the same time.

#### **IV. THE SCOPE OF THE QUESTIONNAIRE**

##### **A. General interpretative framework in light of the purposes of the Convention**

- (11) As mentioned above, para. 3, the purposes of the Convention are threefold according to Article 1: a) to prevent and combat sexual exploitation and sexual abuse of children, b) protect the rights of child victims, and c) promote national and international co-operation in this field. A comprehensive evaluation of sexual abuse of children in the circle of trust must, as regards its interpretative framework, take account of this three dimensional aspect of the Convention which necessarily entails creative solutions to effectively engage the destructive phenomenon of child sexual abuse and exploitation.
- (12) The scope of the “circle of trust” in cases of child sexual abuse must therefore not be construed narrowly with the effect of limiting the reach of the evaluative and monitoring process of the Committee. The concept must however have defined parameters for it to have practical meaning in the implementation of the Convention. Conceptual issues must therefore be dealt with at the outset in drafting a questionnaire for dealing with this issue in an effective manner in conformity with the purposes of the Convention.

##### **B. Conceptual issues**

- (13) Looking to the discussion of Article 18 (b) of the Convention in the Explanatory Report, cf. para. 123 and 124, the circle of trust encompasses at least recognised positions of trust, authority or influence over the child. Relationships of trust normally exist between the child and his or her parents, family members, foster or adoptive parents, but also to others who have parental or caretaking functions; or educate the child; or provide emotional, pastoral, therapeutic or medical care; or employ or have financial control over the child; or otherwise exercise control over

the child. Volunteers who look after children in their leisure-time or during voluntary activities, for example in holiday-camps or in youth organisations, can also be viewed as holding positions of trust. The “circle of trust” must thus be understood to deal with situations where a relationship of trust has been established with the child, where the relationship occurs within the context of a professional activity (care providers in institutions, teachers, doctors etc.) or to other relationships, such as where there is unequal physical, economic, religious or social power. Relationships of trust can thus in general be created when persons have, due to voluntary activities or professional capacities, regular contacts with children. Persons that fall under the “circle of trust” in this sense can therefore include those who work with children in education, health, social protection, judicial and law enforcement sectors as well as those who deal with children in the fields of sport, culture and leisure activities, cf. para. 54 of the Explanatory Report.

- (14) It must also be emphasised that an examination of sexual abuse of children in the circle of trust is not limited to the situations where the perpetrator is himself in a relationship of trust to the victim, but is also directed towards circumstances where persons, close to the victim, may have knowledge of such acts and may have an opportunity to report them or take an active part in their future prevention. The “circle of trust” can therefore be categorised in essence as a *zone of vulnerability* for child victims of sexual abuse and sexual exploitation, necessitating the implementation of special mechanisms of protection and prevention.

## **V. ANALYSIS OF THE CONVENTION PROVISIONS**

- (15) The Lanzarote Convention includes a Preamble and XIII Chapters. In this part of the Commentary, an overview will be given of the provisions of the Convention and a detailed elaboration on which provisions should form a part of a questionnaire, directed to the Parties, dealing with the theme: “Sexual abuse of children in the circle of trust“.

### **A.Purposes, non-discrimination principle and definitions**

- (16) Chapter I describes the *purposes* of the Convention, sets forth a *non-discrimination principle* and provides for *definitions* (Articles 1-3). The provisions of the chapter are discussed in paras. 37-51 of the Explanatory Report. In formulating a theme-specific questionnaire dealing with sexual abuse of children in the circle of

trust only Article 2, the non-discrimination principle, seems a necessary focus-point of inquiry. The argument for the inclusion of Article 2 is further developed in Chapter A of the questionnaire preceding question 4. Article 1, on the purposes of the Convention and Article 3 on definitions, are general in nature and are more applicable in the drafting of a more general questionnaire on the situation in the Parties.

