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LANZAROTE CONVENTION

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

Replies to the general overview questionnaire

PORTUGAL

Replies registered by the Secretariat on 3 February 2014

Introductory remarks

The Directorate-General for Justice Policy from the Ministry of Justice, was the entity responsible for collecting the replies to this questionnaire. The answers are the result of the joint contributions of the Ministry of Justice (Directorate-General for Justice Policy, Directorate General for Rehabilitation and Prison Services, Directorate-General for the Administration of Justice, Attorney General's Office, Criminal Police, the Ministry of Health (Directorate-General of Health), the Ministry of Solidarity, Employment and Social Security (International Affairs Bureau), the Ministry of Internal Affairs (Directorate-General for Internal Affairs) the Ministry of Education and Science (Directorate-General of Education), the National Commission for the Protection of Children and Youngsters at Risk.

The following statistic data are attached to the present questionnaire:

- (i) Investigations conducted by the Criminal Police between 2008 and 2012, sexual criminality against minors, according to the type of relationship between the offender and the victim, in the circle of trust - % by crime; and
- (ii) Crimes registered, offenders, criminal proceedings and convictions in courts of 1st instance are attached to this questionnaire.

GENERAL FRAMEWORK

Question 1: Definition of “child”

- a. Does the notion of “child” under your internal law correspond to that set out in **Article 3, letter (a)**, i.e. “any person under the age of 18 years”?

Yes. In the Portuguese legal system, child is any person under 18 years of age (Article 122 of the Civil Code).

- b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with **Article 11, para. 2**?

The general practice of authorities that deal with children, in particular those with competences as regards childhood and youth matters, the commissions for the protection of children and juveniles at risk as well as the judicial authorities responsible for the execution of the Law for the promotion of children and young people at risk, is to afford protection to all presumed children. This protection only ceases when the confirmation that the victim is not a minor is received.

Measures to disseminate best practices within public administration were adopted and a project to facilitate birth registration was developed. Provisions were taken to facilitate contacts, in particular of persons with disabilities and migrants, with public administration and other services, including inspection visits, signing of protocols, enforcement of rules on priority reception, setting up of civil registry desks at National Immigrant Support Centers, and the simplification of registration procedures, including by using online tools, concentrating services and creating a support hotline.

The Project “To be born a Citizen”, which is available in all the public maternity units and in large private maternities (through the celebration of protocols between the Ministry of Justice, Health departments and Hospital units) has promoted access to the birth register and to the protection of the identity of the child.

Through this project new-borns can now directly be registered in the hospital or maternity by representatives from the civil register, facilitating parents' access to the service of birth register of birth and thus improving the control on the identity of the child.

c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

There is no specific provision on the general age of consent for sexual activities. The age of consent should result from the conjugation of provisions of the Criminal Code and from the Civil Code.

Nevertheless, children under 18 and 16 years benefit from special protection in the case of certain sexual activities such as participation in pornography (children below 18) or consenting sexual activities where the partner takes advantage of the inexperience of the minor (children between 14 and 16).

Question 2: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in **Article 2**, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify. If not, please justify.

Discrimination on grounds such as the ones stated in Article 2 is prohibited.

In fact, the Constitution of the Portuguese Republic (Article 14) grants all citizens the same social dignity and equality before the law and no one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic

situation, social circumstances or sexual orientation. The same principle is reaffirmed in its Article 69 (Children), which affords children the right to state protection, in particular against all forms of discrimination.

Regarding discrimination, in a broad sense, a number of legislative measures and best practices are in place. Some of the most significant are as follows:

Children with disabilities

In respect to stereotypes and discrimination against children with disabilities, Portugal is a State Party of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and therefore is bound by the provisions of article 7 of the Treaty on Children with disabilities, of Article 23, concerning the household and family and of Article 24, on education.

After the UNCRPD ratification, Portugal approved the National Strategy on Disability 2011-2013 (ENDEF), which includes several measures to promote the rights of persons with disabilities in general, and also the rights of children with disabilities, in order to combat stereotypes and discrimination.

Migration

In the area of migration Portugal has been making considerable efforts and investments in order to combat all forms of racial discrimination and to integrate all groups in the Portuguese multicultural society, ensuring the full enjoyment of all human rights, civil, cultural, economic, political and social rights. Portugal was ranked in 2011 the second amongst 31 developed countries for its policies in the area of integration of migrants by the Migrant Integration Policy Index for the second consecutive time. It should also be mentioned that Portugal was recognized as the country with the best legal framework in the protection of migrants' rights in the United Nations Human Development Report 2009.

A good example of those efforts and commitment is the existence of a national public institute (ACIDI) which – among other competences – is devoted to combating racism, promoting the integration of immigrants and Roma communities and intercultural dialogue. Specifically with regard to children, the **Choices Programme** is worth mentioning. The program, now in its 4th generation (2010-2013) reaches 71,000 children aged 6 to 18 from disadvantaged social backgrounds, many of whom are immigrant descendants and members

of ethnic minorities living in vulnerable places, in order to promote their social integration. It supports 110 local projects that involve schools, municipalities, non-profit organizations and the Commissions for the Protection of Children and Youngsters at Risk.

As regards the marginalization and abuses against immigrant children, it is important to mention Article 185-A (3) of Law nr. 23/2007, of 4 July, that approves the legal framework for the entry, permanence, exit and removal of foreigners into and out of national territory – according to which, whoever uses the work of an illegal minor foreign citizen is punishable with a imprisonment penalty of up to 2 years or a fine up to 480 days.

Regarding *Roma*, Portugal launched in 2013 the Strategy for Inclusion of the Roma Communities 2013-2020. This is an important instrument which will help to better integrate *roma* communities and to eliminate prejudices and misconceptions towards them. The main areas of the Strategy are education, health, housing and employment. The Strategy addresses the recommendations of the European Commission and also includes the fight against discrimination, gender perspective, mediation, Roma history and culture, and Justice and security as crosscutting areas.

Efforts are being undertaken, also, in the area of public awareness on diversity, intercultural dialogue, and in combating racial stereotypes and prejudices.

Access to healthcare

Access to physical and mental healthcare in the National Health Service (NHS) is free of charge for all children up to twelve years old. Undocumented immigrants have access to the NHS for reasons of public health, urgent and vital health care and maternal and child health care (Directorate-General of Health Standard nr. 12). Once their situation is legalized, immigrants acquire the same rights and privileges of the rest of the population.

Unaccompanied minors

The Ombudsman has made a recommendation regarding the issue of immigrant children following the inspection carried to places of detention of irregular foreign nationals. Previous to this recommendation the legal framework only allowed the entry into domestic territory of foreign children unaccompanied by those who exercised parental responsibility when there was a Portuguese citizen or a foreign citizen with legal status who took responsibility for their stay. As this requirement couldn't always be complied with, the Ombudsman recommended

that whenever unaccompanied children are being held, the Commission for the Protection of Children and Juveniles at Risk is responsible for accompanying the child.

Question 3: Overview of the implementation

Please indicate (without entering into details):

- a.** the main legislative or other measures to ensure that children are protected against sexual exploitation and sexual abuse in accordance with the Convention;

Chapter V of the Criminal Code (CC), Sections I (Crimes against sexual freedom) and II (Crimes against sexual self-determination) are the main criminal law provisions in what concerns child protection against sexual exploitation and sexual abuse. The criminalized conducts are very briefly the following: as regards crimes against sexual freedom; sexual coercion (article 163), rape (164), sexual abuse of a person unable to resist (165), sexual abuse of interned person (166), sexual fraud (167), facilitation of prostitution (169); as regards crimes against sexual self-determination, sexual abuse of children (article 171 CC); sexual abuse of dependant minors (article 172 CC), sexual activities with adolescents (article 173); recourse to child prostitution (article 174), pornography of minors (article 176).

The corresponding sanctions may include, in addition to imprisonment penalties, temporary inhibition from the exercise of parental responsibility or guardianship and/or being banned from exercising professional , activities that involve contact with children (article 179 CC) and provisions on aggravation (article 177 CC).

The Criminal Procedure Code (CPC) accommodates children's specific needs in the context of judicial proceedings through a number of provisions aimed at ensuring that the child is heard while minimizing the risks of further victimization and trying, whenever possible, to create a more protective environment.

The protection of children in danger of becoming victims or who have been victims of physical or psychological ill treatment or sexual abuse is ensured through the work of the Commissions for the protection of children and young people at risk or the Family and Minors Courts.

- b.** whether your country has adopted a national strategy and/or Action Plan to combat sexual exploitation and sexual abuse of children. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

Notwithstanding the absence of an Action Plan to combat sexual exploitation and the sexual abuse of children, other Action Plans contain measures, such as the V National Plan for the Prevention and Fight against Domestic Violence and Gender-based Violence 2014-2020, are

also aimed at the protection of children. It is, for instance, the case of the Measures 21 (regarding the broadening of the territorial covering of teleassistance), 40 (reinforcing the capacities and sensitizing judicial authorities to deal with the issue of domestic violence) or 47 (compiling and disseminating materials on domestic violence).

In the area of law enforcement, an “Orientation Guide for the police forces on situations of ill treatment or other risk situations” was jointly developed and published by police authorities and the Commission for the Protection of Children and Juveniles at Risk.

