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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**

**SAN MARINO**

Replies registered by the Secretariat on 13 March 2015



## GENERAL FRAMEWORK

### Question 1: Definition of “child”

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

- a) San Marino legal system does not provide for a definition of "child", but Law no. 15 of 25 June 1975 establishes the age of majority at 18 years. Considering the whole system of San Marino codes and legal provisions, it can be inferred that the category of "child" includes any person under the age of 18 years (see, for example, Law no. 49 of 1986 – Family Law Reform - and Book II, Title I, Chapter III of the Criminal Code).

Moreover, worth mentioning is also art. 1 of the Convention on the Rights of the Child, to which San Marino is a party. Considering that, pursuant to art. 1 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, "regularly signed and implemented international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict", the definition of child contained in such agreements, i.e. any person under the age of 18 years, is fully recognised, even if they have not been transposed in the national legal system.

- b) No particular measure has been taken thereto. However the judicial authority may urge the involvement of the Minors' Protection Service, where necessary. When the age of a victim is uncertain and there are reasons to believe that the victim is a child, the Law Commissioner may rely on the operators of the Minors' Service of the Social Security Institute to grant the appropriate assistance.
- c) San Marino legal system does not provide for a precise age for legal sexual activities. The wider category of "minors" is divided into three subcategories: *infant* < 7 years, *prepubescent* < 12 years for girls and < 14 years for boys, and *pubescent* up to the age of majority. Therefore it can be inferred that, depending on the evolving capacity of the minors included in the three age brackets, San Marino system considers sexual activities between pubescent as legal, as long as they consent thereto.

### 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.**

The articles of the Criminal Code already envisaging the offences relating to child abuse have recently been integrated in an accurate and detailed way. Specifically, the Great and General Council approved Law No. 61 of 2002 aimed at strengthening the instruments envisaged by the legal system to combat sexual exploitation of minors and establishing close cooperation between the judicial authorities and the Minors' Service for the protection,

assistance and recovery of child victims of the offences regulated by the above mentioned Law.

Art. 6 of Law no. 61 of 2002 and Art. 4 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order clearly testify to the fact that attention is paid to sexual abuses of all children, whether of San Marino nationality or not (the above mentioned articles read, respectively, "[...] *The Law Commissioner acting as Guardianship Judge shall **proceed in the same way even where a foreign minor is victim of one of the offences regulated by this Law and is without any assistance in the territory of the Republic***" and "*All shall be equal before the law, without any distinction based on sex or personal, economic, social, political and religious status*").

Furthermore, as previously highlighted, by acceding to the Convention on the Rights of the Child, the Republic adopted the principle of non-discrimination enshrined in Art. 2 of the Convention.

### **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;**
  - b) whether your country has adopted a national strategy and/or an 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;**
  - 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.**
- a) With regard to the legislative measures provided for the prevention and repression of offences against children, great attention has been paid to such phenomena, focussing not only on the events prior but also on those subsequent to the criminal conduct.

The most relevant legal measures and arrangements are:

- the ratification of the International Convention on the Rights of the Child;
  - several articles of the Criminal Code related to offences concerning unlawful conduct against children (art. 168, 168bis, 173, 177, 177bis, 177ter, 177quater);
  - Law n. 61 of 30 April 2002 "*Law for the suppression of sexual exploitation of minors*";
  - Law n. 97 of 20 June 2008 "*Prevention and repression of violence against women and gender violence*";
  - the creation of a public social and health structure dedicated to the mental and physical well-being of children;
  - the establishment of the Authority for Equal Opportunities for the promotion and support of public awareness raising initiatives on this phenomenon and the monitoring of offences perpetrated in the Republic.
- b) San Marino has not yet adopted a specific national strategy and/or an Action Plan to combat sexual exploitation and sexual abuse of children. However, considering the small size of our territory, the existence of institutions and services for the protection of the best interest of children, as well as awareness raising activities constantly carried out even through Italian TV or radio broadcasters, thus also covering San Marino

population, the phenomenon and all its forms are fully known. However, this does not exclude the possible ratification and adoption of any intervention programmes, based on specific assessments.