## **B.Preventive measures**

- (17) Chapter II contains *preventive measures* to be implemented at the national level. The provisions of the chapter are discussed in detail in paras. 52-75 of the Explanatory Report. According to para. 52 of the Report, these measures include policies or strategies to prevent the sexual exploitation and sexual abuse of children, knowledge of the possible signals which could be given by children, as well as the provision of, and easy access to, information about sexual exploitation and sexual abuse, their effects, their consequences and how best to combat them.
- (18) Article 5 in Chapter II deals with *recruitment, training and awareness of persons* working in contact with children. Article 6 in the same chapter then provides for programs of education for children. Both provisions must necessarily form a part of a questionnaire dealing with child sexual abuse in the circle of trust. The argument for the inclusion of Articles 5 and 6 is further developed in Chapter B of the questionnaire preceding questions 5-8. As stated in the Questionnaire, these questions have their aim to collect information on policies and strategies related to sector-specific awareness of persons working in contact with children, and thus forming a part of the their circle of trust, and of the extent of their training and knowledge about sexual exploitation and sexual abuse of children. Furthermore, the questions are directed towards analysing the form and content of internal law regarding the conditions for professional accession for persons having close contact with children in their work.
- (19) Article 7 provides that the Parties shall ensure that persons who fear that they might commit any of the offences established in accordance with the Convention may have access, where appropriate, to effective *intervention programmes or measures* designed to evaluate and prevent the risk of offences being committed. In this respect, it is important to compile information on whether the Parties have implemented measures that provide intervention programmes of this nature for

those individuals that are considered to form a part of a child's circle of trust. Question 9 of the questionnaire is formulated with this argument in mind.

- (20) Article 8 deals with *awareness-raising campaigns directed to the general public*. The provision is general in nature. It is directed towards informative campaigns on the problem of sexual abuse and sexual exploitation of children in an abstract manner. However, it is important to compile information on whether the Parties have implemented policies or strategies in this area where the focus is directed especially towards the risks and realities of sexual abuse of children in the circle of trust in light of the prevalence of this problem, see paras. 7-8 above. Question 10 of the questionnaire is formulated with this in mind.
- (21) Article 9 of the Convention provides for participation of children, the private sector, the media and civil society in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children, see further paras. 67-75 of the Explanatory Report. It is clear that this provision envisages a holistic implementation of policies and strategies dealing with all the facets of the problem of sexual abuse and exploitation of children. A general type questionnaire is therefore more suitable for the evaluation of the status within the Parties in this regard. Formulating narrow questions in this respect might create the appearance that the implementation of Article 9 is satisfied where the actors involved are focused only on child sexual abuse in the circle of trust whereas the problems, inherent within the private sector, the media and civil society, are more general in nature as the text of the provision manifests. It is thus proposed that questions dealing with Article 9 not form a part of the theme-specific questionnaire dealing with the circle of trust.

### **C.Specialised authorities and co-ordinating bodies**

- (22) Chapter III of the Convention deals with *specialised authorities and co-ordination bodies*. Article 10 provides in more detail for the national measures of co-ordination and collaboration to be implemented in this regard. The first paragraph is concerned to promote a "multi-agency" and "multidisciplinary approach", cf. paras. 76 and 77 of the Explanatory Report, by requiring the Parties to take measures to ensure co-ordination on a national and local level between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children. The second paragraph, item (a), furthermore stipulates that each party shall take the necessary legislative or other measures to set up or designate independent competent

national or local institutions in this regard, ensuring that they are provided with specific resources and responsibilities. The obligations provided for in Articles 10 (1) and 10 (2) (a) do not in substance necessarily make a distinction on the grounds of whether the problem being addressed is sexual abuse within or outside the child's circle of trust. A general type questionnaire is therefore more suitable for the evaluation of the status within the Parties in this regard.

- (23) Article 10 (2) (b) provides that each party shall take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points at the national or local levels and in collaboration with civil society for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of data protection. This provision must be considered in light of the provisions of Chapter VIII on recording and storing of data, addressed in Chapter H of this Commentary. Bearing in mind, that available data shows that the majority of sexual abuse against children in Council of Europe countries is committed within the family framework, by persons close to the child or by those in the child's social environment, cf. para. 7 above, it is important to compile information on whether Parties have taken measures for data collection or focal points that are specially designated to observing and evaluating child sexual abuse in the circle of trust. Therefore, Chapter C and question 11 of the Questionnaire are formulated with this purpose in mind.

