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LANZAROTE CONVENTION

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

Replies to the thematic questionnaire

PORTUGAL

1st thematic monitoring round

“Sexual abuse of children in the circle of trust”

Replies registered by the Secretariat on 3 February 2014

DATA COLLECTION

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

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

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

None of the Portuguese authorities consulted reported the existence of systematic collection of data on the specific issue of sexual abuse of children in the circle of trust. The official statistics of justice on sexual crimes against children only allow for a disaggregation of data per crime and not per type of offender.

According to the Portuguese Ministry of Health, clinical data concerning the abuse of children and juveniles are currently in the process of being electronically registered, which will allow for the gradual improvement of collection methods and availability of information.

The Criminal Police (Polícia Judiciária) collects data on the phenomenon of sexual crime against children, including disaggregated data on sexual abuse of children in the circle of trust. These data originate from the register of crimes reported to and investigated by the Criminal Police and are registered into SIIC, a database on criminal information available to all Portuguese police forces. The relevant indicator that is taken into consideration is the kind of relationship which exists between the aggressor and the victim. This indicator allows for a research according to the type of relationship, and many of the categories inscribed bare a connection with the child's circle of trust.

The typology of sexual crimes against children foreseen in the Portuguese criminal legislation is: sexual abuse of children, sexual abuse of dependent minor, sexual activities with adolescents; pornography of minors, children recruitment for prostitution purposes (pandering of minors).

For available statistical information please see the tables attached.

PREVENTION

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

Question 2: Education for children

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

Both the Portuguese Ministry of Health and the Portuguese Ministry of Education have developed educational programmes/tools for children which focus on the risks of sexual abuse, including in the circle of trust.

The subject of sexual abuse and in particular the dissemination of mechanisms/tools that may help children to identify potential offenders is dealt with within the framework of sexual education classes. The approach taken is adapted to the developmental stage of the child. Indeed, the building of capacities to protect oneself against all kinds of sexual abuse and exploitation including in the circle of trust is one of the goals assigned to the subject of sexual education in schools, as explicitly inscribed in Article 2 of Law nr. 60/2009, of 6 August.

The mandatory contents of sexual education classes comprise, at the first cycle level notions on the protection of the body and the notion of its limits, and the rejection of abuse. At the second cycle level children are given insight on the need of protecting their own body and defending themselves from abusive approaches. Also, at second and third cycle of primary and secondary school, the need to protect one's body and defending oneself from abuse are thought in classes (please refer to Order 196-A/2010, of 9 April).

The Health Action for Children and Youngsters at Risk (Ministerial Decision nr. 31292/2008, of 5 December) developed under the aegis of the Ministry of Health, also undertakes an educational role next to children, raising awareness to the issue of sexual abuse in the circle of trust. This document lists a number of very important guidelines concerning the identification of signs and the criteria of intervention in situations of emergency; such as those of sexual abuse, and is enforced with recourse to a network of units created within the National Health Service.

(<http://www.dgs.pt/accao-de-saude-para-criancas-e-jovens-em-risco.aspx>)

Several other institutions undertake training sessions aimed at children in this area, raising awareness to possible situations of abuse. One of the most relevant projects of this kind is that of IAC (Institute for the support of children) through the Project-Street.

As for the detection of abuse, whenever behaviours/situations that may indictate situations of abuse are identified, reporting to the commissions on protection of children and youngsters at risk and local family units takes place.

Question 3: Recruitment and screening

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

Please refer to the answer provided in the GOQ.

Screening of people working with children, both in professional and voluntary activities, is mandatory.

Pursuant to Law nr. 113/2009, of 17 September, entities recruiting for positions which involve regular activities with children, including voluntary activities, must request that the candidate presents his/her criminal register when applying, in order to have his/her capacity to work with children appreciated. The extract of the criminal register of the candidate should contain information on convictions on domestic violence; ill treatment, crimes against sexual freedom and sexual self-determination (including sexual offences committed in the circle of trust) and accessory penalties applied as a result of these convictions.

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

Have policies or strategies been implemented for promoting or conducting awareness-raising campaigns where the focus is directed especially towards the risks and realities of sexual abuse of children in the circle of trust? If so, please specify for whom these campaigns were/are run (**Article 8, Explanatory Report, paras. 65-66**). Please include examples by providing links to what has been developed.

Several authorities, such as police forces, conduct awareness raising campaigns in schools focusing on the phenomenon of sexual abuse in the circle of trust, along with other types of sexual abuse.

Experts from the Criminal Police regularly participate in seminars/conferences addressing the subject of the abuse of children in the circle of trust.

