



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

T-ES(2014)THE-RO

LANZAROTE CONVENTION

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

Replies to the thematic questionnaire

ROMANIA

1st thematic monitoring round

“Sexual abuse of children in the circle of trust”

Replies registered by the Secretariat on 31 January 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.

ANSWER:

On ANITP level there is the Integrated System for Monitoring and Assessing Victims – database referring to the trafficking of children for the purpose of exploitation in any way.

As well, the data concerning child abuse, neglect and exploitation of any kind is also collected through the Monitoring reports on situations of abuse, neglect and exploitation of children. This data is collected on national level by the Directorate for the Protection of Children within the Ministry of Labor, Family, Social Welfare and Elders (DPC-MLFSWE), the data being collected on local level through the 47 DGSWCP.

The data collection on the level of DGSWCP is made on the basis of the mandatory notification provisioned by Law no. 272 on the protection and promotion of the rights of the child, notifications being made by any person or institution, including nongovernmental organizations (NGOs). The data is available on the website www.copii.ro, as statistics begin with 2008.

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**).

ANSWER:

We do not have anything to add further to the answer given to question 8 of the GOQ

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.

ANSWER:

We do not have anything to add further to the answer given to question 9 of the GOQ.

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.

ANSWER:

Campaigns on child rights, violence against children and domestic violence are constantly implemented at national and local level. Examples:

- 2002 Phare Project “Education campaign on child rights”, the component of communication campaign for parents “You can be a better parent”, implemented by DCP-MLFSPE, during the period 2005-2007: 4 tv video clips, 3 posters and 4 radio clips broadcasted in 2007, 8 training sessions for journalists organized in 2007 together with the Center for Independent Journalism and using UNICEF translated into Romanian language Manual Media and child rights (www.copii.ro/ programe internationale).

- “Programme for the victims of domestic violence” implemented by CDP-MLFSPE based on the Loan Agreement no. 4825 RO between Romania and International Bank for Reconstruction and Development, ratified by Law no. 40/2006, aims to improve life conditions and social inclusion of the victims of domestic violence. During November 2012 – January 2013, an awareness campaign was implemented “Domestic violence should not let you indifferent”: 7 regional conferences, a poll, 35 street events like caravan on three routes in the country, one video clip for television and one radio clip (www.copii.ro/ prima pagina).

- GDSACP celebrates regularly the international and national days for children and combat of various forms of violence against children, through action with and for children, mostly in partnership with schools and police: March 21 – International day for street children, May 25 – International day for missing children, June 1st – International day for children, June 5 – National day for combat violence against children, June 12 – International day for combat of child labour, June 26 – International day for combat trafficking in drugs, September 23 – International day for combat sexual exploitation and trafficking in women and children, November 19 – International day for combat child abuse and neglect, November 20 – International day for child rights.

- GDSACP Alba: 2009, campaign „Open your heart, don’t close your fist!”;

- DGASPC Bacău: 2013, campaign „Child, wherever you are, you have rights”, 70 community resource persons informed;

- GDSACP Bihor: campaign „Together against violence” on topic of domestic violence in 2009 and 2012, Cup „Friendship and non-violence” sport competitions for children from placement centers, schools and high schools, annually, during 2010-2012;

- GDSACP Bistrita-Nasaud: 2011-2013, campaigns in schools regarding violence against children, 400 pupils informed;

- DGASPC Botoșani: 2009-2010, campaign „Use your heart, not your palm!”;

- GDSACP Bucuresti sector 5: 2010-2011, campaign „Say further” in schools;

- GDSACP Hunedoara: 2009, campaign on combat child labour, school drop-out, juvenile delinquency and drugs; 2010, campaign „Street, shelter or trap”;

- GDSACP Iasi: 2012, „Information campaign on good practices regarding prevention, identification and working techniques with children victims, potential victims of violence and their families”, „Information campaign on domestic violence”; 2013, „Information campaign on ICT role at county level, prevention, identification and working techniques with children victims, potential victims of violence and their families, as well as methodology for combat domestic violence and protection order for the victim”;