- c) This issue is regulated in San Marino legislation taking inspiration from the relevant general principles of international law and, in particular, from the Convention on the Rights of the Child. As an example, see Law no. 97/2008, which directly derives from the Council of Europe Recommendation Rec (2002) 5 on "the protection of women against violence."

#### **Question 4: Child participation**

- a) **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);**
  - b) **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).**
- a) The Authority for Equal Opportunities promotes public activities on children's rights, and more generally, on the rights of all minorities.
  - b) Also in the spirit of the International Convention on the Rights of the Child, children are taken into due account by the institutions responsible for their education, care and support. Indeed, the laws approved or the decisions taken to protect minor victims are based on the victims' needs and the measures deemed as necessary by the social institutions dealing with children's education.

#### **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));**
  - b) **Which legislative or other measures have been taken to set up or designate mechanisms for data collection or focal points, at 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));**
  - 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).**
- a) The Complex Operational Unit Minors' Service, in particular the Simple Operational Unit Minors' Protection is responsible for neglected, abandoned children and victims of child abuse. The Service operates in order to solve any existing prejudicial situation, also by removing children from their family, developing family support programmes, where possible, in order to ensure the protection of children and their ties with their family.

In order to protect the rights of the child, the COU promotes information, training and prevention projects, also in cooperation with other services of the territory. Being a public social and health service, resources are allocated by the State.

- b) Under Law no. 97/2008 and its Delegated Decree n. 60 of 31 May 2012, the Authority is the competent body designated to collect and analyse data from the judicial authorities, the Gendarmerie, the Minors' Service and the civil society and to issue periodical reports. Laws no. 70 and 71 of 23 May 1995 established that the Data Protection Supervisor is responsible for the protection of personal data. For further information, please refer to the answer of question no. 1 of the thematic questionnaire.
- c) No legislative or other measures have been taken yet to organise the collection and storage of data relating to the identity and the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention.

### **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)?**

- a) In compliance with Law no. 97/2008 and with Delegated Decree no. 60/2012 a coordination group has been established, consisting of the Authority for Equal Opportunity, school directors, health and social services, law enforcement, the association of lawyers, the association of psychologists and the court, which meets regularly. One of its tasks is to establish operational protocols for the exchange of information and for any prevention and protection measure concerning children victims of sexual abuse.

Moreover, health services have established a technical panel, consisting of the Authority for Equal Opportunities, school directors, health and social services, law enforcement, the association of lawyers, the association of psychologists and the court, to increase professionals' sensitivity through a common approach.

- b) Delegated Decree n. 60/2012 established a Counselling Centre offering support and counselling to victims, including with the help of specialized professionals. Where necessary, victims can be offered residential care in competent shelter homes.
- c) Among its major activities, the Social Services Centre for Adults promotes, urges and organizes cooperation and participation initiatives involving institutions and associations, civil and religious, public and private, as well as private individuals, designated by law or otherwise authorized and responsible for rehabilitation initiatives. Such initiatives are

aimed at the resocialisation of prisoners and internees, persons subject to alternative measures to detention or to programmes fostering contacts between the prison community and the free society; they also combat exclusion, separation and segregation of prisoners.

### **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, paragraph 4)? Please, give examples.**

Yes, in recent years San Marino contributed to international solidarity projects focussed on prevention and protection of children from sexual abuse. For example, San Marino contributed to the OSCE Project "Preventing human trafficking in children without parental care in the Republic of Moldova".

San Marino also supports PREDA Foundation in the Philippines, which fights against children sexual exploitation and cares about their psychological and physical rehabilitation.

Moreover, some local associations operate for international cooperation for the benefit of populations in developing countries. As an example, "San Marino for the Children" is an association providing psychological, social, educational assistance, health care and any other form of assistance and relief to children living in difficult or emergency conditions. It also encourages cooperation with national and international associations promoting the protection of children's rights.