Link: www.internetsegura.pt

Question 5: Specialised training

Have legislative or other measures been taken to ensure that **persons, units or services in charge of investigations** are trained in dealing with cases where the alleged perpetrator of child sexual abuse is a member of the victim's immediate family or has otherwise been in a recognised position of trust, authority or influence over him or her? (**Article 34 (1), Explanatory Report, paras. 233-235 as well as para. 123**).

Within the Ministry of Internal Affairs, both the National Republican Guard (GNR) and the Police of Public Security (PSP) receive training on sexual abuse of children, including on the abuse of children in the circle of trust. Within the PSP, officials who integrate the Victim Support Units are given special training in the framework of the Integrated Training of Proximity Policing.

Public Prosecutors do not receive specific training on the issue of sexual abuse of children in the circle of trust. The ongoing training of public prosecutors essentially takes place in the context of the annual training program organized by the Centre for Judiciary Studies which offers training clusters on the issue of sexual abuse of children, including aspects connected with the specificity of the investigations and the protection of child victims, particularly in the context of criminal investigations and hearings.

Within the Criminal Police, the initial training course comprises clusters on the investigation of sexual crime against children. This theme is focused at a deeper level on the ongoing training clusters, where, among other aspects, the commission of abuse through information and communication technologies is focused in detail.

Moreover, the Criminal Police has established cooperation protocols with other police authorities in order to provide specialized training in other countries in the framework of international cooperation and to other public civil society institutions which develop work in this area such as the National Institute for Legal Medicine and Forensic Sciences, hospitals, the Portuguese Victim Support Association, Commissions for the Protection of Children and Juveniles at Risk and the Child Support Institute.

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

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

Please refer to the answer provided to questions 4 to 11 of the GOQ. No specific steps have been taken as far as abuse of children in the circle of trust is concerned.

Question 7: Preventive intervention programmes or measures

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

Within the Ministry of Justice, the Directorate-General for Social Reinsertion and Prison Services has implemented an Intervention Program Aimed at Sexual Offenders in the Prison Context.

The program resorts to the cognitive-behavioral paradigm attempting to promote cognitive restructuring aimed at behavioral change. Having recourse to group dynamics as a privileged technique, it seeks to identify the cognitive and emotional dysfunctions leading to the criminal action and addresses them in order to induce changes.

As with other high risk specific issues, the intervention with sexual offenders is of high level, in emotional terms, as the individual is confronted not only with the wrongfulness of the act, but also with the consequences it has on the victim and on society.

The follow-up phase has a variable duration and its main objective is to ensure the maintenance and consolidation of the changes experienced during the previous phases. The general objectives of the program are the prevention of crime and recidivism as well as the protection of victims and of the general public.

Summary

Program	Target Population	Issue	Length	Facilitators	Stage of the sentence
Sexual offenders Program	Convicted for crimes against self-determination and sexual freedom	Sexual offences	Variable 44 minimum sessions 90 Minutes	2 Psychologists	Middle of the sentence

The Criminal Police seek to carry out its preventive work by making available detailed leaflets with information on prevention and advice on how to report this type of crime.

Advice is structured in order to meet the needs of children and teenagers, focusing on the prevention of sexual crimes against children by means of new information and communication technologies and in awareness rising to sexual crimes perpetrated through the Internet.

Advice is given on the prevention of risk behaviour among children, both through leaflets and the resources available at the Internet Segura site. Indications on the way to preserve digital evidence and procedures for reporting are given.

PROTECTION

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

Question 8: Reporting suspicion of sexual abuse

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

Please refer to the answer given to question 13 of the GOQ. Other than the general rules of the Criminal Code and Article 70 of Law nr. 147/99, of 1 September - which requires all professionals dealing with children who have knowledge of a situation that puts the child at risk and implies the commission of a crime to report it to the competent authorities -, no specific measures to encourage reporting of sexual abuse in the circle of trust were taken.

Reporting is also encouraged via telephone and e-mail through the Criminal Police website, plataformas digitais and “alert line” (Linha Alerta).

Question 9: Assistance to and special protection for victims

- a. If, and to what extent, does internal law provide for the possibility of removing the victim from his or her family environment when parents or persons who have care of the child are involved in his or her sexual abuse? If internal law so provides:
- are the conditions and duration of such removal to be determined in accordance with the best interests of the child? (**Article 14 (3), Explanatory Report, para. 99**);
 - have legislative or other measures been taken to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care? (**Article 14 (4), Explanatory Report, para. 100**).

Yes. The Portuguese legal system of protection of children and youngsters at risk (Law nr. 147/99, of 1st September), allows for the possibility of removing a child from his/her family environment when the carers are involved in acts of abuse or other type of ill treatment.