- GDSACP Mehendinti: 2013, campaign against domestic violence;
- GDSACP Olt: annual campaigns for raising awareness on helpline 0800800564 at the level of city halls, hospitals, schools and family doctors;
- GDSACP Prahova: 2013, campaign „Violence leave marks”, 120 children informed;
- DGASPC Satu-Mare: 2013, campaign „Together we can change” in schools, on the topic of trafficking in children; campaign „March against domestic violence” in several communities;
- DGASPC Sibiu: 2012, campaign on sexual abuse in placement centers;
- DGASPC Vaslui: 2013, awareness campaign for prevention of abuse for children aged 8-10 years old.

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).

ANSWER:

See the answer given to question 8a) from the General Questionnaire. We do not have additional information regarding the specific training in matters of sexual abuse in the circle of trust.

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).

ANSWER:

We do not have anything to add further to the answers given to questions 4 and 11 of the General Questionnaire.

Also, see the answer given to question 6c) from the General Questionnaire referring to awareness campaigns.

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).

ANSWER:

There are no services or pro-active programs for persons fearing they might commit one of the offences provided for by the Convention, however they can make use without any restrictions to public and private mental health services, the same like any other citizen.

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**).

ANSWER:

We do not have anything to add further to the answer given to question 13 of the GOQ.

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**).

ANSWER:

In order to protect the child who is abused or neglected or the child who, regardless of the reason, for his/her best interests, cannot be left in the care of his/her parents, Law no. 272/2004 provides for the measure of placement or the measure of emergency placement¹.

¹ Chapter III - The special protection of the child who is temporarily or definitively deprived of the protection of his or her parents

Section 1 - Joint provisions

Article 50

The special child protection is made up by the all measures, assistance and services aimed at the care and development of the child who is deprived, either temporarily or definitively, of the protection of his or her parents, or of the child who, in view of protecting his or her best interests, cannot be placed in the care of his or her parents.

Article 51

(1) The child receives the special protection stipulated by the present law, until reaching the full capacity to exercise his or her rights.

(2) Upon the request of the youngster, which is expressed following acquirement of full capacity to exercise his or her rights, if the youngster is continuing his or her studies in the regular, mass education system, the special protection is granted, according to the law, for the entire duration of his or her studies, but without exceeding the age of 26 years old.

(3) The youngster who has acquired full capacity to exercise his or her rights and has benefited from a special protection measure, but who is not continuing his or her studies and does not have the opportunity to return to the family, being confronted with the risk of social exclusion, receives special protection upon request for a period of maximum 2 years, for the purpose of facilitating his or her social integration. In case proof is made of the fact that the youngster has been offered a job and / or accommodation and that he or she has successively turned the offer down or has been deprived of them by his or her own fault, the provisions of the current paragraph are no longer applicable.

Article 52

The special protection services are those listed under Article 108 - 110.

Article 53

(1) The special child protection measures are established and enforced based on the individualized protection plan.

(2) The plan stipulated under paragraph (1) is drafted and revised according to the methodological norms elaborated and approved by the National Authority for the Protection of the Rights of the Child.

(3) The special child protection measures for the child who has reached the age of 14 years old are established only with the child's consent. In case the child refuses to give his or her consent, the protection measures are established only by the court of law which, under strongly motivated circumstances, may overlook the child's refusal to express his or her consent for the proposed measure.

Article 54

(1) The general department for social security and child protection must draft the individualized protection plan immediately after receiving the request to enforce a special protection measure or immediately after the director of the general department for social security and child protection has decided on the emergency placement of the child.

(2) In the case of the child for whom a legal guardian has been appointed, the provisions of paragraph (1) are not applicable.

