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## **LANZAROTE CONVENTION**

Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

**Replies to the thematic questionnaire**

### **BOSNIA AND HERZEGOVINA**

**1<sup>st</sup> thematic monitoring round**

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

Replies registered by the Secretariat on 6 April 2014



## DATA COLLECTION

### Question 1: Data on sexual abuse in the circle of trust

*Please indicate whether data are collected for the purpose of observing and evaluating the phenomenon of sexual abuse of children in the circle of trust. If so, please:*

*- Specify what mechanisms have been established for data collection or whether focal points have been identified especially with regard to statistical data on victims and offenders within the circle of trust (Article 10 (2) (b), Explanatory Report, paras. 83 and 84);*

*- Include any relevant data in an Appendix.*

In order to draw up the annual report on the state of human trafficking, the Ministry of Security of BiH is collecting data on the number of potential and/or identified victims of human trafficking. Data is collected by the police, prosecutor's offices, social care centres, non-governmental institution, and all other relevant stakeholders.

As part of monitoring the implementation of the Strategy for Combating Violence against Children, Ministry of Human Rights and Refugees of BiH is collecting data on the number, age, type, and form of violence committed against children. Questionnaire for monitoring the Strategy implementation is forwarded to the social protection sector, healthcare sector, education sector, police and justice sector, and the non-governmental sector.

## PREVENTION

Questions in this section aim specifically at collecting information on policies and strategies to prevent sexual abuse particularly in the child's circle of trust. The questions thus concern awareness-raising of children themselves as well as of persons working in regular contact with them, thus forming a part of their circle of trust.

### Question 2: Education for children

*The reply to question 8 of the GOQ will be examined by the Committee to assess the implementation of Article 6 with respect to the theme of the monitoring round. While replying to this question, please therefore only add whether a special attention is drawn to children's education concerning the risks of sexual abuse of children in the circle of trust, and how children should protect themselves and request help in this regard. If so, please provide details. (Explanatory Report, paras.59-62).*

Special attention is being paid to the education of children on the risks of sexual abuse in the circle of trust. In that regard, specific child protection measures are stipulated and children can request help from professional staff in schools or from persons whom they trust the most. The Protocol on the Procedure in Cases of Violence, Abuse and Neglect of Children in Republika Srpska, signed on 20<sup>th</sup> November 2012, which, among other things, covers the sexual abuse of children in the circle of trust, defines the manner of reporting.

In order to protect children from all types of violence and neglect and abuse, and accordingly, from sexual exploitation and sexual abuse, schools take certain protective measures and establish cooperation with the relevant institutions. One of the most important measures is the application of the Protocol on the Procedure in Cases of Violence, Abuse and Neglect of

Children in Republika Srpska. Schools must apply the Protocol and the multidisciplinary operational team in social care centres.

The Protocol on the Procedure in Cases of Violence, Abuse and Neglect of Children in Republika Srpska was printed and distributed to educational institutions, and can also be found at: [www.djeca.rs.ba](http://www.djeca.rs.ba).

In 2012 and 2013, Department for the Protection of the Rights of a Child in the Institution of Human Rights Ombudsman of BiH undertook a number of activities towards promotion of child rights and protection of violence as part of the project entitled “Strengthening the Capacities of the Department for the Protection of the Rights of a Child in the Institution of Human Rights Ombudsman of BiH”, supported by Save the Children. One of those activities is the “Ombudsman in Your School”, which meant organising educational workshops in schools in order to inform children about child rights, particularly about protection from violence, including sexual violence in a trusted environment, and the mechanisms of protection.

Children can use different modes (e-mail, telephone, Facebook) to address the Institutions of Ombudsman dealing with child rights and seek protection of their rights. SOS telephone is also available for those seeking help.

Some cantonal governments and the competent ministries began creating a referral mechanism for protection of children from violence, including sexual violence in the circle of trust. Thus, the Canton Sarajevo Government, in cooperation with the Association of Pedagogues of the Sarajevo Canton in March 2011 made the Protocol on School Response to Situations Involving Violence, which was distributed to all elementary and secondary schools in Sarajevo Canton. With the support from OSCE, Ministry of Education, Science, Culture, and Sports of the Una-Sana Canton adopted the Protocol on the Procedure in Cases of Violence Involving Children. The Protocol was signed by the ministers of education, science, culture, and sports, Ministry of Health and Social Policy and the Ministry of Interior. Zenica-Doboj Canton, Posavina Canton and Tuzla Canton, in cooperation with the non-governmental organisations that have safe houses also set out to draft and sign the foregoing Protocols. This process will be followed by workshops and training in educational institutions in order to promote them.