- c. whether your country has any guidelines to ensure a child-friendly implementation of the laws, measures and strategies referred to in letters (a) and (b) above. If so, please specify. With regard to judicial proceedings, please specify whether the Council of Europe Guidelines on Child-friendly Justice were taken as inspiration for your guidelines.

There are no Guidelines to ensure the child-friendly implementation of measures and strategies. However, a number of legal instruments provide for orientation on what concerns its implementation in a child-friendly perspective.

The Law for the promotion and protection of children and juveniles at risk refers in its Article 4 to the guiding principles that should be taken into account in all the proceedings involving children. Although the law dates from 1999, these principles match the content the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, such as:

- **Best interests of the child** – the intervention should give high priority to the interests and rights of the child;
- **Privacy** – The intervention should be carried out bearing in mind the intimacy, the right to image and the child’s right to privacy;
- **Early intervention** – the intervention should take place as soon as the situation of danger is known;
- **Minimum intervention** – The intervention should be only carried out by the entities and institutions whose course of action is essential to the effective promotion of the rights and to the protection of children and young people at risk;

- **Proportionality and adequacy** – The intervention should be adequate and necessary to the situation of danger in which the child or the youngster finds him/herself at the moment the decision is taken and can only intervene in his/her life and family if considered strictly necessary to such purpose;
- **Right to information** – The child and the youngster have the right to be informed of their rights, the reasons underlying the intervention and the way it is to be carried out;
- **Right to participation and to be heard** – the child and the youngster, separately or accompanied by the parents or by a person of their choice, have the right to be heard and to participate in the acts and on the definition of the measure on the promotion of rights and protection.

Question 4: Child participation

Please indicate what steps have been taken to encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children (**Article 9, para. 1**);

Some occasional initiatives should be mentioned, such as the launching of an Action Plan on crimes against children in the internet by the Attorney General's Office presented during a conference on “Children and the Internet – safe use, abuse and denunciation”, in October 2013.

In this conference, where representatives of the civil society, children and entities linked with the defence of the children's rights have participated, it was launched a booklet “You and the Internet – (ab)use, crime and denunciation”, addressed to the children and to the public in general, with short texts written in a straightforward language and including illustrations made by 6 to 17 years old students, in Lisbon. The children have participated in the elaboration of this booklet that intends to contribute, through information and awareness, towards the safe use of the internet, focusing in particular the criminal conducts, in particular those of a sexual nature.

The booklet is available, free of charge, in Portuguese and English, in <http://cibercrime.pgr.pt> It should also be referred that, in the scope of this Action Plan, awareness actions to be carried out in schools and other institutions are foreseen.

- a. In particular, please indicate whether, and if so, how child victim's views, needs and concerns have been taken into account in determining the legislative or other measures to assist victims (**Article 14, para. 1**).

The child victim's needs and concerns have been taken into account in the legislative and other measures to assist victims in various aspects.

For instance, the legislation in force ensures the intervention of the child in the choice of protective measures, whenever he/she is in a situation of danger. That is, once it is identified that the child is in a situation of danger, including of sexual abuse, the protective measure to be taken by the competent entities in these matters must bear in mind the child's right to participate in the choice of the protective measure to be applied (Article 4 (i) of Law nr. 147/99).

This participation is regulated by Article 84 (1) of said Law, where it is specified that the child or the youngster over 12 years old, or younger, once his/her maturity to understand the intervention is taken into account, is heard by the Protection Commission or by the judge on (i) the situation that has originated the intervention and, (ii) on the application, review or termination of the promotion and protection measures.

Paragraph 2 of the same Article refers that the child or the youngster has the right to be heard separately or accompanied by the parents, by the legal representative, by a lawyer of their choice or a public defender or by a person of their confidence.

Question 5: Specialised bodies/mechanisms

- a. Please indicate the independent institution(s) (national or local) in charge of promoting and protecting the rights of the child. Please specify its/their responsibilities and indicate how resources are secured for it/them (**Article 10, para. 2, letter (a)**);

The promotion of rights and the protection of children and young people at risk are ensured:

(i) By the **entities competent in matters regarding children and young people**, public or private, with activities in areas related to children or to young people – schools, social solidarity private institutions (such as, “Misericórdias”, parents’ associations, Institute for Child Support);

(ii) By the **Commissions for the Protection of Children and Young People**, non-judicial official institutions that usually operate at municipality level (administrative territory).

They have functional autonomy and decide independently, being their intervention dependent upon the consent of the parents and of the child that is 12 years old or older.

(iii) By the **Family and Minors Courts** that intervenes in situations where the Commission for the Protection of Children and Juveniles either cannot intervene or can no longer intervene or whenever the protective measure applied is not complied with.

(iv) By the **Public Prosecutors**, that are in charge of representing the children and young people at risk and is entrusted with bringing legal actions, requiring civil tutorial measures (such as the inhibition of exercise of parental responsibilities) and resorting to judicial means whenever necessary to the promotion and defence of the children's rights and to their protection.

b. Which legislative or other measures have been taken 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 personal data protection? (**Article 10, para. 2, letter (b)**);

In the framework of criminal investigations, the Criminal Police collects data on sexual criminality against minors, according to the type of relationship between the offender and the victim (Please see the statistic data, attached to the present Questionnaire).

c. Which legislative or other measures have been taken to organise the collection and storage of data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention? What is the national authority in charge of the collection and storage of such data? (**Article 37, para. 1**).

Portugal made a declaration regarding Article 37 of the Lanzarote Convention, whereby it has designated the Institute for Legal Medicine and Forensic Sciences as the competent entity to record and store national data of persons convicted of the offences established in accordance with the Convention. The identity and genetic profile (DNA) database is regulated under Law nr. 5/2008, of 12 December, which allow for the collection of samples in criminal cases.

The Law of Criminal Identification (Law nr. 57/98, of 18 August) applies to all convicted persons and not only to those convicted for the crimes specified in the Convention. This registration comprises the identification elements of the convicted person, with extracts of criminal decisions and the communication of facts related to said person. It also includes elements on the civil identification of the suspect, the date, form and contents of previous

court decisions and provisions applied. As they are decisions on convictions, the corresponding register specifies the type of crime and the date in which it has been committed as well as the violated legal precepts and main penalties, either of replacement or ancillary, or the security measures applied.

As an additional identification means, the fingerprints of natural persons convicted by the Portuguese courts are also collected; these are filed and ordered by formula, for dactyloscopic file organization purposes.

It should also be mentioned that the judges and the public prosecutors may accede to criminal identification data for criminal investigation purposes, in order to conduct fact-finding cases, to enforce sentences and to decide on the adoption, custody, guardianship, foster care, civil sponsorship, delivery or custody of minors or to regulate the exercise of parental responsibilities.

A draft Law is under preparation in the Ministry of Justice in order to establish a data base of persons convicted by sexual crimes involving minors.

Question 6: National or local coordination, cooperation and partnerships

- a. Please describe how coordination on a national or local level is ensured between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children. In particular, please provide information on existing or planned coordination between the education sector, the health sector, the social services and the law enforcement and judicial authorities (**Article 10, para. 1**);
- b. Is cooperation with a view to better preventing and combating sexual exploitation and sexual abuse of children encouraged between the competent state authorities, civil societies and the private sector (**Article 10, para. 3**)? If so, please specify how;
- c. Are partnerships or other forms of cooperation between the competent authorities promoted with particular regard to the recipients of intervention programmes and measures for persons subject to criminal proceedings or convicted of any of the offences established in accordance with the Lanzarote Convention (**Article 15, para. 2 and Article 16**)?

Coordination is ensured between the different competent entities in charge of the protection of children and of the prevention and the fight against sexual exploitation and sexual abuse of children at local level, which covers the whole of the national territory.

Following several recommendations of the United Nations Committee on the Rights of the Child, Portugal adopted in 1999 the Law on the Protection of Children and Juveniles in Danger (LPCYD) and the Law on Educational Guardianship. Both Laws guarantee several principles enclosed in the Convention of the rights of Children. The LPCYD is the framework

of the National Protection System of Children and Juveniles at Risk (NPSPPCR). There is a group of legal instruments which address other aspects concerning child' rights such as adoption, parental responsibilities regulation and civil godfather measure.

The NPSPPCR is aimed at the accomplishment of core child's rights which are foreseen in the Article 4 of the LPCYD, such as the superior interest of the child, prevalence of family, hearing and compulsory participation.

The NPSPPCR is a system of shared and subsidiary responsibilities in a pyramid structure with three successive levels of intervention: a) the entities closest to civil society and to the child parents/family (all the community), b) the Commissions for the Protection of Children and Youngsters (CPCY) and c) the courts. Only the CPCY and the courts can apply protection measures. The professional work at any CPCY is foreseen by the LPCJD as being a priority towards the work each professional has in the service from where he/she originally belongs to (Article 25 of the LPCYD).

The functioning of local CPCYs started in 2001 and they are municipality based. In 2014 the system has 308 CPCY covering all districts and the autonomous regions of Madeira and Azores.

Through the CPCY, the NPSPPCR has a very innovative role concerning child's rights and society role. The CPCYs are non judicial and autonomous institutions in their functions and have a local priority and responsibilities not only at tertiary or indicative prevention (Article 21 of the LPCYD - removing the child from danger), but also at secondary (selective) and primary (universal) prevention (Article 18 of the LPCYD). It also implies an active role of citizenship both at an individual level as well as at a collective level.