(3) Upon establishing the objectives of the individualized protection plan, special priority is given to the re-integration of the child in the family or, if this is not possible, the placement of the child in the extended family. The plan's objectives are established by obligatorily consulting the parents and the members of the extended family who have been identified.

(4) The individualized protection plan may stipulate the placement of the child in a residential type of service, only if no legal guardianship could be established or no placement with the extended family, with a maternal assistant or with another person or family could be achieved, in accordance with the present law.

Article 55

The special child protection measures are:

a) placement;

b) emergency placement;

c) specialized supervision.

Article 56

The beneficiaries of the special child protection measures established by the present law are:

a) the child whose parents are deceased, unknown, deprived of the exercise of parental rights or have been enforced the penalty of denial of parental rights, placed under interdiction, declared dead or missing by a court of law and for whom no legal guardianship could be established;

b) the child who, in view of protecting the his or her best interests, cannot be left in the care of the parents, for reasons for which the parents cannot be held accountable;

c) the abused or neglected child;

d) the foundling or the child who has been abandoned by the mother in a hospital ward;

e) the child who has committed an act stipulated by the criminal law and who is not criminally liable.

Article 57

The parents, as well as the child who has reached the age of 14 years old have the right to appeal in a court of law the special child protection measures established by the present law, and they have the right to receive free legal assistance, in accordance with the law.

Section 2 – Placement**Article 58**

(1) The placement of the child represents a temporary special child protection measure, which, in accordance with the present law and by case, may be decided, as follows:

a) with a person or family;

b) with a maternal assistant;

c) in a residential service, stipulated under Article 110, paragraph (2) and licensed in accordance with the law.

(2) The person or family who is legally responsible for the placed child must have residence in Romania and must be evaluated by the general department for social security and child protection with regard to the moral warranties and the material conditions that have to be fulfilled, in order to receive a child in placement.

Article 59

Throughout the entire duration of the placement measure, the domicile of the child is the same with that of the person, family, maternal assistant or the residential service who is legally responsible for the child.

Article 60

(1) The placement of the child who has not reached the age of 2 years old may only be decided with the extended or substitute family and it is forbidden to place him or her in a residential service.

(2) As an exception to the provisions stipulated under paragraph (1), the placement in a residential service of the child who has not reached the age of 2 years old may only occur in the case in which the child has severe disability and is dependent on specialized residential care services.

(3) The following issues will be targeted upon establishing the placement measure:

a) giving priority to the placement of the child in the extended or the substitute family;

b) placing the siblings together;

c) facilitating the parents' opportunity to exercise the right to visit the child and to maintain personal relations with the child.

Article 61

(1) The placement measure is decided by the child protection commission, if the consent of the parents has been granted, for the situations stipulated under article 56 b) and e).

(2) The placement measure is decided by the court of law, upon the request of the general department for social security and child protection:

a) for the child who is in the situation stipulated under article 56 a), as well as for the child who is in the situation stipulated under Article 56 c) and d), if it is necessary to replace the emergency placement measure decided by the general department for social security and child protection;

b) for the child who is in the situation stipulated under article 56 b) and e), when the consent of the parents or, if the case, of one of the parents has not been granted for enforcing this measure.

Article 62

(1) The parental rights and duties towards the child are maintained throughout the duration of the placement decided by the child protection commission.

(2) The parental rights and duties towards a child for whom a legal guardian could not be appointed and for whom the court of law has decided the placement measure are exercised and, respectively, fulfilled by the president of the county council, and by the Bucharest sector mayor, respectively.

(3) As an exception to the provisions stipulated under paragraph (2), the parents who have been deprived of their parental rights, as well as those who were enforced the penalty of interdiction of parental rights, still maintain the right to consent to the adoption of their child.

(4) The method of exercising the parental rights and fulfilling the parental duties regarding the person and the assets of the child who is in the situation stipulated under Article 56 c) and d) and Article 56 b) and e) is decided by the court of law.