FBiH Ministry of Education and Science organised a seminar on prevention of domestic violence for advisors in pedagogic institutes. FBiH Ministry of Education and Science prepared the “Manual on Prevention of Domestic Violence” and using a uniform education programme it will continue to organise trainings for advisors and teaching staff on detection and prevention of domestic violence. A didactic kit on the prevention of violence, intended for elementary schools and based on the syllabus, was developed in order to inform the pupils about the types of violence and adequate response to violence through development of communication skills and skills for peaceful conflict resolution and through ultimately building pupils’ attitude that violence is unacceptable. Manual for Teachers, with developed workshops for realization of instructional content is part of the didactic kit.<sup>1</sup>

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<sup>1</sup> Strategy for Prevention and Combating Domestic Violence (2013-2017), 5. Situation analysis by areas – 5.1. Education

As part of the “Lanzarote Convention” project, implemented by non-governmental organisations in partnership with the BiH Ministry of Human Rights and Refugees, over 100,000 educational flyers were distributed to the students of all elementary and secondary schools. They were entitled “What we have to know about sexual abuse and why”. The material was printed in the languages of all the three peoples and in two scripts.

#### **Question 4: Raising awareness on sexual abuse in the circle of trust**

*Have policies or strategies been implemented for the promotion or institution of awareness campaigns where the focus is directed especially towards the risks and realities of sexual abuse of children in the circle of trust? If so, please specify for which public these campaigns were/are run (Article 8, Explanatory Report, paras. 65-66). Please provide examples and links at which the campaigns can be viewed.*

The RS Gender Centre has been officially conducting the campaign “Family without Violence” throughout Republika Srpska every year since 2008. Posters, video clips, promotional and educational material are a constant in all institutions, from the Government of Republika Srpska down to the local level institutions, media, and non-governmental organisations, and are available to all citizens. The awareness of professional groups and the public on domestic violence as a problem in the society was raised. The “White Ribbon” campaign (Men say NO to violence against women) has also been conducted since 2009 across Republika Srpska. It is the only campaign of such kind being conducted in the region and it targets men as allies in combatting violence against women. The Gender Centre campaigns and their intensity and effects were particularly noted in the 2009 report of the Council of Europe. The material used in the campaigns was presented at the international exhibition held in Brussels in 2010, for which 70 campaigns from various countries were selected. We consider this to be a major success and recognition of the Republika Srpska Gender Centre’s efforts in promoting zero tolerance to domestic violence.

Promotional material for the campaign was distributed across Republika Srpska. All the information about the campaign is available at: [www.youtube.com/watch?v=rCGAS90gGD4](http://www.youtube.com/watch?v=rCGAS90gGD4) and [www.facebook.com/pages/Gender-centar-Vlade-RS/176050459122199](http://www.facebook.com/pages/Gender-centar-Vlade-RS/176050459122199)

This year, Republika Srpska socially-responsible companies also joined the promotional activities of the campaigns and the process of raising awareness.

Partner of the “Family without Violence” campaign in 2013 is the “Vitinka” a.d. Company from Kozluk, whose bottled water “Vivia” will bear the logo of the “Family without Violence” campaign.

Partner of the “White Ribbon – Men fighting violence against women and girls” campaign is the “Nestro petrol” a.d. Company from Banja Luka. During the campaign, staff at the “Nestro petrol” petrol stations will distribute to their clients car air-fresheners bearing the logo of the “White Ribbon” campaign.

Citizens, institutions and corporate subjects contribute to the campaign financially (by making payments to the humanitarian telephone no. 1411, and to the bank account particularly intended for support to safe houses) and by conducting promotional activities (distributing promotional material and wearing a white ribbon). The companies include Telekom Srpske,

### **Question 5: Specialised training**

*Have legislative or other measures been taken to ensure that persons, units or services in charge of investigations are trained in dealing with cases where the alleged perpetrator of child sexual abuse 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? (Article 34 (1), Explanatory Report, paras. 233 through 235, and para. 123)*

Centre for Judicial and Prosecutorial Training in Republika Srpska, in cooperation and with the support of the Gender Centre of the Republika Srpska Government, in 2012 held 2 seminars for judges and prosecutors entitled: "Application of legislation for prevention and suppression of domestic violence with case studies", and "Importance and role of multi-sectorial cooperation on prevention and suppression of domestic violence". One of the conclusions reached at the seminars was that there is no database on multiple perpetrators that would contain information on alcohol addiction, imposed measures of treatment etc. Establishment of such a base would greatly facilitate the work of all stakeholders in fighting domestic violence.