Since 2010 the NCPCYR has been promoting the implementation of local prevention systemic projects monitored and evaluated at local and central levels, which have given, raise to Social Child Observatories. This is also considered a Child' Right, meaning that the child has the right to be guaranteed a permanent communication between science and research in all matters that concern her/his rights. It is a new vision that empowers the child' rights.

The CPCY have a specific and innovative intervention at tertiary level, closer to the child and parents/careers, less stigmatizing for the child (different from court) and for the parents/careers, with a child friendly centered and parents capacity building approach, with

shorter and faster interventions and with the obliged mobilization of all the local community entities for putting in place the needed resources to remove the child from the danger situation (Articles 13 and 25 of the LPCYD). The CPCY can only intervene with the express consent of each parent and with the non opposition of the child with or more than 12 years old or less age if his/her maturity level will permits her/him to understand the meaning of the intervention (Articles 9 and 10 of the LPCYD).

The two main protection measures applied by CPCY are measures in the natural living environment (intervention in a short period of time e.g. 6-12 months, maximum 18 months) and placement measures.

The NCPCYR was created by Decree-Law nr. 98/98, of 18 April, which attributes to NCPCYR the responsibility for planning state intervention and for coordinating, monitoring and evaluating the performance of public entities and the community in protecting children in danger and to propose measures concerning children's rights, as well as to follow support and assess the CPCY annual activity and to train and supervise their staff. The NCPCYR is under the Ministry of Justice and of the Solidarity and Social Security. Both ministries are responsible for nominating the President of NCPCYR and the Solidarity and Social Security Ministry is responsible for the annual NCPCYR budget.

Annual CPCY activity reports are published since 1991. The activity reports are always been accomplished and is also associated to public discussions on several important issues related to Child Culture. Since 2013, the periodicity of the CPCY activity assessment by the NCPCYR has been done every 3 and 6 months period, promoting and allowing a better and detailed evaluation of local, regional and national reality which has been mirrored on the detection and analysis of Domestic Violence (DV) situations reflected in the National Intervention Plans for DV.

Given the close relationship between the protection Commissions and the Public Prosecution Service – this latter in charge of the follow up of the former's activity, the supervision of the protective measures adopted by them and of promoting the adequate judicial proceedings -, there is a mechanism that provides an adequate cooperation and coordination between the different entities. Such cooperation has been strengthened with protocols in order to improve proceedings and good practices at local level.

At national level, it should be highlighted a protocol celebrated between the National Commission for Children and Juveniles at Risk and the Attorney General's Office on 23 June 2009. This Protocol foresees, among other proceedings, situations of sexual abuse, whereby

the Promotion and Protection Commission must immediately and simultaneously (a) inform the Attorney General's Office so that a criminal inquiry be opened, (b) communicate to the competent prosecutor the opening of a promotion and protection proceeding, (c) this latter must immediately interact with the judge in charge of the criminal inquiry so that a quick coordination between the interventions (in the protection and in the criminal scope) is put in place.

On the other hand, the services of judicial authorities – in particular when, at local level, they comprise prosecutor's units or judges allocated to this specific type of crime – have celebrated protocols in order to obtain a quick and integrated response, designed to reduce the risk of secondary victimization. These protocols have increased in number and involve, as a rule, the health services, forensic offices, private associations, Commissions for the Protection of Children and Juveniles at Risk, the Attorney General's Office and law enforcement agencies. Non formal and quick communication and routing channels are thus established as well as service structures and coordinated responses.

It should be referred, for instance, the 2010 commitment to good practices between the DIAP/Porto - Department for Criminal Investigation and Prosecution in Porto (similar others were carried out in Évora, Setúbal, Almada and Amadora) on domestic violence, ill treatment and against the children's **freedom and sexual self-determination**, that has involved DIAP next to the Family and Minors Court of Porto, the DIAP next to the Criminal Court of Porto, the Commission for the Protection of Children and Juveniles at Risk – Central, the East, West and North Delegations of the National Institute for Legal Medicine and Forensic Sciences.

The commitment entered into by the parties, whenever there is a suspicion of the commission of the crimes above referred to, aim to obtain (i) a combined and coordinated inter-institutional approach, through quick communication channels and focal points in different institutions; (ii) to improve the approach to the situations, in order to guarantee a better and adequate protection to child-victims; (iii) to avoid the secondary victimization of the child, by coordinating and streamlining procedures at two levels – to protect the child and inquiries of a criminal nature; (iv) to ensure an effective swiftness and to efficiently obtain evidence at criminal level, considering that at stake are facts that constitute crimes that require priority investigations, bearing in mind the protection of specially vulnerable victims. Regarding cooperation with the civil society (cooperation arrangements), the Portuguese context is characterized by the fact that most social services are developed by Private

Institutions of Social Solidarity (IPSS) or equivalent (NGO, associations, etc.) and not directly by the state.

This cooperation model between the state and such entities has been carried out since 1992 and is reflected in the establishment of protocols signed between both parties.

A cooperation agreement establishes a legal relationship for the provision of social services by non-profitable institutions. The state, through Social Security District Services, provides technical and financial support to the entities.

The cooperation model currently in place relies on a number of principles in which the institutions complement the state's responsibilities in the protection of citizens, as for example:

- Institutions, by their nature, have greater proximity to the community, thereby ensuring greater availability and responsiveness, particularly in emergency situations;
- Institutions may implement a rational management of resources.

The selection of entities is carried out by the Social Security Institute based on the experience on the provision of social services of each entity and the assessment of community needs.

The operation of these social services is subject to a periodic monitoring where agreements are reviewed and when necessary, reviewed or ceased.

The cooperation model is established in partnership between the State and the three national bodies representing the institutions (*Confederação Nacional das Instituições Particulares de Solidariedade Social, União das Mutualidades Portuguesas e União das Misericórdias Portuguesas*) which, jointly, represent approximately 4,700 institutions on a much participated debate.

Every year the state and the national bodies representing institutions meet to discuss the annual Protocol.

The table below shows the total expenditure from 2008 to 2012 of cooperation arrangements in the area of childhood and youth. The figures show that there is a positive trend in the expenditure.

Expenditure 2008-2012

	2008	2009	2010	2011	2012
Cooperation agreements in the area of childhood and youth	478.176.746 €	498.525.245€	504.146.899€	498.842.443€	512.368.132€

Source: ISS, Social Security Institute, Cabinet for Planning and Strategy, 2013.

Question 7: International cooperation

Has your country integrated prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states (**Article 38, para. 4**)? Please give examples.

It should be stressed that several measures have been taken in order to deal with interconnected actions, with specific incidence in the sexual abuse of children through trafficking.

In this respect, it should be mentioned the Work Commission established within the Conference of Ministers of Justice of the Portuguese Speaking Countries, in 2010, whose work has led to the approval of the Lisbon Declaration on the implementation of common measures to prevent and combat trafficking in human beings and of a Recommendation on this matter.

Within the framework of the XIII Conference of Ministers of Justice of the Portuguese Speaking Countries, held in 2013, a Children Platform, to deal with the issues of protection of children against sexual exploitation and sexual abuse was launched.

It should also be mentioned that in 2010, at the 17th Conference of Ministers of Justice of the Ibero-American Countries, a proposal for a Recommendation on minimum common standards regarding criminal sanctions to apply to trafficking in human beings was approved. Afterwards, in March 2011, Portugal, Spain, Brazil and Argentina have issued the “Declaration of the Santiago de Compostela Group”, that intends to approve the fourfold Plan on the prevention and criminalization of trafficking in human beings and on the protection of its victims.

PREVENTION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 8: Education, awareness raising and training

- a. Which legislative or other measures have been taken to:
 - ensure that children, during primary and secondary education receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacities? (**Article 6, Explanatory Report, paras. 59-62**). Please also specify whether this information includes the risks of the use of new information and communication technologies (**Article 6, Explanatory Report, para. 63**);
 - encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities? (**Article 5, para. 1**);
 - ensure that persons, referred to while replying to the bullet point above, have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility of reporting suspicions of a child being the victim of such acts? (**Article 5, para. 2**).
- b. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of sexual exploitation and sexual abuse of children? Please describe the material used for the campaign/programme and its dissemination. If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details (**Article 8, para. 1**);
- c. Which legislative or other measures have been taken to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention? If so, please provide details (**Article 8, para. 2, Explanatory Report, para. 66**).

Schools from kindergarten to secondary education develop projects for Promotion and Health Education which address the following thematic areas: Nutrition Education and Physical Activity, Sexual Education and Prevention of Sexually Transmitted Infections, Prevention of use of Psychoactive Substances, Mental Health and Prevention of Violence at school.

The results of the survey of projects in the area of Promotion and Health Education (addressed to schools' clusters and non-cluster schools), carried out in the end of 2013, produced the following indicators:

2013	Number	%
Clusters/schools with projects	419	
Pupils involved	494.062	
Clusters/schools with projects in the area of Nutrition Education and Physical Activity	411	98,1%
Clusters/schools with projects in the area of Sexual Education and Prevention of Sexually Transmitted Infections Prevention	411	98,1%
Clusters/schools with projects in the area of Prevention of use of Psychoactive Substances	402	96,4%
Clusters/schools with projects in the area of Mental Health and Prevention of Violence at school	385	94,2%
Clusters/schools with partnership with health units	411	98,1%

Source: Ministry of Education and Science, 2013

SeguraNet initiative

The *SeguraNet* is a project under the responsibility of the Unit Resources and Educational Technology of the Directorate-General for Education from the Ministry of Education and Science. It is an integral part of a public-private consortium called "Safe Internet", in partnership with the Foundation for Science and Technology, the Portuguese Institute for Sport and Youth and Microsoft Portugal. This initiative was launched under the European Commission's programme "Safer Internet Programme".