Article 63

The child protection commission or, if the case, the court of law which has decided the placement of the child, will also determine the amount of the monthly contribution which the parents must make for the maintenance of the child, in accordance with the conditions stipulated by the Family Code. The amounts thus collected represent an income to the county budget and, respectively, to the budget of the Bucharest sector where the child is coming from.

Section 3 - Emergency placement

Article 64

(1) The emergency placement of the child is a temporary special child protection measure, which is undertaken in the situation of the abused or neglected child, as well as in the situation of the foundling or of the child abandoned in healthcare institutions.

(2) The provisions stipulated under Article 58 - 60 are properly enforced.

(3) Throughout the entire duration of the emergency placement, the exercise of parental rights is suspended de jure, until the court of law rules on maintaining or replacing this measure and on the exercise of parental rights. Throughout the suspension period, the parental rights and duties towards the child are exercised and fulfilled respectively, by the person, family, maternal assistant or by the head of the residential service which has received the child in emergency placement, and those regarding the assets of the child are exercised and fulfilled, respectively, by the president of the county council or by the Bucharest sector mayor.

Article 65

(1) The emergency placement measure is decided by the director of the general department for social security and child protection from the administrative – territorial unit where the foundling or the child abandoned by the mother in a hospital ward or the abused or neglected child is located, in case there is no opposition from the representatives of the legal persons, or from the natural persons who take care of the respective child and ensure the child's protection.

(2) The emergency placement measure is decided by the court in accordance with the provisions stipulated under Article 94, paragraph (3).

Article 66

(1) In the case of the emergency placement measure decided by the general department for social security and child protection, the department has the duty to inform the court of law within 48 hours from the date when this measure was decided.

(2) The court of law will analyze the reasons based on which the general department for social security and child protection adopted the measure and will rule on either maintaining the emergency placement or replacing it with the placement measure, on the establishment of the legal guardianship, or on the re-integration of the child in his or her family. The court of law must also rule on the exercise of parental rights.

(3) If the emergency placement is decided by the court, the court will rule in accordance with Article 94, paragraph (4).

(...)

Article 94 - (1) The representatives of the legal persons, as well as the natural persons who are legally responsible or provide child protection must cooperate with the representatives of the general department for social security and child protection and offer them all necessary information for addressing the situations.

(2) In case when, following the verifications, the representatives of the general department for social security and child protection reach the conclusion that there are sound reasons to support the existence of an imminent dangerous situation for the child, as a result of child abuse and neglect, and they do not face any opposition from the persons referred to under paragraph (1), the director of the general department for social security and child protection will establish the emergency placement measure. The provisions stipulated under Articles 58 - 60, Article 64, paragraph (3) and Article 66 are properly enforced.

(3) In case the persons referred to under paragraph (1) refuse or prevent in any way the representatives of the general department for social security and child protection to conduct the verifications, and it is established that there are sound reasons to support the existence of an imminent dangerous situation for the child, as a result of child abuse and neglect, the general department for social security and child protection notifies the court of law, requesting the issuance of a presidential ordinance for the emergency placement of the child with a person, family, maternal assistant or in a residential service, which is licensed in accordance with the law. The provisions stipulated under Articles 58 – 60 and Article 64, paragraph (3) are properly enforced.

(4) Within 48 hours from the date of executing the presidential ordinance through which the emergency placement measure was established, the general department for social security and child protection notifies the court of law, requesting it to issue a decree ruling on: the replacement of the emergency placement with a placement measure, the partial or complete termination of parental rights, as well as on the exercise of parental rights.

(...)

ARTICLE 108

(1) The day-care services are those services which provide the maintenance, re-establishment and development of the capacities of the child and of his or her parents, in order to overcome situations which may determine the child's separation from his or her family.

(2) Access to these services is made based on the service plan or, if the case, on the individualized protection plan, in accordance with the present law.

ARTICLE 109

The family-type services are those services which, at the domicile of a natural person or a family, provide the upbringing and care of the child who has been separated, either temporarily or definitively, from his or her parents, as a result of enforcing the placement measure, in accordance with the present law.