In 2012, 3<sup>rd</sup> cycle of specialised training in juvenile justice was held. This cycle, just like the previous two, consisted of two parts, that is, two seminars in the course of one year. In view of the large number of participants, the contents of the seminars did not change, and thus a total of 4 seminars covering two topics were held in 2012. The first seminar in the cycle was held on 16<sup>th</sup> February 2012. It was attended by 50 already registered participants in the training, judges and prosecutors from all levels of judiciary and from across the Republic Srpska.

In 2012, the specialised training was joined by the participants from the courts and the Prosecutor's Office of the Brčko District of BiH, in view of the fact that the Assembly of the Brčko District of BiH on 10<sup>th</sup> November 2011 adopted the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Brčko District of BiH, and that the Law stipulates that the Centres for Judicial and Prosecutorial Training issue certificates to judges and prosecutors confirming that they are trained to deal with juvenile delinquency and their protection in terms of criminal law. Right now, only the Centre for Judicial and Prosecutorial Training in Republika Srpska organises this specialised training. During the first part of the seminar, basic and general information about juvenile justice was presented, and was followed by an overview of international documents in this field. In the end, selection and pronouncement of correctional recommendations in practice was covered. Identical seminar was held on 13<sup>th</sup> March for the second group of participants. The third cycle of specialised training in juvenile justice, which represents the second and the last part of the third cycle of training, was held on 8<sup>th</sup> and 9<sup>th</sup> November 2012 in the Centre for Judicial and Prosecutorial Training in Republika Srpska. The two-day training was organised for two groups of registered participants who, by attending the second part of the third cycle, successfully completed the entire three-cycle training.

The seminar was attended by around 100 already registered participants in the training, judges and prosecutors from all levels of judiciary and from the entire Republika Srpska. During the first part of the seminar, examples from the practice of the European Court of Human Rights

were presented by the judge of the juvenile division of the Basic Court of Banja Luka and the permanent educator in the Centre for Judicial and Prosecutorial Training, Dragan Uletilović, while Nenad Mrkonja, a psychologist working in the Ministry of Justice of the RS held a presentation entitled “Psychology of juveniles”. During the second part of the seminar, the UNDP representative presented the project of establishing the mechanisms of support to victim-witnesses in criminal cases in judicial institutions of BiH. In the end, Olga Lola Ninković, psychologist from the Witness Support Section of the District Court of Banja Luka spoke about examination of juvenile witnesses/victims via video link.

### **Question 7: Preventive intervention programmes or measures**

*Have legislative or other measures been taken to ensure that persons, especially those forming a part of a child’s circle of trust, who fear that they may commit offences of sexual abuse established in accordance with the Convention, have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? (Article 7, Explanatory Report, para. 64)*

## **PROTECTION**

The questions in this section aim at identifying what specific legislative or other measures have been taken to protect in particular children victims of sexual abuse in the circle of trust.

*The questions in this section aim at identifying what specific legislative or other measures have been taken to protect in particular children victims of sexual abuse in the circle of trust.*

### **Question 9: Assistance to and special protection for victims**

*a. If and to what extent does internal law provide for the possibility of removing the victim from his or her family environment when parents or persons who have care of the child are involved in his or her sexual abuse? If internal law so provides:*

*- Are the conditions and duration of such removal to be determined in accordance with the best interests of the child? (Article 14 (3), Explanatory Report para. 99)*

*- Have legislative or other measures been taken to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care? (Article 14 (4), Explanatory Report para. 100.)*

*b. Does internal law provide that sanctions for offences of child sexual abuse within the circle of trust include denying the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed? (Article 27 (3) (b), Explanatory Report, para. 187.)*

