



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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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**

**ITALY**

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

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

**Replies registered by the Secretariat on 6 February 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.*

Please see Question 5b of the GOQ

## 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**).*

### ***Question 3: Recruitment and screening***

*The reply to question 9 of the GOQ will be examined by the Committee to assess the implementation of **Article 5, para. 3** with respect to the theme of the monitoring round, paying particular attention to the recruitment and screening of persons whose professions involve regular contacts with children.*

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

*Have policies or strategies been implemented for promoting or conducting awareness-raising 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 whom these campaigns were/are run (**Article 8, Explanatory Report, paras. 65-66**). Please include examples by providing links to what has been developed.*

Please see question 8 of the GOQ

### ***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, authority or influence over him or her? (**Article 34 (1), Explanatory Report, paras. 233-235 as well as para. 123**).*

Please see question 8 of the GOQ

**Question 6: Participation of children, the private sector, the media and civil society**

Replies to questions 4 and 11 of the GOQ will be examined by the Committee to assess the implementation of **Article 9** with respect to the theme of the monitoring round. Please therefore only add whether any specific steps have been taken to encourage participation by children, the private sector, the media and/or civil society in the development and implementation of policies, programmes or other initiatives specifically concerning sexual abuse of children in the circle of trust. If so, please specify which and explain how participation takes place. (*Explanatory Report, paras. 67-75*).

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

Which measures have 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*).

Please see question 10 of the GOQ

## **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.

**Question 8: Reporting suspicion of sexual abuse**

The reply to question 13 of the GOQ will be examined by the Committee to assess the implementation of **Article 12** with respect to the theme of the monitoring round. While replying to this question, please therefore only add whether specific legislative or other measures have been taken to encourage reporting of sexual abuse of children in the circle of trust to the competent authorities. (*Explanatory Report, para. 91*).

**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*).

Please see question 15 of the GOQ

Moreover, as regards question 9b. it should be added sentencing for the most serious child abuse and child exploitation offences provided for in the Italian Criminal Code (see under question 16) entails not only the main penalties, but also the application of a number of accessory sanctions, provided for in particular by Art. 609 nonies Criminal Code.

These include, among others, the loss of parental authority if this has been an element of the offence; permanent disqualification from offices pertaining to guardianship; permanent disqualification from holding a post in educational institutions or other institution which

minors habitually attend; as well as, after serving a custodial sentence, temporary interdiction from approaching any place attended by minors and disqualification from any job which may entail contacts with minors.

Relevant text:

Article 609-nonies. Collateral penalties and other criminal-law consequences.

The conviction or application of sentence upon request by the parties under Article 444 of the Code of Criminal Procedure for any of the offences laid down in Articles 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies and 609-undecies implies:

- 1) the loss of parental authority, when the capacity as a parent is a constitutive element or an aggravating circumstance of the offence;
- 2) a permanent disqualification from exercising the functions of a guardian, curator or court-appointed administrator;
- 3) the loss of the right to alimony and the exclusion from the victim's succession;
- 4) a temporary disqualification from holding public offices; a disqualification from holding public offices for five years following a conviction to imprisonment from three to five years, without prejudice to the application of Article 29, first paragraph, as to the permanent disqualification;
- 5) the suspension from the exercise of a profession or trade.

The conviction or application of sentence upon request by the parties in terms of Article 444 of the Code of Criminal Procedure for any of the offences laid down in Articles 609-bis, 609-ter, 609-octies e 609-undecies, if committed against a person under eighteen years of age, 609-quater and 609-quinquies, implies at any rate a permanent disqualification from any assignment in schools of any type and level as well as any office or service in institutions or other public facilities prevalently attended by minors. The conviction for the offences as per Article 600-bis, second paragraph, Article 609-bis, in the aggravated cases specified in Article 609-ter, and as per Articles 609-quater, 609-quinquies and 609-octies, in the aggravated cases specified in the third paragraph of the same article, implies the application of the following personal security measures after sentence enforcement and for at least one year:

- 1) an order, if any, limiting movements and the free circulation, as well as a prohibition to get close to places usually attended by minors;
- 2) a prohibition to perform jobs that involve habitual contacts with minors;
- 3) an obligation to keep law enforcement authorities informed on one's residence and transfers, if any.

Whoever violates the law provisions of the third paragraph shall be punished by imprisonment up to three years.

## ***PROSECUTION***

*The questions in this section focus on those provisions that deal with criminalising and 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 10: The offence of sexual abuse**

*The reply to question 16 of the GOQ will be examined by the Committee to assess the implementation of Article 18 with respect to the theme of the monitoring round. The reply to question 1 of the GOQ will also be considered while assessing the situation in the Party with respect to Article 18. While replying to this questionnaire, please therefore only add:*

*a. what is understood by “intentional conduct” in internal law? (Explanatory Report, para. 117);*

*b. what is understood by “sexual activities” in internal law? (Explanatory Report, para. 127).*

a. “Intentional conduct” is defined according to the general rules of the Italian Criminal Code – in particular, Article 42 which describes different criminal liabilities according to different levels of culpability.

Article 42 of the Criminal Code

«Liability for acts committed with malice aforethought or with negligence or for a preterintentional offence. Objective liability.

No person may be punished for an action or omission contemplated by law as an offence, if he has not committed it consciously and wilfully.

No person may be punished for a fact contemplated by law as a crime, if he has not committed it intentionally (with malice aforethought), save in cases of a preterintentional or unintentional crime expressly contemplated by law. The law determines the cases in which the event is otherwise ascribed to the agent, as a consequence of his action or omission.

In infringements, each person answers for his own conscious or voluntary action or omission whether wilful or unintentional »

b. “sexual activities”: established case-law of the Supreme Court of Cassation defines “sexual activity” as any act which constitutes an unsolicited and unwarranted intrusion in the sexual sphere of the victim, through any behaviour which may constitute the expression of sexual instincts. This includes, for instance, mere touching of bodily parts which may be generally considered as erogenous or even acts which, though not implying physical contact, may endanger the freedom of sexual determination of the victim.

### **Question 11: Corporate liability**

*The reply to question 17 of the GOQ will be examined by the Committee to assess the implementation of Article 26 of the Convention with respect to the theme of the monitoring round. If, in addition, any other measures are foreseen, please specify.*

### **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 a person having abused his or her authority or any other person in the child’s circle of trust, that such circumstances may 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).*

See question 20 GOQ for the cases where the personal quality of the offender is a constituent element of the offence or an aggravating circumstance; see also under question 22. for consequences on prosecution of the offence.

**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 ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim of sexual abuse. (Article 30, para. 1, Explanatory Report, para. 215);*

Investigations in the Italian legal systems are ruled by a principle of strict legality; consequently, even in cases where the alleged offender is a member of the victim's family or is in another close personal relationship, investigations will always only aim at ascertaining criminal liability, protecting the victim at the same time through the measures described above.

*b. The reply to question 22(d) of the GOQ will be examined by the Committee to assess the implementation of Article 31, para. 4 of the Convention with respect to the theme 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 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).*

See under question 18. GOQ.

**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);*

*b. Which legislative or other measures been taken to ensure that investigations or prosecution 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);*

*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).*

See question 22 GOQ