ARTICLE 109^M

(1) Children may be placed in the care of families and persons who reached the age of 18 years old, have full exercise capacity, have their residence in Romania and present the moral guarantees and the material means needed to raise and care for the child who is separated, temporary or definitively, from his or her parents.

(2) In order to decide the placement measure, the general directorate for social welfare and child protection shall take the necessary steps for the identification of the extended family members next to whom the child enjoyed his or her family life, in order to consult them and to involve them in the establishment/revision of the objectives of the protection personalized plan.

(3) The activity of the person certified as maternal assistant, according to the law, shall be carried on pursuant to a contract of a special nature, related to child protection, and signed with the directorate or a private accredited institution having the following characteristics:

a) The activity to raise, educate and care for the children in placement, which is carried on at the residential premises;

b) The work schedule is imposed by the children's needs;

This is a special temporary protection measure, consisting in distancing the child from the harming environment and entrusting him or her, as appropriate, to a person or family, to a maternal assistant or a residential service, licensed according to the law.

Penal measures:

In respect of the individuals who have committed a crime, once with the main sentence, the court may also apply the complementary punishment of prohibition on the exercise of certain rights for a period which can vary between 1 and 5 years, including parental rights. This additional penalty may be applied if the main penalty is imprisonment or a fine and the court considers that it is necessary. Additional punishment runs from the final decision of the fine sentence, the sentence ordering probation under supervision or after the service of the imprisonment term after the termination of supervision term while on parole².

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- c) The spare time planning is made according to the schedule of the family and the children in placement;
 - d) The legal vacation ensures the continuity of the activity, except for the cases in which, during this vacation period, the separation from the child in placement is authorized by the directorate.
 - (4) The individual work contract is signed on the date when the director is issuing the emergency placement order or when the commission for child protection/court issued the decision on the placement.

ARTICLE 110

- (1) The residential services are those services which ensure the protection, upbringing and care of the child who has been separated, either temporarily or definitively, from his or her parents as a result of enforcing the placement measure, in accordance with the present law.
- (2) Residential services category includes all services which provide accommodation for more than 24 hours.
- (3) The maternal centers are also considered residential services.
- (4) The residential services which belong to the public administration authorities are organized only within the structure of the general department for social security and child protection, as functional parts of these departments, with no legal status.
- (5) The residential services are organized based on the family model and may have specialized characteristics, according to the needs of the placed children.

² The New Penal Code (Law no. 286/2010 on Penal Code)

ARTICLE 55

Complementary penalties

The complementary penalties are the following:

- a) prohibition on the exercise of certain rights;
- b) military degradation;
- c) publishing the conviction decision.

(...)

ARTICLE 66

Content of the complementary measure of prohibiting the exercise of certain rights

- (1) The complementary measure of prohibiting the exercise of certain rights consists in prohibiting the exercise of one or more of the following rights for a period of one to 5 years:
 - a) the right to be elected in the public authorities or in any other public positions;
 - b) the right to fill in a position involving the exercise of state authority;
 - c) the right of an alien to stay on Romanian territory;
 - d) the right to elect;
 - e) parental rights;
 - f) the right to be a tutor or guardian;
 - g) the right to fill in a position, to practice a profession or to develop an activity which has the nature of the one by means of which the offender committed the crime;
 - h) the right to possess, carry and use any weapon;
 - i) the right to drive vehicles or certain types of vehicles established by court;
 - j) the right to leave the Romanian territory;
 - k) the right to fill any leading position within a legal entity of public law;
 - l) the right to be in certain places established by court;

- Assistance for the children who are victims of violent acts is described in detail by the GD no. 49/2011, annex 1, chapter IV on case management in these situations. During this process, the child's needs and opinions will be taken into consideration, according to his or her age and maturity, and services shall be granted to the child, the parents/legal guardian and other individuals important for the child. The services and interventions shall have in view all the areas in which the child may have needs, namely medical, rehabilitation, social, protection or educational services, as well as others.