According to its Article 1, intervention with the goal to promote and protect the rights of the child or young person at risk so to ensure his/her well being and full development may take place in a number of situations, including in the case where the child is a victim of sexual abuse.

The best interest of the child (Article 4 of Law nr. 147/99) is the paramount principle guiding intervention next to the child, without prejudice to the consideration of other legitimate interests within the framework of plurality of interests at stake in the case.

In the case of sexual abuse in the circle of trust, removal of the child from the family environment is one of the possible measures of promotion and protection available to child care experts.

This removal may take place through various options: by placing the child with another family member (Article 35 (1) b)), confiding him/her to a suitable person (Article 35 (1) c)), support for the autonomy of life (Article 35 (1) d)), host into a family (Article 35 (1) e)), host into an institution (Article 35 (1) f)), trust the child to a selected person for adoption, or to an institution with a view to future adoption (Article 35 (1) g)).

In addition, removal may also take place according to the urgent procedure set forth in Articles 91 and 92 of the said Law nr. 147/99, which allows for the removal of the child in a maximum delay of 48 hours in the case where an actual or imminent danger to the life of the child exists and the holders of the parental powers or de facto guardians oppose to the removal. In these cases, the police authorities immediately report the fact to the Public Prosecutor and withdraw

the child from the situation of danger, ensuring emergency protection in a temporary shelter or other suitable premises.

In addition, the Law on Domestic Violence (Law nr. 113/2009, of 17 September) has introduced the possibility of withdrawal of the perpetrator from the family house ensuring that this prohibition is enforced by means of electronic surveillance techniques, thus preserving the environment of the household, the daily routines of the victims and minimizing further victimisation.

The conditions and duration of the removal are always determined according to the best interests of the child and depend on the personal life project drawn for the situation at stake. Similarly, the choice of the particular removal measure that is to be applied relies on the interpretation of the best interests of the child. On the issue of urgent removal procedures please see the document prepared by the National Commission for the Protection of Children and Youngsters at Risk, available in:

http://www.cnpcjr.pt/preview_documentos.asp?r=1516&m=PDF

Psychological support to people who are close to the victim is provided by the Portuguese Association for Victim Support (APAV), a non-profit organization that has support from the State. APAV seeks to guarantee emotional and psychological support to victims of crime, their families and friends, providing them with free and confidential services.

The APAV provides support through its National Network of staff and their telephone helpline – 707 2000 77.

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

Yes.

The Criminal Code (Article 179) allows for the imposition of an accessory penalty of temporary prohibition of the exercise of professional or voluntary activities involving contact with children as well as an inhibition on the exercise of the parental powers, tutorship or curatorship for a period ranging between 2 and 15 years to individuals convicted for criminal offences against sexual self-determination.

PROSECUTION

The questions in this section focus on those provisions that deal with criminalising and sanctioning intentional conduct which amounts to sexual abuse within the child's circle of trust as well as some theme-specific issues relating to whether the investigative, prosecutorial and court stages of proceedings take adequate account of the special nature of cases that have a circle of trust component.

Question 10: The offence of sexual abuse

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

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

Intentional conduct is generally understood as meaning that the perpetrator is capable of representing the consequences of his act and notwithstanding directs his/her will towards the commission of such act. In Portuguese criminal law, intent is a general requisite to establish the guilt of the offender.

Article 14 of the Criminal Code refers to the various degrees of the intentionality.

Intentional conduct encompasses the situation where the perpetrator knows that the conduct fulfils a typified criminal offence, but nonetheless carries it out; represents the commission of a criminal offence as a necessary consequence of his/her conduct but nevertheless carries it out; represents the commission of the typified criminal offence as a possible consequence of his/her conduct but nevertheless carries it out.

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

The concept of sexual activities does not exist per se in Portuguese criminal law, but that of 'relevant sexual act' (acto sexual de relevo), an expression referred to in many of the criminal types of the crimes against sexual freedom and sexual self-determination (Chapter V, sections I and II of the Criminal Code).

Explicitly provided for and punished as "relevant sexual acts" are acts such as vaginal coitus, coitus per anus, oral coitus or vaginal or per anus penetration by parts of the body or objects (Article 171 (2) of the Criminal Code). Other examples of relevant sexual acts as identified by legal doctrine would be acts of masturbation, kisses on the erogenous zones of the body such as breasts, the pubic area and the sexual organs or pulling off the victim's clothing exposing her/him for erotic satisfaction purposes.

Question 11: Corporate liability

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

Please refer to the reply provided to question 17 of the GOQ.