This project aims to promote a safe, informed and adequate use of the Internet by the school community (students, teachers and parents).

It was established to expand the strategy initiated by the Directorate-General for Education to schools and its community, within the Safer Internet Programme, increasing awareness, raising and promoting a safe use of the Internet to other sectors of society, as well as creating a hotline to report illegal or harmful content for users.

The website *SeguraNet* (<http://www.seguranet.pt/blog/>) presents a number of resources not only informative but also didactic and includes areas specifically dedicated to different educational actors with diverse contents and intended specifically to them, as:

- Students (with content areas like "Avoid online predators", "Learn to deal with bullying online", "risks of socializing on the net", "Uses of the chat rooms in a safer way", "Block undesirable messages", "basic Rules to navigate safely", etc.);

- Parents (guides for parents and educators "How to make the Internet safe - Information for Parents and Educators", listing problems and solutions such: "Predators online: Help minimize the risk, "10 tips for dealing with aggressive users online", "Help your family to avoid promoters of hatred online contents";
- Teachers (Activities to develop with the students of basic and secondary education);
- Schools.

The **Child Support Institute** annually develops awareness/training actions on children's rights and related themes. Their general objectives include, among others: (i) Promote and Protect the Children's Rights; (ii) Encourage inter-institutional dialogue in order to bring awareness to the problem of missing and/or sexually exploited children, through the Building Together Network; (iii) Ensure the Child's right to express his/her views, to protect the child in situations of danger or ill treatment, when deprived of affection, when isolated, abandoned, threaten with **physical or sexual assault**, neglected or forced to prematurely work; (iv) Prevent situations of danger; (v) Combat situations related to the disappearance, kidnapping and **sexual abuse of children**.

Through its **SOS-Child** Service, the Child Support Institute promotes training to different target groups, in particular, teachers, educators, mediators, students and police forces. These training and/or awareness actions, held since 2000, have had the purpose to share experiences and to contribute to the prevention and safeguard of the children's rights.

Such actions aim, in particular (i) to promote good practices and share rewarding experiences that would better adequate the attitudes towards the child/youngster, by encouraging training actions, lectures and seminars; (ii) to bring awareness to local structures and to the society in general to the problems that involve the missing and/or sexually exploited children; (iii) to guide and supervise traineeships; (iv) to collaborate with different institutions/entities in the definition of new intervention strategies; and (v) to promote mediation between the entities involved in the project of missing and/or sexually exploited children.

Set up in 1988, the **SOS-Child** is an **anonymous and confidential service** that gives support to children, youngsters, families, professionals and to the community. It has a nationwide scope. The **SOS-Child** main objective is to give support to the child that is at risk, ill-treated and/or sexually abused, to the child that is not integrated in school, that has conflicts with the parents, that feels rejected or has suicide ideas. The **SOS-Child** tries to find solutions to those situations/problems and to act before the situation of risk takes place.

The **SOS-Child** gives support to the child and to the family by phone (SOS-Child or SOS-Missing Child phone-line), by e-mail, through personalized assistance (social, legal, psychological) and by school mediation. The SOS-Child technical team is composed by psychologists (clinical practice and counselling areas), social workers, educators, school mediators and jurists.

Training of professionals that deal with Children

Since 1990 and through protocols established with different Universities and Higher Education Institutes, the SOS-Child takes in trainees from the social services, psychology, social education, social policy, sociology and cultural entertainment areas. The experience, the knowledge and sensibility acquired on issues related to the problems of the child, provide the trainees with a qualified technical ability to deal with the different challenges and dangers that the children face.

Information/Awareness actions in 2013

The Child Support Institute (IAC) has promoted an awareness action on “Reflecting on Bullying/Sexual Abuse” in 2013. This action was addressed to the technical teams of the Offices for the Support of the Students and Family and to the institutions, partners of the Building Together Network.

The Building Together Network has also promoted, in 2013, actions on the Rights of the Children and, in particular, on missing and/or sexually exploited children.

The parents’ and the children’s awareness to the dangers of child exploitation and sexual abuse also relies upon the initiatives of the Portuguese Association for the Study and Prevention of Sexual Abuse of Children (APPEPASC). This Association carries on a Programme based on the belief “Prevention Works”, in the scope of which workshops to schools (parents, teachers and school assistants) and to children between 6 and 12 years old (1 and 2 school terms) were organized, with the purpose to reduce the children’s vulnerability and provide them with strategies to prevent the abuse.

The workshops for the assistants have the purpose to give these professionals information on the abuse of children and its prevention. In the workshop for the parents and other relatives, the communication between the adult and the child is underlined and strategies have been presented to start, recognize and use opportunities to talk about abuse to the

children. The children's workshop takes place in the schoolroom, where role-play techniques and oriented group discussion are used. It seeks to teach the children to recognize potential situations of danger and to effectively use different options.

On the question and risk related aspects of the use of new information technologies, please see the actions carried out by the Public Prosecution, part of the reply to question 4.

The NCPCYR has been reinforcing the professional training of the sectors that have responsibilities in childhood and youth matters and whose professionals work directly with children and youngsters (teachers, social workers, police forces, etc.). In order to accomplish this goal the NCPCYR developed specific projects supported by European Union, among others Five On-line Manuals with specific Guide-Lines for Professionals of Social Welfare, Education, Health, Police and Media facing child abuse and other dangerous conditions, (www.cnpcjr.pt/direito/ Guides for professionals - <http://www.cnpcjr.pt/left.asp?12.08>): *Guidance Manual for Professionals of Education, or (of Social Welfare), or (of Police forces) or (of Health) in the approach to child abuse situations or other dangerous situations.*

Since 2012, based on the Manual for Education Professionals, the NCPCYR launched in partnership with the Education and Science Ministry, the *on-line Training courses*, specifically addressed to teachers who work in the CPCY. In 2012, 150 teachers attended those courses and, in 2013, 100 teachers who are working at 100% attended on-line courses, in the CPCY. On January 2014, a training course for police forces based on the Guidance Manual for Police forces has started.

Question 9: Recruitment and screening

- a. Which legislative or other measures have been taken to ensure that the conditions for accessing those professions whose exercise implies regular contact with children, ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children? (**Article 5, para. 3**). Please specify to which professions such measures apply. Please also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country;
- b. Does the screening of candidates apply to voluntary activities (**Explanatory Report, para. 57**)?

In 2009, legislation establishing children's protective measures, in compliance with Article 5 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, was published (Law nr.113/2009, of 17 September).

This Law basically foresees the conditions for the accessing to professions, jobs, functions or activities, public or private, even if unpaid, whose exercise involves a regular contact with children, where the recruiting entity has to compulsory require the applicant's criminal record and is obliged to consider whether the applicant is suitable to the exercise of such functions.

Total number of positive criminal records for the above mentioned purpose:

2010: 144.387, of which 5.054 positives ;
2011: 160.947, of which 6.296 positives ;
2012: 167.606, of which 6.189 positives ;
2013: 171.329, of which 5.556 positives .

Moreover, the judicial authorities that have to decide on the adoption, custody, guardianship, foster care, civil sponsorship, delivery or custody of minors or on the regulation of the exercise of parental responsibilities may accede to the criminal record of the persons to whom the child is to be entrusted, so as to know whether they are considered suitable or not. The judicial authorities may also accede to the criminal record of other persons that cohabit with the child.

Public Prosecutors can as well request the criminal record of the person to whom the child is to be entrusted and/or of other persons that cohabit with the child.

The definitive removal from the criminal record of information regarding the convictions and penalties applied due to sexual crimes against children can only take place 23 years have elapsed from the extinction of the main sentence or of its replacement or security measure applied but only if, in the meanwhile, no new conviction occurs (Article 15 (1) a) of the Law nr. 57/98, of 18 August).

Question 10: Preventive intervention programmes or measures

- a. Which legislative or other measures have been taken to ensure that persons who fear that they may commit any of the offences established in accordance with the Convention, have access to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? Please specify under which conditions, if required (**Article 7, Explanatory Report, para. 64**);
- b. Which legislative or other measures have been taken to ensure that persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention, may have access to effective intervention programmes or measures? Please specify under which conditions, if required (**Articles 15 to 17**). Please indicate in particular:

- who has access to these programmes and measures (convicts, persons subject to criminal proceedings, recidivists, young offenders, persons who have not committed a crime yet?);
- how the appropriate programme or measure is determined for each person;
- whether there are specific programmes for young offenders;
- whether persons have a right to refuse the proposed programme/measures?

The Directorate-General for Social Rehabilitation and Prison Services has, at national level, a programme specifically aimed at the rehabilitation of sexual offenders serving an imprisonment sentence, which uses a group intervention methodology based on the cognitive-behavioural approach to beliefs, attitudes, emotions and deviant perceptions, promoting the definition of personal security plans with a view to prevent recidivism.