From the information received from the courts, it was noted that, in child sexual abuse cases, the victims were accommodated in assistance centers for victims or, in cases when

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- m) the right to be in certain places or to go to certain sport or cultural events or other public meetings, as established by the court;
 - n) the right to communicate with the victim or with the victims' family members, with the persons with whom the crime was committed or with other persons established by court or to approach these persons;
 - o) the right to approach the home, work place, school or other places where the victim carries on his or her social activities, according to the terms set by the court of law.
- (2) When the law provides for the interdiction of the right to fill in a public office, the court shall also prohibit the exercise of the rights provisioned in paragraph (1) a) and b).
 - (3) The prohibition on the exercise of the rights mentioned in paragraph 1, letter a) and b) shall be ordered jointly.
 - (4) The penalty provisioned in paragraph (1) c) shall not be ordered when there are well founded reasons to believe that the life of the expelled individual is in danger or that such individual shall be submitted to torture or other inhuman or degrading treatments in the state of expulsion.
 - (5) When ordering the prohibition of one of the right provisioned in paragraph (1) n) and o), the court shall individualize concretely the content of this penalty, taking into account the circumstances of the case.

ARTICLE 67

Application of the complementary penalty of prohibition on the exercise certain rights

- (1) The complementary penalty of prohibition of exercising certain rights can be applied only if , the main imposed sentence is imprisonment or fine and the court finds that, considering the nature and the seriousness of the crime, the circumstances of the crime and the persona of the offender, this penalty is necessary.
- (2) The application of the prohibition on the exercise of certain rights is mandatory when the law provides such a penalty for the crime committed.
- (3) The prohibition on the exercise of the alien's right to be on Romanian territory shall not be applied if the court ordered the parole under supervision.

ARTICLE 68

Execution of the complementary penalty of prohibition on the exercise of certain rights

- (1) The execution of the penalty of prohibition on the exercise of certain rights starts:
 - a) after the conviction sentence to the fine penalty is final;
 - b) after the conviction sentence was rendered final, sentence according to which it was ordered the parole under supervision;
 - c) after the service of the imprisonment sentence, after the total pardon or the pardon of the rest of the sentence, after the end of the statutes of limitation period or after the termination of the parole under supervision period
- (2) If parole was ordered, the prohibition of the alien's right to be on Romanian territory shall be executed beginning with the release date.
- (3) If the revocation of the parole under supervision is ordered or the replacement of the fine with imprisonment is imposed, for other reasons than the committal of a new offence, the part of the period set for the complementary penalty of prohibition on the exercise of certain rights, which was not executed on the date of revocation or replacement shall be executed after the service of the imprisonment sentence.
- (4)

the abuse was committed in family environment, the victim was retreated from the family and the measure of his/her placement was taken.

There were cases when the instance decided that the victim be included in a protection and conciliation program of the Probation Service.

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).

ANSWER:

Once with the main sentence, the court may also apply the complementary punishment of prohibition on the exercise of certain rights for a period which can vary between 1 and 5 years, including parental rights.

This penalty may be applied if the main penalty is imprisonment or a fine and the court considers that it is necessary, taking into consideration the nature and seriousness of the offence, the circumstances of the case and the persona of the offender.

For some of the offences provisioned by this convention, imposing this complementary penalty is even mandatory (see the content of the offences presented in the general questionnaire). Among the rights which may be prohibited, there are the rights to fill in the position, to practice a profession or to develop an activity which has the nature of the one by means of which the offender committed the crime.

The service of the penalty of prohibition on the exercise of certain rights runs from the execution of the imprisonment sentence, or if parole was ordered, from the release date.

Please refer to the footnotes related to the answer given to the question 9a) for the content of the legal provisions.