When it comes to the types of assistance, “Medica” from Zenica provides short-term and long-term accommodation in the Safe House and other services to the victims of sexual exploitation and children who are victims of sexual abuse. As part of their stay in the Safe House, in addition to safe accommodation, food, basic clothing items and footwear and toiletries etc. on the basis of their individual needs and the developed individual plan, clients also receive continued individual and group psychological assistance and support, counselling

and therapy suited to the clients' age, medical assistance, educational work, economic strengthening, occupational therapy, mediation in dealing with institutions, work with family and other services in accordance with the needs of each individual client. Individual plan of work for each client is developed in cooperation with the client and other professionals and on the basis of individual needs. Duration of female clients in the Safe House also depends on individual needs of every victim/child. During the children's stay in the Safe House, the whole treatment is tailored to suit their age and individual needs and to various kinds of help. During individual work with children, treatment is given depending on the children's age, the gravity of the traumatic experience and the degree of the consequences developed after the violence experienced, and various counselling, therapeutic and educational approaches are aimed at the child's recovery and reintegration. "Medica" Zenica also has services intended for children only, such as the Children's Day Care Centre "Medica" Zenica, where children staying in the Safe House spend their free time. It helps them in developing life habits, skills, and through various educational, supportive and creative workshops, children learn about non-violent communication, violence and protection from violence and various forms of exploitation, child rights and duties and other topics suited to their interests and in accordance with the assessment of the expert team on the need to cover certain topics. Children who attend regular schools receive support in learning, mastering the lessons and carrying out other school assignments, whereas children who do not attend regular schools are taught to read and write and in cooperation with other institutions, the Centre facilitates inclusion of children in the educational process. The whole treatment is provided with active participation of the clients, and tailored to suit individual needs, age, development period, physical and intellectual capacity etc.

During the stay of children clients in the Safe House, "Medica" Zenica, in cooperation with other institutions involved in caring for the clients, works with the parents and other family members, if there are no obstacles to it, such as that the parents and/or other family members participated in the child exploitation/abuse. Also, when it comes to clients who are of age, "Medica" Zenica also works with the family on developing mutual understanding and support between the family and the client, on reducing the stigma and rejection by the family, but also on fixing the symptoms that family members developed when learning about what the child had been through.

## PROSECUTION

The questions in this section focus on those provisions that deal with sanctioning intentional conduct which amounts to sexual abuse within the child's circle of trust as well as some theme specific issues relating 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.

### **Question 12: Aggravating circumstances**

*Does internal law ensure that if an offence of sexual abuse, established in accordance with the Convention, is committed by a member of the family, a person cohabiting with the child or any other person in the child's circle of trust, that such circumstances will be considered an aggravating factor in the determination of sanctions, in so far as they do not form a part of the constituent elements of the offence? If so, does internal law provide different sanctions depending on whether the relationship of the perpetrator to the child is within the context of family relations or of a professional or voluntary activity (e.g. care providers in institutions, teachers, doctors, etc.)? (Article 28 (c and d), Explanatory Report, paras. 198-199.)*



Yes, in addition to the criminal offence of Sexual Intercourse by Abuse of Office, which, in its aggravated form also comprises the abuse of office by persons in a child's circle of trust, a court will, pursuant to the rules on meting out a sentence, particularly take into account other aggravating circumstances when deciding on the sanction to be imposed on perpetrators of sexual violence in the circle of trust.

Criminal Codes define the General Rules on Meting out a Sentence, pursuant to which a court will mete out a sentence to a perpetrator of a criminal sentence within the limits prescribed by the law, taking into account the purpose of punishment and all the mitigating and aggravating circumstances.

As for the aggravating circumstances pursuant to Article 28 of the Convention, most of the listed circumstances represent elements of the criminal offence, and a court will, pursuant to the rules on meting out a sentence, particularly take into account the following: degree of guilt, the motive, the degree of endangering or the degree of victim's injuries, circumstances under which the offence was committed, treatment of victim by the perpetrator, perpetrator's previous conduct, his/her personal circumstances and behaviour after the fact, and other circumstances pertaining to the perpetrator's person. When meting out a sentence to the perpetrator for a repeated criminal offence, a court will particularly take into account whether the previous offence is of the same kind or a new offence, whether both were committed on the basis of the same motive, and how long the period between the previous conviction or a served sentence or a pardon was.

### **Question 13: Best interest of the child**

- a. Please specify whether in situations where the alleged perpetrator is a member of the victim's family or has otherwise been in a recognised position of trust or authority towards him or her, legislative or other measures have been taken to protect the rights and interests of the child victim of sexual abuse during investigation and the criminal procedure (Article 30, para. 1, Explanatory Report para. 215)*

The Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of the RS, in its separate chapter entitled "Criminal offences against children and juveniles" contains provisions concerning the situation when juveniles and children are victims or witnesses of the criminal offences committed against them.