It is a programme composed of 44 sessions, 14 of which part of a motivational component opened to non-differentiated groups; the remaining 30 sessions are included in the central intervention component, opened to different groups of offenders.

Question 11: Participation of the private sector, the media and civil society.

What steps have been taken to encourage:

- a. the private sector (in particular the information and communication technology sector, the tourism and travel industry, the banking and finance sectors) to participate in the elaboration and implementation of policies, programmes or other initiatives to prevent sexual exploitation and sexual abuse of children? Please indicate which private sectors are concerned and explain how participation takes place. Please also provide information concerning any relevant code of conduct or enterprise charter aimed at protecting children from sexual exploitation and sexual abuse (**Article 9, para. 2, Explanatory Report, paras. 68-73**);
- b. the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children (**Article 9, para. 3, Explanatory Report, para. 74**);

The National Commission for the Protection of Children and Juveniles at Risk has been cooperating with the media on the implementation of standards as regards the treatment of child related issues by the media and most particularly those that involve the intimacy and privacy of the child such as sexual abuse.

A Guide on the Relationship with the media has been drafted (available at http://www.cnpcjr.pt/Manual_Competicencias_Comunicacionais/default.html).

As regards the issue of child participation, all training sessions directed at media staff underline the importance of listening to the child in an active way and of encouraging child participation in all the proceedings where they are involved.

It was published a “*Guide on the Relationship with the Media*” which not only seeks to bring awareness to journalists and to the media on the ethical and deontological perspective whenever facts and events involving children and youngsters are reported but also includes, in the normative principles of this profession, issues that organizations representing the journalists, such as the International Federation of Journalists, debate since 1996.

It also tries to respond to the questions that were raised in a questionnaire addressed to all the commissions for the protection of children and young people.

In addition, the journalists’ Deontological Code sets forth that “*the journalist must respect the citizens’ privacy*” (item 9), which is applied *a fortiori* to the children. The exceptions relate to situations where “*the public interest is at stake*” or when “*the conduct of the person expressly goes against the values and principles that he/she, in public, defends*”.

The Deontological Code is clear when it states that the journalist cannot identify, directly or indirectly, the minor offenders (item 7). The Deontological Council reaffirms this criterion and extends it to the exposure and identification of children in the news, in particular, when conflicts with the parents and/or guardians occur.

The journalist “*must use legal means* to obtain information, images or documents and cannot abuse of those that act in good-faith” (item 4) and also “*cannot humiliate people or disturb their grief*” (item 7). Non compliance with these duties usually leads to direct and indirect identifications.

- c. the financing, including, where appropriate by the creation of funds, of the projects and programmes carried out by civil society aimed at preventing and protecting children from sexual exploitation and sexual abuse (**Article 9, para. 4, Explanatory Report, para. 75**). May the proceeds of crime be used to finance the above mentioned projects and programmes? Please provide details (**Article 27, para. 5, Explanatory Report, para. 193**).

In relation to cooperation with civil society (cooperation arrangements) please see answer provided to question 6.

Some steps have been taken to warn and encourage the private sector, the media and the civil society to the issues related to the sexual exploitation and sexual abuse of children.

Criminal Police experts regularly participate, as speakers, in conferences of a preventive nature, organized by several organizations that have the protection and care of children at

their core. The Criminal Police collaboration with the private sector has been carried out next to the new technology companies and to the media and regard, in particular, software that safeguards the access to harmful contents.

The Criminal Police provides information and collaborates with the press in the disclosure of information on the type of crime at issue. The media has been adopting an attitude of total collaboration in the disclosure of suspects, in order to know their whereabouts. Together with the telecommunications sector, preventive programmes to alert and advise the users on how to browse through the internet and on the risk of finding contents that may be harmful to the children's rights have been developed.

Currently, the seized goods, the value of the crime proceeds confiscated by the state and those that result from the payment of court fees or fines are not used to finance any funds directed to the fight against the crimes foreseen in the Convention or any projects or programmes referred to in paragraph c).

Question 12: Effectiveness of preventive measures and programmes

- a. Please specify whether an assessment of the effectiveness and impact of the preventive measures and programmes described in replies to questions 4, 10 and 11 is regularly carried out;
- b. Please provide examples of the good practices in preventing sexual exploitation and sexual abuse of children.

Until now no assessment on the effectiveness and impact of the preventive measures and programmes described in replies to questions 4, 10 and 11 has taken place.

As regards the programme addressed to sexual offenders, the assessment on the results obtained, when comparing them with the first assessment carried out before the programme and the assessment made when the programme was concluded, show that there are measurable clinical changes in the social behaviour of these offenders, a reduction of cognitive distortions and an increased awareness as regards the damage caused to the victims.

Different bodies engaged in the fight against sexual abuse of children already have a guide of good practices. Two examples and respective electronic links (in Portuguese) are set below:

“Ill treatment of children and youngsters – practical guide on the approach, diagnosis and intervention”

Action in the health area for children and young people at risk - directorate general for health
- February 2011 - <http://www.dgs.pt/upload/membro.id/ficheiros/i016079.pdf>.

“Promotion and protection of the children’s rights – orientation guide for social services professionals on the approach to situations of ill treatment and other risky situations”.

National Commission for the Protection of Children and Youngsters at Risk

http://www.cnpcjr.pt/%5Cdownloads%5CGuia_acciao_social.pdf

Please see the answer provided to question number 8 *in fine*.

PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN VICTIMS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 13: Reporting suspicion of sexual exploitation or sexual abuse

- a. Are professionals working in contact with children bound by confidentiality rules? Do these rules constitute an obstacle for reporting to the services responsible for child protection any situation where they have reasonable ground for believing that a child is a victim of sexual exploitation or sexual abuse? Please indicate the criteria or guidelines which allow for the waiving of confidentiality rules (**Article 12, para. 1, Explanatory report, para. 89**);
- b. Are there any rules encouraging any person who knows about or suspects, in good faith, sexual exploitation and sexual abuse of children to report the facts to the competent authorities? If so, please specify under which conditions and to which authorities (**Article 12, para. 2, Explanatory Report, para. 91**). Please provide examples of good practice.

In the Portuguese legal system, all crimes related to Articles 18, 19, 20 and 21 of the Convention are of a public nature, save the crime under Article 173 (sexual activities with adolescents). Therefore it is not required that a complaint be submitted by the victim or his/her legal representative to initiate criminal proceedings.

Moreover, the Criminal Code on this matter states that when the criminal proceedings depend on a complaint, the Public Prosecution Service may initiate criminal proceedings within 6 months from the date of the knowledge of the fact and of its authors, whenever the interests of the victim so advises it (i) the victim is a minor or lacks the capacity to understand the range and meaning of presenting a complaint, or (ii) the right of complaint cannot be exercised because only the perpetrator of the crime may do so. (Articles 178 (1) and (2) and 113 (5))

The public nature of such crimes makes reporting mandatory for any civil servants who become aware of them, even if the agents of the crime are not known (Article 242 of the Code of Criminal Procedure).

The concept of civil servants, which covers, among others, teachers, nurses, educators and doctors in the public sector, and also the person who voluntarily or compulsorily, paid or for free, performs an activity in a public administration service or in a court, or in the same circumstances, works or takes part in organizations of public-benefit.

The mentioned Law on the Protection and Promotion of Children and Youngsters at Risk foresees that anyone who is aware of situations that may endanger the life and the physical or psychological integrity or liberty of the child shall report the situation to the authorities with competence in childhood and youth matters, law enforcement authorities, protection commissions or the legal authorities.

It should also be noted that the staff and workers of Directorate General for Rehabilitation and Prison Services are bound to the general obligation to denounce the practice of crimes brought to their knowledge in the exercise of their functions.

Question 14: Helplines

Which legislative or other measures have been taken 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? (**Article 13, Explanatory Report, para. 92**).

Portugal has a hotline (Line 144 of the Social Security Service), free of charge that works 24 hours a day throughout the year. This line identifies and responds to social emergency situations, guiding the persons to other lines and/or institutions that are best suited to the situation presented by working in partnership with different bodies, including the Commission for the protection of children.

As already mentioned the Child Support Institute has two helplines, an anonymous and confidential service called SOS-Children, created in 1988. This service has competent and skilled professionals in the attendance and referral of the cases that are reported to it.

The Portuguese Association of Missing Children also offers a 24-hour free contact - 910 190 000 - covering situations of abuse and sexual exploitation of children and of missing children.

The Ombudsman has a “Child Line” for receiving complaints relating to children and young people who are at risk or in danger. Complaints can be transmitted by them or on their behalf by adults, the phone calls being free.

This is not a hotline nor a conversation line but one of referral and intervention aiming at the promotion and protection of the Rights of the Child.

The most commonly reported cases concern situations of safety neglect, health, livelihood and education of children, physical abuse, abandonment, family deprivation, parental responsibility and school issues.

The most frequently contacted authorities are the Commissions for the Protection of Children and Juveniles people (CPCJ), the Institute for Social Security (ISS) and educational facilities.