#### **D. Reporting suspicion of sexual abuse, helplines and assistance to victims**

- (24) Chapter IV of the Convention deal with *protective measures and assistance to victims*. Article 12, which provides for measures on reporting suspicions of sexual exploitation or sexual abuse, is especially relevant for the theme here in question. As explained in paras. 89-90 of the Explanatory Report, under Article 12 (1) Parties must ensure that professionals normally bound by rules of professional secrecy, (such as, for example, doctors and psychiatrists) have the possibility to report to child protection services any situation where they have reasonable grounds to believe that a child is the victim of sexual exploitation or abuse. The aim of this provision is to ensure the protection of children rather than the initiation of a criminal investigation. Therefore, the provision provides for the reporting possibility to child protection services. This does not exclude the possibility provided in certain States to report to other competent services. Each Party is responsible for determining the categories of professionals to which

Article 12 (1) applies. The phrase “professionals who are called upon to work in contact with children” is intended to cover professionals whose functions involve regular contacts with children, as well as those who may only occasionally come into contact with a child in their work. According to Article 12 (2) Parties are required to encourage any person who has knowledge or suspicion of sexual exploitation or abuse of a child to report to the competent services. It is the responsibility of each Party to determine the competent authorities to which such suspicions may be reported. These competent authorities are not limited to child protection services or relevant social services. The requirement of suspicion “in good faith” is aimed at preventing the provision being invoked to authorise the denunciation of purely imaginary or untruthful facts carried out with malicious intent, cf. Explanatory Report, para. 91. Chapter D of the Questionnaire, questions 12 and 13, are formulated with Articles 12 (1) and (2) in mind.

(25) Article 13 covers *helplines*. It provides that each Party shall take the necessary legislative or other measures to encourage and support the setting up of *information services*, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity. According to the Explanatory Report, para. 92, this provision is particularly intended to apply to persons who may be confronted with a situation of sexual exploitation or sexual abuse and it could happen that persons to whom the child is entrusted do not know how to react. Moreover, child victims may also seek to obtain support or advice without knowing whom to turn to. This emphasises the importance of the development of means whereby persons can safely reveal that they know about or have been victims of sexual abuse or sexual exploitation, or simply talk to a person outside their usual environment. It is therefore clear that the setting up of such information services, that can create a zone of confidentiality or have due regard for the caller’s anonymity, can be an important step in the fight against child sexual abuse within the circle of trust, where both the victim and possible witnesses are in close contact with perpetrators. Question 14 in Chapter E of the Questionnaire is formulated with Article 13 in mind.

(26) Article 14 provides Parties to take measures for the *assistance of victims*. It must be interpreted closely in light of the principles enunciated in Article 11 on the necessity for a multidisciplinary approach to assisting and protecting children victims of sexual offences as well as their close relatives, families or anyone in whose care they are placed. These provisions are especially relevant for the theme here in question in light of the fact that the majority of sexual abuse against children in Council of Europe countries is committed within the family

framework, by persons close to the child or by those in the child's social environment, see para. 7 above. Therefore, questions 15-19 in Chapter E of the Questionnaire are formulated with Articles 11 and 14 in mind.

## **E. Intervention programmes or measures**

(27) Chapter V of the Convention provides for *intervention programmes or measures* targeting sex offenders designed to prevent repeat offences against children. Article 15 outlines general principles in this regard and Article 16 lists the recipients of such programmes. Article 17 subsequently provides that recipients shall be fully informed of the reasons for the proposal and consent to the programme or measure in question in full knowledge of the facts. The provisions of Chapter V do not, in and of themselves, have a special or explicit circle of trust component that require the formulation of direct theme-specific questions in the Questionnaire discussed here, although the implementation of these provisions is an important step for the prevention of repeated offences. Therefore, questions directed to the Parties regarding the implementation of Chapter V should be formulated in a more general questionnaire.