Article 184, Para. 1 of the Law prescribes the criminal offences when the injured party in the criminal proceedings is a child or a juvenile, while a judge of the juvenile division, that is, the Panel whose president is a judge of the juvenile division or a judge with special knowledge, also tries adults for the criminal offences prescribed by the Criminal Code, inter alia, the following:

- a) abuse,
- b) rape,
- c) sexual intercourse with a helpless person,
- d) sexual abuse of a child,
- e) sexual intercourse by abuse of position,
- f) satisfying lust in front of others,
- g) trafficking in human beings for the purpose of prostitution,

- h) abuse of a child or juvenile for pornography,
- i) production and screening of child pornography,
- j) incest,
- k) cohabitation with a juvenile,
- l) abduction of a juvenile,
- m) neglecting and abusing a juvenile,
- n) domestic violence,
- o) breach of family obligations.

Juveniles are treated in accordance with the procedure prescribed by Article 186 of the Law, which reads:

(1) When dealing with criminal cases involving perpetrators of criminal offences committed to the detriment of children or juveniles, while implementing the procedural actions, a child or a juvenile to whose detriment the criminal offence was committed shall be treated with particular care in view of his/her age, personality, education and the circumstances, in order to avoid potential damaging consequences for his/her future life, upbringing and development. A child or a juvenile shall as a rule be examined in the presence of a pedagogue, psychologist or another professional.

(2) If a child or a junior juvenile who is the injured party in a criminal offence prescribed by Article 184 of this Law is being examined in the capacity of a witness, examination may be conducted two times maximum.

Prosecutor or an authorised official person shall examine the witness by using equipment for transfer of images and sounds, with the prosecutor or authorised official person not being in the same room with the witness. A child or a juvenile shall as a rule be examined in the presence of a pedagogue, psychologist or another professional.

(3) A child or a junior juvenile may be examined in his/her flat or another place where (s)he spends his/her time, or in a social care centre. When examining a witness, actions shall be taken pursuant to Para. 2 of this Article.

(4) Court shall examine a child or a juvenile in the capacity of a witness injured by a criminal offence prescribed by Article 184 of the Law, pursuant to Para. 2 of this Article in such a manner that the court, parties to the proceedings and the defence counsel can ask questions without being in the same room with the witness. A child or a juvenile shall be examined in such a manner that the questions shall be asked through the court, and if necessary, with the assistance of a pedagogue, psychologist or another professional.

(5) In order to protect the children and juveniles injured by a criminal offence prescribed by Article 184 of the Law, other appropriate provisions of the Law on Protection of Witnesses in Criminal Proceedings shall apply (Official Gazette of Republika Srpska, issue 48/03).

(6) Provisions of this Article shall also apply to examination of a child or a juvenile who is a witness-eyewitness to an offence prescribed by Article 184 of this Law.

(7) Article 184 of this Law shall apply in criminal proceedings against perpetrators of criminal offences committed to the detriment of children and juveniles.

Article 187 of the Law shall refer to the ban on confrontation, specifying that if a child or a juvenile who is physically or mentally seriously traumatised by the circumstances under which the criminal offence was committed or suffers serious mental disorders rendering him/her particularly sensitive, is being examined in the capacity of a witness, (s)he shall not be confronted with the suspect, that is, the accused.

If a juvenile injured by a criminal offence or who eye-witnessed the criminal offence is to identify the suspect, that is, the accused, such identification at all stages of the proceedings shall be conducted in a manner that makes it impossible for the suspect, that is, the accused, to see the underage person.

Affective procedural laws in BiH also prescribe the manner of examination of an underage person. To wit, during *an examination of an underage person*, particularly if such a person was injured by the criminal offence, due care shall be exercised in view of his/her age, degree of mental, emotional and social maturity, level of education, circumstances and the surroundings in which (s)he lives, so that the examination would not have an adverse effect on the juvenile's mental state, and shall be conducted with the assistance of a psychologist, pedagogue or another professional<sup>2</sup>. This provision also enables the authorities involved in the criminal proceedings to examine the juvenile in the presence of his/her parent or guardian as they are the persons whom the juvenile trusts and whose presence should provide psychological support during the examination. Even in cases when parents demand to attend examination of a juvenile injured party, particular care shall be required and the opinion by a psychologist, pedagogue or another professional, or other evidence indicating such necessity should be obtained in order to enable that. That shall not be done if, in the opinion of the law-enforcement agency, one might expect that the presence of a parent might affect the readiness of the underage injured party to give a statement or to give a truthful statement.