Question 15: Assistance to victims

- a. Please indicate which types of assistance described in **Article 14** are provided to victims of sexual exploitation and sexual abuse of children. (**Explanatory Report paras. 93-100**) Please specify:
- how the assistance is adapted to the victims' age and maturity;
 - how due account is taken of the child's views, needs and concerns;
 - if the assistance (in particular emergency psychological care) is also provided to the victims' close relatives and persons responsible for their care.
 - Please specify if and to what extent internal law provides for the possibility of removing (**Article 14, para. 3, Explanatory Report, para. 99** the alleged perpetrator, when the parent or persons caring for the child are involved in his **or her sexual exploitation or sexual abuse**;
 - **the** victim from his or her family environment when parents or persons caring for the child are involved in his or her sexual exploitation or sexual abuse.
 - If internal law does provide for this:): are the conditions and duration of such removal to be determined in accordance with the best interests of the child?
 - are social programmes and multidisciplinary structures in place to provide the necessary support for victims, their close relatives and for any person responsible for their care? (**Article 11, Explanatory Report, paras. 87-88**).
- b. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (**Article 38, para. 2, Explanatory Report, paras. 258-259**).):

The measures for the promotion and protection provided for in Article 35 of the Law on the Promotion and Protection of Children and Juveniles at Risk (LCJPR), apply when the child is at risk serve not only to remove the risk but also the following purposes:

- (i) provide conditions that promote safety, health, welfare, training and education, and

(ii) ensure the physical and psychological rehabilitation of children and young people. The measure that shall be concretely applied results from a judgment of appropriateness and proportionality, where the principles inherent to any protective intervention are considered, in particular the child's best interests.

The measure of support to the parents (along with others, *inter alia*, the support to other family members or competent person), measured in the natural living environment par excellence, is to provide the child or young person psycho-educational and social support and, if necessary, economic support. The psycho-educational support translates in a psychological and pedagogical intervention and is intended primarily to promote the full development of the child or young person and contribute to the construction of his/her identity.

The measure has a fixed duration, and in principle it should not exceed 12 months, even though such may be extended up to 18 months. It is regularly reviewed (at intervals to be determined, not exceeding, however, six months).

The rights of hearing and participation of children, enshrined in Article 4 (i) of the above mentioned Law, are in Decree-Law nr. 12/2008, that expressly provides that the child or young person is properly informed and heard on the applied measure and shall be prepared for its implementation and monitoring according to his/her ability to understand the meaning of the intervention (Article 17 (1)).

The measures designed to support the parents and other family members may cover the household of the child (Article 39, 40 and 42 of LCJPR).

The measure of institutional care is enforced by institutions that necessarily have a multidisciplinary technical team -, including in particular psychology, and the cooperation of medical doctors, nurses and lawyers - that shall make the diagnosis of the child or young person and define and implement a project for the promotion and protection (Articles 54, 57 and 58 of LCYPR).

This measure has a fixed duration, and in principle it should not exceed 12 months, even though such may be extended up to 18 months (Articles 61 and 62 of LCYPR). It shall be regularly reviewed (at intervals to be determined, not exceeding, however, 6 months).

The child shall be properly informed and heard on the measure to apply and before every review (if he/she has the maturity to understand the meaning of the intervention and, in any case, if he/she has already completed 12 years of age, as established by Articles 84 and 4 i) of LCYPR).

The law does not provide for the way in which the child's participation is achieved. However, the cases of promotion and protection are, as a rule, made in person, before a judge.

In any case, the child or young person has the right to be heard individually or accompanied by the parents, legal representative, lawyer or person of his/her confidence (Article 84 of LCYPR).

The removal of the offender to whom the child is entrusted (parent or third person) occurs as a rule in criminal proceedings as a result of a coercive measure, in particular: (i) remand (ii) prohibition of contacts, of being in certain places or certain environments, of not remaining or not remaining without authorization in a particular area of the town, parish or county or in the residence where the crime was committed or where the victim dwells, (iv) suspension of profession or activity, (v) suspension of the exercise of parental or guardianship responsibilities (Articles 202, 199 and 200 of the CPC).

The child victim may be removed from his/her family environment as a result of the application by the Commission or by the court, by agreement or by imposition of the court, of a measure of support to another family member; entrust to a competent person, foster care, institutional care or entrust to the person selected for adoption or to an institution with a view to future adoption (the last two measures only apply to promotion and protection court proceedings]).

The maximum duration of the measure on the removal/prohibition of contact of the offender with the victim is established by law, and, in the review, the danger that the offender will continue the criminal activity shall be taken into account (Article 204 c) of the Code of Criminal Procedure).

Regarding the measures of promotion and protection, the application, the choice and duration are made considering the best interests of the child victim (Article 4 a) of LCJPR).

Complaints relating to acts committed abroad can be received. Portugal is a Party to the European Convention on Mutual Assistance, where the mechanism of formal complaint

applies in relation to acts which do not fall under its jurisdiction, national or international, and must therefore be reported to the state which has jurisdiction to investigate and bring them before the court.

The Commission for the Protection of victims of Crimes was reactivated in October 2010 in order to ensure the state advance payment of compensation to victims of violent crimes and domestic violence.

Number of child victims who have been given assistance with reintegration or compensation

	2011	2012	2013
1 – Number of orphan children	*47 , 1 Moldavian; 5 Roma; 2 from Cape Vert.;	*36, 4 Brazilian; 1 Venezuelan;	*25, 2 Mozambican, 2 Roma, 1 Brazilian.
2- Reparation value	300.750,00	172.000,00	173.200,00
3 – Solving delay period	13 a 22 months	3 a 12 months	6 a 12 months
4 – Number of files	20	21	20
5- Average payment/file	15.037,5....	8.190,47...	8.66.....
1 – Number of children – sexual abuse	14	*11	11
2- Reparation value	6.500,00	53.500,00	81.000,00
3- Solving delay period	23 months	6 a 15 months	
4- Number of files	7	7	11
5 - Average payment/file	6.500,00	7.642,88...	7.363,65...

Source: Commission for the Protection of victims of Crimes, 2013.

PROSECUTION OF PERPETRATORS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE OF CHILDREN

Question 16: Criminal law offences

- a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law;
- b. Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify;
- c. Please highlight whether there are any other offences not included in the box below incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included;
- d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

Sexual Abuse (Article 18)

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
 - Engaging in sexual activities with a child where use is made of coercion, force or threats;
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

Child Prostitution (Article 19)

1. Recruiting a child into prostitution or causing a child to participate in prostitution;
2. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
3. Having recourse to child prostitution.

Child Pornography (Article 20)

1. Producing child pornography;
2. Offering or making available child pornography;
3. Distributing or transmitting child pornography;
4. Procuring child pornography for oneself or for another person;
5. Possessing child pornography;
6. Knowingly obtaining access, through information and communication technologies, to child pornography.

Participation of a Child in Pornographic Performances (Article 21)

1. Recruiting a child into participating in pornographic performances or causing a child to participate in such performances
2. Coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes
3. Knowingly attending pornographic performances involving the participation of children.

Corruption of Children (Article 22)

The intentional causing, for sexual purposes, of a child who has not reached the internal legal age for sexual activities, to witness sexual abuse or sexual activities, even without having to participate.

Solicitation of Children for Sexual Purposes (“grooming”) (Article 23)

The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age for sexual activities as established by internal law, for the purpose of committing sexual abuse or producing child pornography, where this proposal has been followed by material acts leading to such a meeting.

Aiding or abetting and attempt (Article 24)

1. Intentionally aiding or abetting the commission of any of the above offences.
2. The attempt to commit any of the above offences.

As mentioned before, the Portuguese Criminal Code criminalizes the conduct referred to in Article 18 of the Convention in its following Articles: (i) 171 (sexual abuse of children), (ii) 172 (sexual abuse of dependant minors), 173 (sexual activities with adolescents) , 163 (sexual coercion), 164 (rape), 165 (sexual abuse of a person unable to resist), 166 (sexual abuse of a interned person), the aggravation of sentences consisting of Article 177 (1), (5) and (6).

Still, it is observed that, unlike Article 18 (3) of the Convention, according to which it should not be regarded as a criminal offense to engage in sexual intercourse with a child who has not yet reached the legal age provided for this purpose, when at stake are sexual acts between consenting minors, the Portuguese law does not exclude the liability of the perpetrator in these cases, punishing, for example the practice of sexual acts between a victim of 13 years and an agent of 16 years, although the act was consented by both.

The behaviour to which Article 19 of the Convention refers in covered by Articles 171 (4) (Sexual abuse of children), 174 (Recourse to child prostitution) and 175 (Pandering of minors) of the Criminal Code.

The situations foreseen under the various subparagraphs of Article 20 (1) of the Convention are also foreseen under Article 176 of the Criminal Code, entitled pornography of minors. Article 176 (3) provides for the punishment of the situations of realistic representation of a minor, with reference to the behaviours provided in subparagraphs c) and d) of (1), which the Convention, in Article 20 (3) of, leaves up to the States the right not to apply.

Article 21 a) of the Convention has correspondence in Article 176 (1) a) of the Criminal Code, in conjunction, regarding the cases of facilitation of the participation of children in pornographic performances, if necessary, with the concept of authorship and complicity embodied in Articles 26 and 27 of the same law.

Article 21 b) of the Convention concurs with Article 176 (1) a) and (2), the latter being an aggravation of behaviours when committed professionally or with the intent of profit.

The framework of Article 22 of the Convention in the domestic law is made by reference to Articles 171 (3) a) - which refers to Article 170 (sexual harassment) - and b) and Article 172 (2) (sexual abuse of dependant minors), all of the Criminal Code.