## **F. Substantive Criminal Law**

(28) Articles 18-29 in Chapter VI of the Convention deal with substantive criminal law. It is reiterated that an examination of the general situation within the Parties is not envisaged in this questionnaire, as it is theme-specific dealing with child sexual abuse in the circle of trust. However, it is necessary to focus on those provisions of the chapter, namely Articles 18 (1) (b), 24, 25 (5), 26, 27 (3) (b) and 28 (c and d) that deal, directly or indirectly, with criminalising and sanctioning conduct within the child's circle of trust and thus falls under the scope of the questionnaire. Chapter F, questions 20-27, of the Questionnaire is formulated with this purpose in mind. It is necessary to provide an explanation of the provisions dealt with in this part of the Questionnaire and their relations to the individual questions directed to the Parties.

(29) Articles 18 (1) (b) (second and third indent) provide for the obligation of the Parties to take the necessary legislative or other measures to ensure that intentionally engaging in sexual activities with a child where *abuse is made of a recognised position of trust*, authority or influence over the child, including within the family; or abuse is made of a particularly vulnerable situation of the child,

notably because of a mental or physical disability or a situation of dependence. Article 24 deals with aiding or abetting and attempt to intentionally commit the offences established according to the Convention, including Articles 18 (1) (b) (second and third indent). These offences form the paradigm examples of abuse in the child's circle of trust. The purpose of questions 20-22 is therefore to compile information on whether and to what extent the Parties have complied with their obligations to criminalise these offences.

(30) Article 25 covers rules on *jurisdiction*. According to paragraph 5 of the Article, each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to limit the application of paragraph 4 of Article 25, with regard to offences established in accordance with Article 18 (1) (b) (second and third indents), to cases where its national has his or her habitual residence in its territory. Article 25 (4), referred to in paragraph 5, states that for the prosecution of the offences established in accordance with Articles 18, 19, 20 (1) (a) and 21 (1) (a and b) of the Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as offences committed by one of its nationals is not subordinated to the condition that the acts are criminalised at the place where they were performed. The provision thus eliminates, in relation to the most serious offences in the Convention, the usual rule of dual criminality. It is therefore considered to represent an important element of added value in the Convention and a major step forward in the protection of children from certain acts of sexual exploitation and abuse, see para. 171 of the Explanatory Report. Article 25 (5) however provides the Parties with the right to limit the abolition of the rule on dual criminality in cases of offences under Articles 18 (1) (b) (second and third indent) to cases where a person actually has his or her habitual residence in the State of nationality and has travelled to the country where the offence has been committed, see further para. 172 of the Explanatory Report. The purpose of question 23 in the Questionnaire is to provide an overview of whether Parties have decided to reserve their right to limit application of Article 25 (4) in accordance with Article 25 (5).

(31) Article 26 deals with *corporate liability*. According to paragraph 2 of the Article each party shall take the necessary legislative or other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person, who has a leading position within the legal person, has made possible the commission of an offence established in accordance with the

Convention for the benefit of that legal person by a natural person acting under its authority. Bearing in mind, that sexual abuse of children within a relationship of trust can take place within professional activities organised by legal persons, question 24 aims to collect information on whether Parties have taken the necessary legislative or other measures to ensure that legal persons can be held liable in the situation described in Article 26 (2).