Question 12: Aggravating circumstances

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

Yes. The crime of sexual abuse of dependent children aged 14 to 18 years old by the person to whom their education or assistance has been trusted typified in Article 172 of the Criminal Code. The ratio underlying the autonomous typification is the special situation of vulnerability of the abused child towards his/ her caretaker; and thus the seriousness attached to the violation of the bond of trust that was established.

The crime of solicitation of minors for prostitution explicitly previews and sanctions the circumstance where this solicitation takes place with the abuse of a position of authority resulting from a family relationship, tutorship, curatorship or hierarchical dependency (Article 175 (2) c) of the Criminal Code).

Moreover, Article 177 of the Criminal Code provides for an aggravation of one third in the minimum and maximum thresholds of the penalty in the case where the victim is a descendent, adopted, stepchild or a in a tutorship, family, hierarchical, economical or labour relationship with the perpetrator and the crime is committed by taking advantage of these circumstances.

Question 13: Best interest of the child

- a. Please specify whether in situations where the alleged perpetrator is a member of the victim's family or has otherwise been in a recognised position of trust or authority towards him or her, legislative or other measures have been taken to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim of sexual abuse. (**Article 30, para. 1, Explanatory Report, para. 215**);

- b. The reply to question 22(d) of the GOQ will be examined by the Committee to assess the implementation of **Article 31, para. 4** of the Convention with respect to the theme of the monitoring round;
- c. Please also indicate whether internal law provides that sanctions, as a result of offences committed by a person considered to be in the victim's circle of trust, include withdrawal of parental rights or monitoring or supervision of convicted persons (**Article 27, para. 4, Explanatory Report, para. 191**).

Although Portuguese criminal procedural law does not have a specific provision stating that investigations and criminal law proceedings should take place according to the best interests of the child, it should be underlined that the Convention on the Rights of the Child, which once ratified is integrated automatically in the Portuguese legal order, provides that all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, shall take into account the best interests of the child (Article 3 (1)).

This Article resonates throughout the Portuguese domestic law provisions that aim at the protection of childhood, specially through the explicit inscription of the principle of the protection of the best interests of the child in Article 4 of the Law on the Protection of Children and Youngsters at Risk.

In the case where the holders of parental responsibility are precluded from representing the child as a result of a conflict of interests, the child shall be represented by a Public Prosecutor.

Question 14: Child-friendly justice

- a. Please specify whether in situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her, a protective approach towards victims has been adopted to ensure that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate (**Article 30, para. 2 and Explanatory Report, paras. 211-215**);

Yes. The attempt to prevent the aggravation of the trauma of child victims of sexual abuse, during the investigation and trial phases takes place by means of several procedural mechanisms:

- The early examination of child victims in order to avoid the re-victimising effect of repeated inquiries (Article 271 (2) of the Code of Criminal Procedure);
- The setting up of an informal and private environment where the taking of statements in case of crimes against sexual freedom and self-determination is facilitated and assistance by qualified

technician in the taking of statements is provided (Article 271 (4) of the Code of Criminal Procedure);

- In court proceedings, the inquiry of the victim under 16 years of age is conducted exclusively by the presiding judge (Article 349 of the Code of Criminal Procedure);

- The protection of the child's privacy is ensured by restricting the publicity of the proceedings and the dissemination of the personal data of the victim whenever a sexual crime, and including sexual abuse within the circle of trust, is at stake (Article 87 (3) and Article 321 (1) and (2) of the Code of Criminal Procedure);

- The judge may order the withdrawal of the defendant from the courtroom in the case where the witness is under 16 years of age and there are reasons to believe that the conduction of the hearing in the presence of the defendant might be detrimental to him/her (Article 352 (1) a) and b) of the Code of Criminal Procedure).

- Confrontation between the victim and the perpetrator at the court's premises is avoided by having recourse to *pro memoria* statements or to the taking of testimony by videoconference.

b. Which legislative or other measures been taken to ensure that investigations or prosecution of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement, especially in cases where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (**Article 32, Explanatory Report, para. 230**);

With the exception of the crime of sexual activities with teenagers (Article 173 of the Criminal Code), all crimes against sexual self-determination and sexual freedom in the case where the victim is a child entail public prosecution, regardless of a report or accusation made by the victim and irrespective of a possible withdrawal of the victims' statements.

In addition, when the prosecution depends on the existence of a report by the victim, and always upon consideration of the interests of the victim, the public prosecutor may initiate criminal proceedings in a maximum delay of 6 months counting from the date where it had knowledge of the facts and identity of the perpetrator if the victim is a minor or does not understand the significance of the act of reporting the crime or the right to report may not be exercised because it pertains to the perpetrator (Articles 178 (1) and (2) and Article 113 (5) of the Criminal Code).

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

Yes. Please refer to third paragraph of the first part of this answer.