As well, Article 97 of Law no. 272/2004 provides that “It is forbidden to employ a person against whom a final and irreversible court decree has been issued for intentionally committing a crime, in the public or private institutions, as well as in the public or private residential services, which provide the protection, upbringing, care or education of children.”

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**);

ANSWER

a) According to the domestic law, the offence is committed by fault when the offender foresees the outcome of the act, aiming to that outcome by committing the act or foresees the outcome of his act and, although the offender does not pursue the outcome, accepts the possibility of its occurrence (Article 16³ of the new Penal Code – Law no. 286/2009)

ANSWER

According to the domestic law, the offence is committed by fault when the offender foresees the outcome of the act, aiming to that outcome by committing the act or foresees the outcome of his act and, although the offender does not pursue the outcome, accepts the possibility of its occurrence (Article 16³ of the new Penal Code – Law no. 286/2009)

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

ANSWER

The words “sexual life” is not defined as such in the domestic law. However, the Penal Code, in respect of the offence regarding the sexual freedom and integrity, gives an indirect definition as follows:

Rape is “the sexual intercourse, the sexual oral or anal intercourse, committed by ...”, while the sexual aggression is “the act of a sexual nature, other than the one provisioned in Article 218 (rape)...”, the sexual intercourse with a minor, incriminated by Article 220 is “the sexual intercourse, the oral or anal sexual intercourse, as well as any other acts of vaginal or anal penetration committed with a minor ...”.

In fact, the provisions having in view the protection of the personal freedom and sexual integrity refer to any type of manifestation of the protected values, as listed above.

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.

ANSWER

We do not have anything to add further to the answer given to question 17 of the General Questionnaire.

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**).

ANSWER:

The offences of rape and sexual aggression are provided for in their aggravated form (punished with 5 to 12 years imprisonment and to 10 years imprisonment) when committed against the victim who is in the care, protection, education or guard or treatment of the offender or when the victim is a direct relative, brother or sister.

As well, the offences regarding the sexual intercourse with a minor and sexual corruption of minors are punished more severe (3 to 10 years imprisonment and 2 to 7 years imprisonment), when the minor is a direct relative, brother or sister of the offender or the minor is in the care, protection, education or guard or treatment of the offender.

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);

ANSWER:

Any of the actions concerning the minor are taken, giving consideration to the minor's best interest. (To this aim, see the answer given to question 4b of the GOQ)

In what concerns the special rules regarding the development of the criminal procedure, the victim who is a minor has a special status during the criminal procedure and the new Code of Penal Procedures contains a set of rules meant to protect his or her interests (To this aim, see the answer given to question 21 of the General Questionnaire).

- 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).

ANSWER:

Once with the main sentence, the court may also apply the complementary punishment of prohibition on the exercise of certain rights.

This penalty may be applied if the main penalty is imprisonment or a fine and the court considers that it is necessary, taking into consideration the nature and seriousness of the offence, the circumstances of the case and the persona of the offender.

For some of the offences provisioned by this convention, imposing this complementary penalty is even mandatory (see the content of the offences presented in the general questionnaire). Parental rights are among the rights which may be prohibited.

The service of the penalty of prohibition on the exercise of certain rights runs from the execution of the imprisonment sentence, or if parole was ordered, from the release date. Please refer to the footnotes related to the answer given to the question 9a) for the content of the legal provisions.

As well, the prohibition on the exercise of parental rights may be also applied as accessory penalty, during the service of the sentence when ordered by the court as complementary penalty³.

³ ARTICLE 65

The content and the manner of service concerning the accessory penalty of prohibition on the exercise of certain rights

- (1) The accessory penalty shall consist in the prohibition of rights provisioned under Article 66 paragraph (1) a), b) and d) - o), the exercise of which was prohibited by the court as additional penalty.
- (2) In case of life imprisonment, additional punishment by the court is the prohibition on the exercise of the rights referred to in Article 66 paragraph (1). a) - o) or some of them.
- (3) The accessory penalty of prohibition on the exercise of certain rights shall be served from the moment when the sentencing judgment is rendered enforceable until the main custodial sentence has been served or deemed served.
- (5) In case of life imprisonment, the accessory penalty provided for in Article 66 paragraphs (1) c) shall be served from the date of release on parole or after the sentence was deemed served.