Due care on the part of the law-enforcement agencies may also mean that they should avoid multiple examinations of an underage injured party.

The Law also prescribes that a person injured by a criminal offence cannot be asked about his/her sex life prior to the criminal offence committed, and if such examination was already conducted, such a statement cannot represent the basis for a court ruling,<sup>3</sup> that is, a person injured by a criminal offence cannot be asked about his/her sex life prior to the criminal offence subject to the proceedings, and no evidence presented with the view to indicate the injured party's prior sex experience, behaviour or sexual orientation shall be admitted. In the last two situations, which pertain to the victims of the so-called sex crimes, the law also prescribes the procedural consequences for failure to act in accordance with those provisions, that is, imposes limits in proposing and presenting evidence that might lead to breach of the provisions that protect the personal integrity of victims of the foregoing criminal offences.

The Law also contains a provision that makes *audio or audio-visual recording of examination of juveniles* who did not turn sixteen yet and who were injured by the criminal offence, mandatory.<sup>4</sup> It is not possible to conclude on the basis of this provision that its goal is to protect the underage victims of criminal offences. However, this provision should also be used for protection of an underage victim of a criminal offence from secondary victimisation during the proceedings in such a way that its application, with the right to defence of the

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<sup>2</sup> Criminal Procedure Code of the Federation of Bosnia and Herzegovina, Article 100(4)

<sup>3</sup> Criminal Procedure Code of the FBiH, Article 100(5); Criminal Procedure Code of the RS, Article 279

<sup>4</sup> Criminal Procedure Code of the FBiH, Article 104.

suspect, that is, the accused, already ensured, should result in avoiding multiple examinations of an underage victim or his/her exposure to the negative effects of appearing in a courtroom.<sup>5</sup>

- b. Answer to the question 22(d) of the Questionnaire of the general overview will be examined by the Committee when assessing the implementation of Article 31(4) of the Convention for the purposes of the subject matter of the monitoring round.*
- c. Please also indicate whether internal law provides that sanctions, as a result of offences committed by a person considered to be in the relevant victim's circle of trust, include withdrawal of parental rights or monitoring or supervision of convicted persons (Article 27, para. 4, Explanatory Report, para. 191)*

One of the most important provisions in the **RS Family Law** bans parents and other family members from subjecting a child to degrading treatment, mental or corporal punishment, that is, abuse.<sup>6</sup> If the parents, that is, the parent with whom the child lives, abused the child or neglected to take care of the child, neglected the child's upbringing, or the child's upbringing is irregular, a guardian authority may take the child and entrust him/her to the other parent, some other person or an appropriate institution if there is no court ruling on entrusting the child. Additionally, a court may take the parental right of a parent who abuses the child, abuses the parental right, or abandoned the child, neglected to care about the child and neglected his/her parental duties.<sup>7</sup> It is very important to highlight that pursuant to Article 107(2), the guardian authority has the duty to initiate the procedure for taking of parental right when it learns about any of the previously listed circumstances in any way.

The Family Law provides a definition of abuse of parental right. Also, pursuant to Article 106(2), a parent abuses parental rights and duties if (s)he, among other things, sexually exploits a child.

Family Laws of the FBiH and the Brčko District of BiH also provide definitions of abuse of parental right. Additionally, pursuant to Article 154(2) of the Family Law of the FBiH, *a parent abuses parental rights and duties in cases of mental and physical violence against a child, sexual exploitation of a child, incitement of a child to behave inappropriately, and gross violations of a child's rights in other ways*. Parents who, by abusing their rights or by gross neglect of their duties, or by abandoning a child, that is, by not caring for a child they live with, clearly endanger the child's safety, health, and morals, particularly in cases involving violence against the child, will have their *parental care taken* by a court in a non-contentious procedure. This measure ends all parental rights and duties, with the exception of the duty to support the child. During the procedure for taking parental right, the guardian authority will appoint a special guardian for the child, who will carry out his/her duty as long as the imposed measure is in effect. The court will, *ex officio*, submit to the competent registrar the final decision on taking and reinstating parental care so it could be registered in the book of births.

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<sup>5</sup> Even though it prescribes mandatory audio or audio-visual recording of examination of underage persons who did not turn sixteen yet and who were injured by a criminal offence, the CPC of FBiH does not explicitly provide for the possibility to replay the recording at the main trial, without the re-examination of the underage injured party at the main trial. With such a possibility enabled, naturally, having previously enabled the parties and the defence counsel to examine the witness who is in another room using the video link, or in the same room, mandatory recording of the statement given by an injured party who is under 16, would truly make sense, and it would also make a court ruling based on such a statement possible to render.