- (32) Article 27 covers *sanctions and measures* forming the system of punishment and preventive actions taken as a consequence of committed offences established in accordance with the Convention. According to paragraph 3 (b) of the Article, each party shall take the necessary legislative or other measures to deny the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which an offence was committed. As offences of this nature necessarily involve a violation of a relationship of trust, as defined in paras. 13 and 14 above, question 25 seeks to compile information on the whether Parties have complied with this obligation.
- (33) Article 27 (4) of the Convention provides that each party may adopt measures in relation to perpetrators that include withdrawal of parental rights or monitoring or supervision of convicted persons. The former measure could be taken, for instance, in relation to a person who was removed from the family environment as an assistance measure to the victim in accordance with Article 14 (3) of the Convention, see para. 191 of the Explanatory Report. Question 26 is formulated with this provision in mind.
- (34) Article 28 deals with *aggravating circumstances* in the determination of sanctions. According to items (c) and (d) of the Article, each party shall take the necessary legislative or other measures to ensure that where the offence was (item c) committed against a particularly vulnerable victim or (item d) by a member of the family, a person cohabiting with the child or a person having abused his or her authority, such circumstances shall be taken into consideration as aggravating circumstances in the determination of sanctions to the offences established in accordance with the Convention, in so far as they do not already form a part of the constituent elements of the offence. Examples of vulnerability according to item (c) include where the child is physically or mentally disabled or socially handicapped, children without parental care, such as street children or unaccompanied immigrant minors; children of a very young age; children in a state of intoxication due to influence of drugs or alcohol, see para. 198 of the Explanatory Report. The latter circumstance according to item (d) would cover

various situations where the offence has been committed within the circle of trust, see para. 13 and 14 above, and further para. 199 of the Explanatory Report. Question 27 of the Questionnaire is thus directed to analysing the internal law and other measures of the Parties in relation to Articles 28 items (c) and (d).

## **G. Investigation, prosecution and procedural law**

- (35) Chapter VII of the Convention deals with investigations, prosecution and procedural law. In a theme-specific questionnaire such as the one considered here, questions must not be directed towards collecting general information on whether and to what extent Parties have introduced necessary legislative or other measures to implement the general principles of a protective approach towards victim provided by Article 30. The same applies to other provisions of the chapter that are general in nature and deal with the processing of cases of sexual exploitation and sexual abuse irrespective of whether they constitute a part of the victim's circle of trust. The formulation of questions 28-35 in Chapter G of the Questionnaire are therefore directed towards analysing some theme-specific issues pertaining to whether the investigative, prosecutorial and court stages of proceedings take adequate account of the special nature of cases that have a circle of trust component. As in the preceding chapter of this Commentary, it is necessary to provide an explanation of the provisions dealt with in this part of the Questionnaire and their relations to the individual questions directed to the Parties.
- (36) Article 30 of the Convention establishes the *general principles* that each party shall ensure that the investigation and criminal proceedings are carried out in the best interests of the child and respecting the rights of the child, cf. paragraph 1, and shall adopt a protective approach towards victims, cf. paragraph 2. Thus the principles manifest the development towards a *child-friendly and protective procedure* for child victims in criminal proceedings that although are formulated so as not to violate the rights of the accused and the principle of a fair trial set out in Article 6 of the European Convention on Human Rights, see para. 213 of the Explanatory Report. The purpose of questions 28 and 29 of the Questionnaire is to flesh out to what extent the Parties have taken the necessary measures to comply with these principles, especially with regard to situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her?

- (37) Article 31 provides for *general measures of protection* during investigations and criminal proceedings, having their aim to create child-friendly procedures, cf. para. 219 of the Explanatory Report. According to paragraph 4, each Party shall provide for the possibility for the *judicial authorities to appoint a special representative for the victim* when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim. The provision thus deals with the situation in cases of sexual abuse within the family, in which the holders of parental responsibility, while responsible for defending the child's interests, are involved in some way in the proceedings in which the child is a victim (where there is a "conflict of interest"). In such cases, the provision makes it possible for the child to be represented in judicial proceedings by a special representative appointed by the judicial authorities. This may be the case when, for example, the holders of parental responsibility are the perpetrators or joint perpetrators of the offence, or the nature of their relationship with the perpetrator is such that they cannot be expected to defend the interests of the child victim with impartiality, see para. 227 of the Explanatory Report. Question 30 of the Questionnaire is directed towards examining whether the Parties have complied with this provision that has a clear circle of trust component.
- (38) According to Article 32 of the Convention, each party shall take the necessary legislative or other measures to ensure that investigations or prosecutions of offences established in accordance with this Convention shall not be dependent upon the *report or accusation made by a victim*, and that the proceedings may continue even if the victim has withdrawn his or her statements. This provision is designed to enable the public authorities to prosecute offences established in accordance with the Convention without the victim having to file a complaint. The purpose is to facilitate prosecution, in particular by ensuring that victims do not withdraw their complaints because of pressure or threats by the perpetrators of offences, see para. 230 of the Explanatory Report. It is clear that the situation envisaged by this provision has a clear nexus to circumstances addressed within the theme of this questionnaire, as pressure or threats by perpetrators against victims must be considered a real risk within the circle of trust. Question 31 of the Questionnaire is therefore directed towards examining whether the Parties have complied with this provision.
- (39) Article 34 of the Convention lays down the principle that professionals responsible for criminal proceedings concerning the sexual exploitation or sexual