### **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 exploitation and sexual abuse, as well as on measures 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).**

a) The Department of Education introduced mandatory training courses for teachers and school staff in order to provide them with adequate tools and skills to intervene and prevent sexual exploitation of children in accordance with art. 4 of Delegated Decree N. 60 of 2012.

These courses are aimed at providing an appropriate knowledge of sexual exploitation and sexual abuse of children and of the means to identify them. Whenever there are grounds for suspicion that a child is victim of such acts, school staff is required to report confidentially to the school board that shall submit such reports to the Minors' Protection Services, under art. 19 of Law no. 97 of 2008 and as agreed by the above mentioned coordination group.

b) In the first stage works have been focussed on creating a network of public services, through technical panels and training, in order to raise awareness on this issue and to lay the right foundation to enhance awareness amongst the general public.

Moreover, a brochure was drawn up and sent to the entire population, containing contact details of the competent services appointed to receive reports on various forms of violence against children and women.

c) Law no. 61 of 2002, whose scope has been mentioned above, ruled *ex novo* the tasks assigned to the Law Commissioner and Police Forces, establishing the allowed activities, including investigations, to identify and suppress the offences related to the dissemination, distribution and advertisement of child abuse material.

In this regard, refer to

- Art. 3: "[...] *in case of conviction for the offences referred to in the preceding paragraphs, **the confiscation of child abuse material** shall always be mandatory under Article 147 of the Criminal Code. To this end, the Law Commissioner may order during the investigation phase **the seizure of the child abuse material***".
- Art. 7: "*During investigations aimed at identifying, acquiring evidence and suppressing the offences referred to in this Law, the Law Commissioner may authorize the Police specialized personnel to **simulate the acquisition of child abuse material**, to intervene in the activity of mediation, to take part in tourism initiatives, even abroad, which also include child sexual exploitation, to use covert indication so as to open websites, to participate in exchanges on the Internet.*"

## **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 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)?**



- a) San Marino legal system has provided for additional penalties inflicted by the judicial authority to punish the criminal conduct, in order to suppress and punish not only the offence, but also the criminal behaviour of the offenders and their chance for future repetition of it.

A penalty of disqualification shall affect the legal capacity of sentenced persons, banning them **from public offices or services and from the tasks related to them, respectively, of public officer and civil servant** - Art. 82, paragraph 3, no. 1) -.

Although this penalty is mentioned in the general part of the Criminal Code and not specifically for the offences referred to in this questionnaire, the scope of the provision shall also covers the category of offences against children.

San Marino system includes two types of certificate: a historical criminal record for internal use only of public administration, judicial offices and Police forces, containing information relating to criminal proceedings against an individual; a general criminal record, to which special clauses apply (non-disclosure of convictions and suspended sentence) for convicted persons, not recidivists, punished for minor offences.

- b) No.

#### **Question 10: Preventive intervention programmes or measures**

- a) **Which legislative or other measures have been taken to ensure that persons who fear they could 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 such offences being committed? Please specify under which conditions, if required (Article 7, Explanatory Report, paragraph 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?**
- a) In case of risks of offences being committed, no legislative measures are specifically envisaged that can guarantee effective preventive actions.

Cases of mental disorders related to the risk of these kinds of offences being committed fall within the competence of the mental health services, if repeated behavioural abnormalities are involved.

- b) No specific measure has been adopted to ensure access to intervention programmes designed for persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention.

However, in 2004 the Social Services Centre for adult prisoners was established to promote and implement the humanity and rehabilitation principles of punishments, in accordance with internal rules and international conventions to which San Marino adhered.

The Centre monitors the rehabilitation process during the enforcement of a penalty; it is also responsible for external monitoring and treatment and cooperates for internal monitoring and treatment, which are complementary for the social reintegration of the offender.