<sup>6</sup> Family Law of Republika Srpska, Article 97.

<sup>7</sup> Family Law of Republika Srpska, Article 106(1).

In case of sexual violence against a child in the family, pursuant to the current laws on protection from domestic violence, the police, prosecutor's offices, courts, guardian authorities and other services in charge of social protection and healthcare have the duty to protect a child who is a victim of domestic violence from the violent behaviour in an urgent procedure. After it receives a report or intelligence that a case of domestic violence occurred, the police has the duty to immediately, without any delay, inform the social care centre, that is, the social protection services, which will without delay directly provide the social protection services and the psycho-social help to the victim, and make a report on it. According to the RS Law on Protection from Domestic Violence, a child shall enjoy special help and protection. In order to ensure physical protection and exercising of the rights and interests of the victim of domestic violence, the police and the guardian authority have the duty to, with the prior consent of the victim of domestic violence, temporarily place the victim in a shelter/safe house. The RS Law stipulates that placing a victim in a safe house is not mandatory (Article 15). A person cannot be in a safe house for more than six months, however, the stay may be extended if the guardian authority gives a consent in writing,<sup>8</sup> that is, it may be extended for another six months after the completion of the procedure and execution of the decision imposing a protective measure against the perpetrator<sup>9</sup>. Funds for the temporary accommodation and care for victims of domestic violence are provided from the FBiH budget (70% of the price of the victim's accommodation), and from the cantonal budget (30% of the price of the victim's accommodation), that is, from the RS budget (70% of the price of the victim's accommodation), and from the municipal budget (30% of the price of the victim's accommodation). In the Federation of BiH, at the request of the guardian authority and with the agreement of the victim, the victim of domestic violence is placed in another appropriate institution or a family when the guardian authority assess it as better for the victim.

Article 11 of the FBiH Law on Protection from Domestic Violence prescribes the protective measure of removal from a flat, house or other residence and a ban on returning to a flat, house or some other residence. This measure can be imposed on a person who acted violently against a family member with whom (s)he lives in a flat, house, or some other residence, if the court of jurisdiction decides that there is danger that the violent person might repeat the violence if such measure is not effected.

Person against whom the measure from Para. 1 of this Article was imposed must immediately leave the flat, house or other residence, accompanied by a police officer if necessary.

The measure from Para. 1 of this Article shall be imposed for no less than a month and no more than two years.

The RS law provides that such a measure shall be imposed for no less than 30 (thirty) days, and no more than 6 (six) months.

Article 12 of the foregoing Law prescribes the protective measure of "ban on approaching a victim of domestic violence", which may be imposed on the person who committed domestic violence. In the decision imposing the ban on approaching a victim of domestic violence, the court of jurisdiction will define the locations and areas, as well as the distance that the violent person must keep from the victim of domestic violence. The measure from Para. 1 of this

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<sup>8</sup> FBiH Law on Protection from Domestic Violence, Article 33(3)

<sup>9</sup> RS Law on Protection from Domestic Violence, Article 15(5)

Article shall be imposed for no less than one month and no longer than two years, unless the court decides that an extended restraining order is in the interest of the victim.

Regulation on the manner of implementation of the measure from Para. 1 of this Article is adopted by the FBiH Minister of Interior.

As for the RS Law on Protection from Domestic Violence, in the decision imposing the ban on approaching a victim of domestic violence, the court of jurisdiction will define the locations and areas, as well as the distance of 200 m that the violent person must keep from the victim of domestic violence.

#### **Question 14: Child friendly justice**

- a. Please specify whether in 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, a protective approach towards victims has been adopted to ensure that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate? (Article 30 para. 2 and Explanatory Report, paras. 211-215.)*

Article 6 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses stipulates provision of psychological, social, and professional help.

During the investigation, the Prosecutor, and after the indictment has been issued, the Court, shall, provided the witness agrees, and without disclosing any of the witness's personal details, ensure that the body responsible for issues of social care is aware of the involvement of the vulnerable witness in the proceedings and shall enable the assistance of this body as well as psychological support to the witness, including the presence of appropriate professionals at examination or hearings.