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);

ANSWER:

In these cases, the general provisions presented under questions 21, 23 and others of the General Questionnaire.

- 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);

ANSWER:

The detailed answer for this question is given under question no. 22b) of the General Questionnaire.

- 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).

ANSWER:

See the answer given under question no. 21d) of the General Questionnaire.

In respect of the trial stage of the penal process⁴ (which is a public stage, as a general rule), if the trial held in public session may infringe upon the morals, dignity or private life of

(6)

⁴ ARTICLE 352 of the New Code of Penal Procedures:

Publicity of the court session

(1) The court session shall be public, save where otherwise provided by law. The session taking place behind closed doors shall not be public.

(2) The court session may not be attended by minors under the age of 18, save where they have the capacity of parties or witnesses, as well as armed persons, save for the personnel in charge with security and order.

(3) If the proceedings held in public session could prejudice State interests, moral, the dignity or privacy of a person, the interests of minor children or justice, the court, upon the demand of the prosecutor, of the parties or *ex officio*, may declare that the session is not public for all its course or only for a part of the proceedings.

(4) The court may also declare the session not public upon the demand of a witness, if their public hearing would prejudice the safety or dignity or privacy thereof or their family members, or upon the demand of the prosecutor, of the damaged person or the parties, where a public hearing would jeopardise the confidentiality of certain information.

(5) The session shall be declared not public in public session, after hearing the attending parties, the damaged person and the prosecutor. The order of the court shall be enforceable.

(6) While the session is not public, only the parties, the damaged person, their representatives, attorneys and other persons whose attendance is authorised by the court shall be admitted to the court room.

the individual or the best interests of the minors, the court, upon the request of the prosecutor, the parties or ex officio, may declare a closed hearing during the entire or partial judgment of the case.

The court can also declare a closed hearing upon the request of a witness, if the hearing held publicly could prejudice the safety or dignity or his private life or his family or upon the request of the prosecutor, the injured party or parties if a public hearing would jeopardize the confidentiality of certain information.

Law no. 678/2001 on preventing and fighting the trafficking in human beings also requires that hearings in cases of trafficking in minors and child pornography are nonpublic (Article 24). The court sessions may be attended by the parties, their representatives, lawyers, representatives of the National Agency against Trafficking in Persons and other persons whose presence is deemed necessary by the court.

Regarding the hearing of the victim without being present in the courtroom, this is one of the measures that the court may take into account, given the status of vulnerable witness of the minor, which also applies to the minor victim through assimilation. For details and related law provisions, see the answer to the question no. 21 e) of the GOQ.

(7) The parties, the damaged person, their representatives, attorneys and experts appointed in the case shall be entitled to take note of the documents and content of the file.

(8) The presiding judge shall have the duty to inform the persons attending the session held behind closed doors on the obligation to keep the information received during the trial confidential.

(9) Throughout the proceedings, the court may prohibit the publication and dissemination, by written or audiovisual means, texts, drawings, photographs or images able to disclose the identity of the damaged person, of the civil party, of the civilly responsible party or of the witnesses, in observance of the conditions provisioned for in paragraphs (3) or (4).

(10) Public interest information in the file shall be communicated in observance of the legal provisions.

(11) Where classified information is essential for the settlement of the case, the court shall request, as a matter of emergency, if appropriate, full declassification, partial declassification or the transfer into another classification degree of or that access be allowed to the information classified for the defendant's attorney.

(12) If the issuing authority does not allow access for the defendant's attorney to classified information, such information may not serve in rendering a sentencing decision, a decision to waive the enforcement of the sentence or to defer the enforcement of the sentence.