With regard to Article 24 of the Convention, paragraph 1 is expressed in Article 27 of the Criminal Code, which punishes as an accomplice who, intentionally and in any form, provides material or moral assistance to the practice of a felony by another person.

As regard the punishment of the attempt, the crime of child pornography or participation of a child in pornographic performances is expressly foreseen in the Portuguese criminal law (Article 176 of the Criminal Code).

Comparing the cases of offences covered by the Convention and the legal Portuguese criminal law, with a view to assess the punishment of the attempt, it follows that:

- They expressly provide for the punishment of the attempt in Articles 174 (Recourse to child prostitution) and 176 (Minor's pornography);

- In the crimes set forth in Articles 171 (1), (2) and (4) (sexual abuse of children), 172 (1) (sexual abuse of dependant minors); 175 (pandering of minors); 176 (1) and (2) (pornography of minors), it does not seem necessary to expressly provide for the punishment of the attempt, following the provisions of Article 23 of the Criminal Code (*a contrario*);

- Regarding the crimes set forth in Articles 171 (3), 172 (2) and (3), 173 (sexual activities with adolescents), which provide penalties of less than or equal to 3 years of imprisonment, there is no explicit norm punishing the attempt, given that such will not be punishable under Article 23 (except in cases of punishment with imprisonment up to 3 years where there is aggravation of Article 177 - aggravation of a third, which puts the penalty in 4 years imprisonment, and therefore in such cases punishing the attempt. It is the case of Articles 171 (3), 172 (3), 173 (2)). In any case, taking into account the provisions of Article 24 (3) of the Convention, which allows the states the right not to apply paragraph 2, in whole or in part, and considering the internal provisions regarding the punishment of the attempt in these cases, it appears to be no inconsistency with the Convention.

The age of the victim plays an aggravating role on the criminal frame in the following way:

- The penalties provided for in Articles 163, 164, 168, 174, 175 and Article 176 (1) of the Criminal Code are aggravated by one-third in its minimum and maximum limits, if the victim is under 16 years;
- The penalties provided for in Articles 163, 164, 168, 175 and Article 176 (1) are aggravated by half in its minimum and maximum limits, if the victim is under 14 years;

Furthermore, the age of the victim functions as a reference parameter in the structure of certain criminal types, in particular:

- The most serious level of incrimination is built by reference to victims under 14 years: Article 171 of the Criminal Code (Sexual abuse of children);
- There are two legal types constructed by reference to victims aged between 14 and 18 years, Articles 172 (sexual abuse of dependant minors) and 174 (recourse to child prostitution);
- There is a criminal type built by reference to victims aged between 14 and 16 years, Article 173 (sexual intercourse with adolescents).

Question 17: Corporate liability

Does your system provide that a legal person may be held liable for an offence established in accordance with **Article 26**? Please specify under which conditions.

Legal persons and equivalent entities, with the exception of the state, of other public legal persons and of international organisations of public law, are held liable for the offences provided for in Articles 163 to 166 (*sexual coercion, rape, sexual abuse of a person unable to resist, sexual abuse of interned person*) when the victim is a child, and Articles 171 to 176 (*sexual abuse of children, sexual abuse of dependant minors, sexual activities with adolescents, recourse to child prostitution, minors' pandering and pornography of minors*), when the offence is committed: (i) on their behalf and in the collective interest by persons who have a leading position therein or, (ii) by whoever acting under the authority of the persons referred, by virtue of a breach of the supervision or control duties incumbent upon them.

The responsibility of legal persons and equivalent entities does not exclude the individual responsibility of the respective agents nor is dependent on them being responsible.

Question 18: Sanctions and measures

- a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (**Article 27, Explanatory Report, paras. 182-193**);
- b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (**Article 29, Explanatory Report, paras. 203-208**).

In the case of criminal offences against sexual freedom and sexual self-determination committed by natural persons, the Criminal Code provides for imprisonment penalties that range from 6 months to 8 years imprisonment in most serious cases. These penalties can be aggravated in one half or by a third in the minimum and maximum limits in the situations foreseen in Article 178 of the Criminal Code.

In the case where one of the criminal offences provided for in the Convention has been committed by a legal person, the applicable penalty may consist of a fine or the dissolution of the legal person (Article 90 –A).

In addition to these sanctions, accessory penalties are also applicable, such as judicial order, interdiction of the exercise of the activity, prohibition to execute certain contracts or contracts with certain entities, privation from the right to subsidies, subventions or incentives, closing of establishment and publicity of the penalty applied.

Penal sanctions may take a variety of forms, including fines or imprisonment and could be complemented with accessory penalties

As regards criminal offences established in accordance with the Convention and committed by legal persons, the Criminal Code provides, as main sanctions, the fine or the winding-up of the company (Article 90-A).

However, for the same offences, the following accessory sanctions may be applied: (i) Judicial order; (ii) Interdiction to perform activity; (iii) Prohibition to execute certain contracts or contracts with certain entities; (iv) Deprivation of the right to subsidies, subventions or incentives; (v) Closing of establishment; (vi) Publicity of the condemnatory decision.

The criminal record of a person shall, if appropriate, contain the decisions of foreign courts relating to sexual offenses against children (Law nr. 57/98). Those who can access the information on criminal identification are (i) judges and prosecutors for purposes of criminal investigation, finding of facts on criminal cases, enforcement of sentences and decisions on adoption, custody, guardianship, foster care, civil sponsorship, delivery or custody of minors or regulation of the exercise of parental responsibilities, (ii) the entities that under the procedural law, have delegated powers to perform acts of investigation or inquiry.

It should also be noted that the court, concerning the choice of the penalty, must take in

consideration the circumstances that, not being part of the type of crime, can be considered for or against the agent, also taking into account, for effects of recurrence, the convictions by foreign courts, insofar as they constitute a crime under Portuguese law.

The full effectiveness of the measures set forth in the Lanzarote Convention, both regarding to the knowledge of convictions for acts of sexual exploitation or sexual abuse of children in the context of the access to professions that involve a regular contact with children (Article 5 of Convention) or in determining the sentences for convictions issued by other states (Article 29 of the Convention), depends, regarding the convictions handed down by EU Member States, on the full and regular functioning of the information system ECRIS - European Criminal Records Information System - created by Decision 2009/316/JHA of the Council and that enables the electronic exchange of information between the central authorities of the EU Member States.

There is still some delay in the full operation of ECRIS and Portugal, due to financial difficulties that prevented the adoption of the required IT developments, is not yet connected to this information system. Therefore, the reception and recording of convictions of nationals issued in other EU Member States so that information can be provided to the courts as well as the issuance of certificates containing this information cannot be guaranteed.

Question 19: Jurisdiction

With regard to the offences referred to in question 16, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (**Article 25, Explanatory Report, paras. 165-176**).

Yes. Apart from the application of the general principle of territoriality, the Portuguese criminal law also applies to acts committed outside national territory, in accordance with article 5 of the Criminal Code.

So, with regard to the offences referred to in question 16, (offences provided in Article 171 (Sexual abuse of children), Article 172 (Sexual abuse of dependent minors) Article 175 (Pandering of minors) and Article 176 (Pornography of minors) of the Criminal Code) the Portuguese law is applicable to facts constituting these crimes committed outside national territory, regardless of the nationality of the victim and of the fact that it may also be punishable under the law of the place where it has been practiced, if the agent is found in Portugal and cannot be extradited or surrendered as a result of the enforcement of an European Arrest Warrant or of another instrument of international cooperation which binds the Portuguese State.

Regarding offences provided in Article 163 (Sexual coercion) and Article 164 (Rape), the Portuguese law is applicable to facts constituting these crimes when committed outside national territory, if the victim is a minor and if the agent is found in Portugal and cannot be extradited or surrendered as a result of the enforcement of an European arrest warrant or of another instrument of international cooperation which binds the Portuguese State.

Question 20: Aggravating Circumstances

Please indicate which of the circumstances referred to in **Article 28**, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (**Explanatory Report, paras. 194-202**).

For the sexual abuse of child (Article 171), sexual abuse of dependant minors (Article 172), sexual activities with adolescents (Article 173), recourse to child prostitution (Article 174), pandering of minors (Article 175) and pornography of minors (Article 176), Article 177 of the Criminal Code provides the aggravation of the imprisonment penalty by one third, in their minimum and maximum limits, if the victim (i) is the offender's ascendant, descendant, adoptive parent, adopted child, relative or in-law up to the second degree, or, (ii) has a family relationship, tutorship or curatorship towards the offender or is in hierarchical, economic or work dependence of him/her and the criminal offence is committed by taking advantage from such relationship or dependence. This aggravation is not applied to the crime of minors' pandering, as the same aggravated circumstances are already provided for in the correspondent provision (Article 175).

Sanctions provided for in Article 175 (pandering of minors) and Article 176 (1) (related to pornography of minors) are aggravated by a third in their minimum and maximum limits, if the victim is less than 16 years of age, and if the victim is less than 14 years of age sanctions are aggravated by one half in their minimum and maximum limits.