Family laws regulate the concept of guardianship in specific cases, which means appointing guardians for certain issues in situations when this is necessary in order to protect the rights and interests of certain persons. A special guardian is appointed for a person (a child) whose parents have the parental right in order to conduct a lawsuit between the child and the parents (adoptive parents) as well as in all other situations when their interests are conflicting (the so-called collision guardian). Special guardian can be a person working in the social care centre, or a child's relative, who is justifiably expected to protect the child's interest to the greatest extent. A guardian must conscientiously care for the person, rights, duties and interests of the charge and for the management of his/her property. A guardian may also be appointed by the authority before which the procedure is conducted (the court), and which will inform the guardian authority without delay, or the procedure will be conducted by the competent guardian authority, in accordance with the law.

- b. Have legislative or other measures been taken to ensure that investigations or prosecutions of offences established in accordance with the 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 statement, especially in cases 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? (Article 32, Explanatory Report, para. 230.)*

Pursuant to Article 35 of the FBiH Criminal Procedure Code, a prosecutor is in charge of prosecuting all criminal offences prosecuted ex officio, regardless of the injured party's position and regardless of whether the victim withdrew the report. A prosecutor has the right and duty to, immediately upon learning there are grounds for suspicion that a criminal offence was committed, take the necessary measures towards discovering the offence and conducting an investigation, finding the suspect, leading and supervising the investigation, as well as directing the activities of authorised official persons related to finding the suspect and collecting statements and evidence.

Identical legal solutions are offered by the Criminal Procedure Codes of BiH, RS, and the Brčko District of BiH.

- c. Have legislative or other measures been taken to ensure that a judge, in a criminal trial regarding an offence which can be considered to involve sexual abuse of a child within the circle of trust, may order the hearing to take place without the presence of the public or that the victim may be heard in the courtroom without being present? (Article 36 para. 2 and Explanatory Report, para. 242.)*

Criminal procedure prescribes that from the moment of opening the session till the completion of the main trial, a judge, that is, a panel, may at any point, ex officio, or following a motion by the parties and the defence counsel, but always upon hearing them, exclude the public throughout the main trial or part of it, if it is in the interest of protecting a juvenile or a witness.

Exclusion of public does not relate to the parties to the proceedings, the defence counsel, the injured party, the legal representative and the agent.

A judge, that is, a panel, may allow official persons, scientists and public officials to attend the main trial from which public was excluded, and at the request of the accused person, his/her spouse or extramarital partner and close relatives may also be allowed to attend.

A judge, that is, a panel, may warn the persons attending the main trial from which public was excluded, that they must keep as a secret all the things they heard at the trial, and that unauthorised disclosure of a secret constitutes a criminal offence.

Decision to remove the public will be rendered in a reasoned procedural decision by the judge, that is, the panel, and made public.

When a juvenile is on trial, pursuant to the current laws on protection and treatment of children and juveniles in criminal proceedings, public is always excluded. A judge may allow persons who work on protection and upbringing of juveniles or suppressing juvenile delinquency, as well as scientists, to attend the main trial. During the main trial, a judge may order that, with the exception of the prosecutor, defence counsel and the representative of the guardian authority, all or some persons leave the courtroom. During the presentation of some of the evidence or presentations by the parties, a judge may order a minor to leave the courtroom due to the potential detrimental effect on his/her upbringing. If it is relevant for the juvenile's defence, the defence counsel will inform him/her of the contents and course of the proceedings during his/her absence.

One of the basic principles in the entity laws on protection and treatment of children and juveniles in the criminal proceedings is the recognition of an underage person's right to privacy during all stages of the proceedings. Law stipulates exclusion of public from the main trial, ban on publishing the case file and the course of the proceedings, as well as the personal details of the underage person or his legal representative. Name and other data that indicate the juvenile's identity will not be published in the media.

During the main trial, a judge may order that, with the exception of the prosecutor, defence counsel and the representative of the guardian authority, all or some persons leave the courtroom. During the presentation of some of the evidence or presentations by the parties, a judge may order a minor to leave the courtroom due to the potential detrimental effect on his/her upbringing. If it is relevant for the juvenile's defence, the defence counsel will inform him/her of the contents and course of the proceedings during his/her absence.

Witness Support Section has been operational in the District Court of Banja Luka for the past four years. Head of the Section is a psychologist who applies the special protective measures on children witnesses. In her work, she uses all the legal solutions concerning the protection of children, their privacy, and subsequent traumatisation. She is familiar with the Lanzarote Convention and participated in the drafting of indicators for monitoring of the Convention's implementation.