The Centre also promotes, urges and organizes cooperation and participation initiatives involving institutions and associations, civil and religious, public and private, as well as private individuals, designated by law or otherwise authorized and responsible for rehabilitation initiatives. Such initiatives are aimed at the resocialisation of prisoners and internees, persons subject to alternative measures to detention or to programmes fostering contacts between the prison community and the free society; they also combat exclusion, separation and segregation of prisoners.

This is a rehabilitation service for the benefit of the entire prison population (fortunately small, in San Marino), adapted to the needs of each offender and usually well accepted and respected by the parties concerned.

#### **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);**
- 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).**

Thanks to its territorial, linguistic and cultural proximity with Italy, San Marino population benefit from information broadcasted by the Italian mass media, in particular from programmes designed for the public opinion awareness raising on the phenomena of the abuse and exploitation of children. San Marino people, in fact, pick up Italian TV stations and, therefore, have access to any Italian awareness raising campaign, that have also an impact in San Marino.

Moreover San Marino has a national public television channel, San Marino RTV that joined the Italian “Fondazione Pubblicità Progresso”, public service announcement foundation, which has been an international point of reference in social communication for more than thirty years.

This Foundation includes Italian private and public partners, such as the Italian federation of newspaper publishers and the main social advertising associations. Therefore San Marino RTV broadcasts social campaigns on issues such as women and children protection, development and cooperation in developing countries, and also social advertising spots.

- c) The San Marino associations’ world in favour of childhood is wide and well-structured. There are several experiences of exchange between civil society and institutions on the topics relating to child protection and well-being.

“Pro bimbi” is a non-governmental association founded in 2009, which represents a qualified reference point for families and people willing to engage in the mental and physical well-being of children. Over the years, this association has successfully cooperated with the paediatrics public service, creating useful synergy in the fields of information and training.

Similarly, the San Marino Foster and Adoptive Families’ Association organized some conferences and meetings in cooperation with the Social Security Institute on the topic “abuse and maltreatment on minors” patronized by the Ministries of Education and Health.

Recently, San Marino University promoted a round-table on “Education to a conscious use of social networks” with the participation of the Youth Observatory’s representative and the Minors Office to the Police Department’ supervisor

Another example of cooperation between public and private sector is the anti-violence Counselling Centre mentioned in reply n.6, which depends from the Social Security Institute but is also funded by the San Marino Saving Bank (Cassa di Risparmio).

Other projects of public-private partnership to raise awareness are under evaluation.

## **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 10 is regularly carried out;**
  - b) **Please provide examples of good practices in preventing sexual exploitation and sexual abuse of children.**
- a) The activities and the effective functioning of the services dealing with these issues are constantly monitored through official channels by the supervisory bodies responsible for verifying that the programs and projects included in the annual and in the three-year Health Plans are implemented according to criteria of efficiency and cost-effectiveness.
  - b) The small size of the phenomenon in our country and the limited number of cases do not allow indicating any good practice.

## 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.
- a) Art. 192 of the Criminal Code establishes the offence related to the *disclosure of official, professional, scientific or trade secret*. This rule protects the secrecy of facts of which professionals become aware while performing their duties. Even if no professional category bound by rules of confidentiality is specified, the provision lists general criteria, such as "own status", "office", "profession", "art or " industry", to determine the professionals bound by this rule.

The category "office" may include public or private officers serving the interest of society, namely teachers and carers working every day in contact with children.

Considering that the provision was meant to protect the freedom and security of professional relationships, the rule should not punish the above mentioned professionals who, in the interest of the child, report to the services responsible for the protection of children, since their reporting is not intended to procure any benefit for them or others.

- b) Anyone is obliged to report and more specifically to "immediately inform the authorities" about people needing care, specifying their age, physical or mental condition. The Criminal Code provides for sanctions in case of non-reporting.

### 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).**

Delegated Decree relating to Law no. 97 of 2008 established a dedicated hotline offering counselling services to the victims of violence.