Question 21: Measures of protection for the child victim

- a. Please describe the measures taken to inform child victims of their rights, the services at their disposal, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role as well as the outcome of their cases (**Article 31, para. 1, letter (a) and para. 2**). Please also indicate what is done to provide all relevant information in a manner adapted to the child's age and maturity and in a language that he/she may understand;
- b. Please also indicate which measures have been taken to enable the child victim to be heard, to supply evidence and to choose the means of having his/her views, needs and concerns presented, directly or through an intermediary, and considered (**Article 31, para. 1, letter (c)**);

- c. What kind of support services are provided to child victims and their families so that their rights and interests are duly presented and taken into account? (**Article 31, para. 1, letter (d)**);
- d. Please describe the measures taken to protect the privacy, the identity and the image of child victims (**Article 31, para. 1, letter (e)**);
- e. Please describe the measures taken to provide the safety of the child victims and witnesses and their families from intimidation, retaliation and repeat victimisation (**Article 31, para. 1, letter (f)**);
- f. Please specify whether the victim and his/her family are informed when the person prosecuted or convicted is released temporarily or definitely from detention or custody. Please indicate who delivers this information and how (**Article 31, para. 1, letter (b)**);
- g. Please also indicate what measures have been taken to ensure that contact between victims and perpetrators, within court and law enforcement agency premises, is avoided. Please specify under which conditions the competent authorities may authorise such contact in the best interests of the child or when the investigations or proceedings require such contact (**Article 31, para. 1, letter (g)**);
- h. Please specify under which conditions child victims of the offences established according to the Convention have access to legal aid provided free of charge (**Article 31, para. 3**).

The general principles relating to the rights to information and the right to be heard are enshrined in the Law for the Promotion and Protection of Children and Juveniles at Risk (Article 4, i)), as well as the right to information as provided in the Criminal Procedure Code. All notices in criminal proceedings are directed to the parents or legal representative of the child or young person.

A way of transmitting information to a child as well as the rules and outline to be followed in order to lessen the emotional impact, are matters addressed in training courses for judges held at the Center for Judicial Studies, where professionals in child psychology also participate.

Currently there are services of the Attorney General's Office, which have their own premises for the hearing of children, creating an informal environment aiming at reducing the harmful effects of the contact with the system and to facilitate the spontaneity of the child's responses.

At the trial stage, there are also practices that attempt to minimize the effects of the child's contact with the system. Before the trial the child is taken to visit the courtroom and contact with the judges and sometimes with other legal professionals with whom he/she shall contact.

In the Portuguese criminal justice system, in cases of sexual offenses against children, the procedural acts, as a rule, take place without publicity, that is, in camera, without the possibility of public participation (Article 87 (3) of the Code of Criminal Procedure).

Also during the inquiry/investigation the judge may decide that it shall take place under justice secrecy (Article 86 (3) of the Code of Criminal Procedure).

In sexual offences against children, the Code of Criminal Procedure prohibits the disclosure by any means, including through the media, of the identity of the victims, under penalty of the offender committing a crime of disobedience (Article 88 (2) c).

The Witness Protection Law (Law nr. 93/99, of 14 July) also provides several measures aimed at protecting the identity of the victim/witness to the crimes in question, especially Article 4 (concealment of witness), Article 5 (teleconference), Article 20 (specific security measures) and Articles 26 to 31 (measures to be taken regarding particularly vulnerable witnesses).

At the hearing stage of the trial it is possible for the judge to order the removal of the defendant from the courtroom during the rendering of statements, if the witness is under 16 and if there is reason to believe that his/her hearing in the presence of the defendant can cause him/her serious harm (Article 352 (1) b) of the Code of Criminal Procedure).

The Code for the Enforcement of Sentences (Law nr.115/2009, of 12 October) provides that the court shall inform the victim and the police authority of the victim's area of residence on the date of release of the offender, when it is considered that the release of the offender/inmate can endanger the victim (Article 23 (3)).

Question 22: Investigations and criminal measures to protect the child victim

- a. What 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, Explanatory Report, paras. 211-215**);
- b. Which legislative or other measures have 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? (**Article 32, Explanatory Report, para. 230**);
- c. Which legislative or other measures have been taken to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with **Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b**, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question? (**Article 33, Explanatory Report, paras. 231-232**);
- d. Please clarify whether your judicial authorities may appoint a special representative for the victim who may be party, where the holders of parental responsibility are precluded

from representing the child in proceedings related to sexual exploitation or sexual abuse of children as a result of a conflict of interest between them and the victim. Please specify who may be appointed as a representative and what are his/her tasks (**Article 31, para. 4**). Please also describe under which conditions it is possible;

- e. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to participate in legal proceedings (for example, as third parties) (**Article 31, para. 5**). Please specify under which conditions, if so required;
- f. Please describe under which circumstances the use of covert operations is allowed in relation to the investigation of the offences established in accordance with the Convention (**Article 30, para. 5**);
- g. Please also describe what techniques have been developed for examining material containing pornographic images of children (**Article 30, para. 5**).

All crimes related to Articles 18, 19, 20 and 21 of the Convention are of a public nature, and therefore do not require that a complaint be submitted by the victim or his legal representative (Article 178 (1) and (2) of the Criminal Code). The crime under Article 173 (sexual activity with adolescents) constitutes an exception, unless it results in suicide or death of the victim.

Article 118 (5) of the Criminal Code provides that in sexual crimes against children criminal proceedings do not end, as a result of the statute of limitation, before the offended completes 23 years of age. This provision seems to comply with article 33 of the Convention.

In criminal proceedings, the Statute of the Attorney General's Office attaches to prosecutors the power to represent the child (Article 3 (1 a)). The Public Prosecution Service is also responsible for representing the minor in case of a civil claim (Article 76 (3) of the Civil Procedure Code).

The Law provides for the possibility to use undercover actions in relation to child sexual crimes that are punishable by imprisonment over 5 years, provided that the agent is not known or when the victim is under the age of 16 or is incapable. Thus, it covers all crimes under Articles 171-176 (sexual abuse of children/ offenses against sexual self-determination) of the Criminal Code. Are excluded from these undercover actions crimes whose victim is aged between 16 and 18 years and that are punishable by less than five years imprisonment.

Portugal ratified recently the European Convention on the Exercise of Children's Rights, of the Council of Europe.

Question 23: Child friendly interviewing and proceedings

- a. Please describe how interviews (**Article 35**) with child victims are carried out, indicating in particular whether:
 - they take place without unjustified delay after the facts have been reported to the competent authorities;
 - they take place, where necessary, in premises designed or adapted for this purpose;
 - they are carried out by professionals trained for this purpose;
 - the same persons are, if possible and where appropriate, conducting all interviews with the child;
 - the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of proceedings;
 - 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.
- b. Please also specify whether all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and whether these videotaped interviews may be accepted as evidence during the court proceedings;
- c. Please describe under which conditions the judge may order the hearing to take place without the presence of the public and the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies? (**Article 36**).

Currently it can be considered that magistrates are well aware that the child's hearing is crucial and requires special knowledge and care.

In larger judicial districts the Attorney General's Office has teams of magistrates who are mostly dedicated to the investigation of crimes of sexual abuse of children. The continuous training of magistrates, provided by the Center for Judicial Studies, includes sessions - in the criminal, family and minors areas – on hearing children, being the judges alerted to the need for the hearing to occur, as soon as after the facts, and to exhaust the subject matter of the hearing in order to avoid its repetition and consequently the child's suffering.

The Attorney General's Office has had specific actions in this area, discussing the best practices for the testimony of children, with the presence of non legal experts and professional of the Criminal Police, given its jurisdiction to investigate crimes against sexual freedom and self-determination of minors.

In the Criminal Police facilities a special room has been prepared for the hearing of children who are victims in order to have a friendlier and less intrusive atmosphere.

The Criminal Police School, on the other hand, provides training in the referred criminal area, and organizes seminars and training actions with the participation of judges and public prosecutors and experts in non legal areas.

The Code of Criminal Procedure (Article 271 - Declaration for future memory) expressly provides for the taking of statements by the judge, for later use at trial (*pro memoria*). With regard to sexual crimes against minors, it is mandatory the hearing as soon as possible after the facts (Article 271 (2)), in order to avoid re-victimization of the child due to new inquiries. These inquiries must occur in an informal and private environment, in order to attain the spontaneity and sincerity in the responses, the minor being accompanied by a technician with special skills to that purpose (Article 271 (4)).

The audio-visual recording of these statements is foreseen under Article 101 of the Code of Criminal Procedure rendering, as a rule, the testimony of the minor at the trial unnecessary. Providing testimony at the trial may still occur, provided that it does not threaten the physical or mental health of the person concerned.

Article 87 (3), in conjunction with Article 321 (1) and (2) of the Code of Criminal Procedure, introduced an exception to the rule of the publicity of the hearings by declaring that in cases of proceedings for crimes against sexual freedom and self-determination, the procedural acts shall, as a rule, take place without publicity.

Thus, Article 352 (1 a) and b) of mentioned Code allows a judge to order the removal of the defendant from the courtroom, if (i) there are serious reasons to believe that his presence would inhibit the deponent from telling the truth or (ii) the deponent is less than 16 years and there is reason to believe that being heard in the presence of the accused would cause him/her great harm.

It should also be referred the Law on Witness Protection (Law nr.93/99, of 14 July) that provides for the hearing by teleconference, whenever compelling reasons of protection - including children who are both victims and witnesses – so justify it (Articles 5 and 29).