abuse of children should be trained in this area, see para. 233 of the Explanatory Report. Article 34 (1) provides that each party shall adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. Such units or services shall have adequate financial resources. In light of the magnitude of the problem of sexual abuse of children in the circle of trust, see paras. 7-8 above, it must be considered especially important that specialisation or training in this field be directed towards situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her. Question 32 of the Questionnaire takes account of this provision.

(40) Article 35 concerns interviews with the child both during investigations and during trial proceedings. The main purpose of the provision is the same as that described more generally in connection with Article 30, see para. 35 above, to safeguard the interests of the child and ensure that he or she is not further traumatised by the interviews. With this in mind Article 35 (1) (f) lays down the rule that each party shall take the necessary legislative or other measures to ensure that the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person. The concluding part of the provision thus entails that the competent authorities shall be able to refuse to allow the legal representative or person chosen by the child to be present when the circumstances of the case are such that there is reason to believe that the presence of the person in question is undesirable, for example because that person has been involved in the offence or there is a conflict between his or her interests and those of the child, see para. 239 in fine of the Explanatory Report. Question 33 of the Questionnaire takes account of this provision.

(41) Article 36 (1) of the Convention, which echoes Article 34 (1), lays down the principle that those involved in judicial proceedings should be able to receive training in children's rights and in the area of sexual exploitation and sexual abuse of children. The provision thus states that each Party shall take the necessary legislative or other measures, with due respect for the rules governing the autonomy of legal professions, to ensure that training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers. According to para. 241 of the Explanatory Report, the obligations of the States

Parties in this respect must naturally take account of requirements stemming from the independence of the judicial professions and the autonomy they enjoy in respect of the organisation of training for their members. It is for this reason that paragraph 1 does not require training to be provided, but states that it should be available to professionals wishing to receive it. As mentioned above, para. 38, it must be considered especially important, in light of the magnitude of the problem of sexual abuse of children in the circle of trust, see paras. 7-8 above, that specialisation or training in this field be especially directed towards situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her. Question 34 of the Questionnaire is therefore formulated so as to examine whether Parties have taken necessary steps to provide training for those professionals involved in criminal proceedings, especially in relation to cases dealing with offences within the circle of trust.

- (42) According to Article 36 (2) of the Convention, each party shall take the necessary legislative or other measures to ensure, according to the rules provided by its internal law, that: (a) the judge may order the hearing to take place without the presence of the public; (b) the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies. It goes without saying that the possibility of closed proceedings or the child being heard without necessarily being confronted with the physical presence of the perpetrator is of special importance in cases of child sexual abuse in the circle of trust. Question 35 of the Questionnaire therefore takes account of this provision.

## **H. Recording and storing of data**

- (43) Chapter VIII covers rules regarding *recording and storing of data*. According to Article 37 (1) each Party shall take the necessary legislative or other measures to collect and store, in accordance with the relevant provisions on the protection of personal data and other appropriate rules and guarantees as prescribed by domestic law, data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with the Convention. It seems important for assessing the scope of sexual abuse in the circle of trust to examine whether Parties have taken measures to set up or designate mechanisms for data collection for the purpose of observing and evaluating this phenomenon. Also, whether and then how the relevant statistics are classified based on the position of the alleged perpetrator (e.g. parent,

teacher etc.). Question 36 in Chapter H of the Questionnaire is formulated with this purpose in mind and takes account of the obligation set forth in Articles 37 (1) of the Convention.