## 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.
- b) 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.
- c) 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).
- d) 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);
- a) Children victims of abuse are assisted by the Simple Operational Unit Minors' Protection, and specifically by a specialized team consisting of psychologists, social assistants, educators and social-health workers, providing tailored programmes based on the victims' age and needs. These programmes also involve the victims' family and/or those taking care of the children.
- b) San Marino legal system widely rules the removal of the victim or child victim of abuse and violence, see:
- Law no. 49 of 26 April 1986, "*Family law reform*", recently integrated with Law no. 68 of 28 April 2008, "*Rules on international adoption and protection of minors*". Under art. 20 of Law 68/2008, children can be removed from their family and be cared for by the Minors' Service, for their best interest;
  - Art. 22 of Law no. 97 of 20 June 2008 provides for that, upon the victim's request, the judge may order the defendant to stay away from the family house and from places usually frequented by the victim.
- c) See above.

Moreover, Law n. 68 of 2008, art. 4, provides for forms of assistance to victims of violence, namely:

- information on the measures envisaged by the law for the protection, safety and right to assistance and support for victims of violence;
- information on the competent social-care services, with specifically trained staff, easily identifiable and accessible by victims, providing immediate support, including

of psychological nature, and subsequently taking care of victims in the medium-term, also for the purpose of family reunification;

- planning of social interventions, protection measures, support to education, training and employment;
  - placing victims in family-like community for a period sufficient to develop a project of social reintegration, in the most severe cases, where living with the family would be harmful;
  - developing, where necessary, programmes for the protection and social reintegration of the victims of violence, including: housing needs and renewal of the stay permit, should it expire before the sentence is rendered, at least for the duration of the criminal proceedings, as well employment, care and support for dependent children;
  - specific training for the judges entrusted with judicial proceedings described in this Law and for Police Forces.
- d) San Marino law applies to anyone committing, outside its territory, an offence against San Marino citizens which is punished by a term of at least second degree imprisonment - between 6 months and 3 years - (art. 6 of the Criminal Code).

## **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.**

San Marino legal system ruled the following offences:

1. **corruption of minors** (art. 177 of the Criminal Code): "*Anyone inciting children under the age of eighteen years to sexual corruption, alcohol or drug abuse or gambling, shall be punished by second-degree imprisonment, if not otherwise ruled by a legal provision*".
2. **exploitation of child prostitution** (art. 177bis Criminal Code.): "*Anyone engaging in sexual activities with a child under the age of eighteen years paying a sum of money or other form of economic utility, shall be punished by second-degree imprisonment and disqualification, provided that the conduct does not amount to a more serious offence*".
3. **child pornography** (article 177ter Criminal Code): "*Anyone using a child under the age of eighteen years in child pornography performances, artworks or material that visually represent a child involved in sexually explicit conduct for the purpose of sexual incitement, shall be punished by third-degree imprisonment and*

disqualification. The same penalties also apply to those trading in such child pornography. Without prejudice to the cases provided for in the previous paragraphs, anyone providing others, whether or not in return for payment, with child pornography material shall be punished by first-degree imprisonment or second-degree arrest and, in any case, by first-degree disqualification. Without prejudice to the cases provided for in the previous paragraphs, anyone distributing, procuring or advertising child pornography material, even through computerised systems, or distributing information aimed at **solicitation of children for sexual purposes or sexual exploitation of children under the age of eighteen years** shall be punished by third-degree imprisonment and disqualification".

4. **organisation of journeys aimed at exploitation of child prostitution** (article 177quater Criminal Code): "Anyone organizing, promoting or advertising journeys, meetings and transfers abroad to facilitate the conduct of sexual activities mentioned in article 177 bis, sexual activity to the detriment of minors, shall be punished by imprisonment not exceeding the second-degree and by third-degree disqualification".
5. **maltreatment of family members and cohabitants**(article 235, Criminal Code): "Anyone maltreating any person in the household or cohabitant, or a person subject to their authority or entrusted to them, shall be punished by second-degree imprisonment. A third-degree imprisonment shall be applied if the offence is committed against a child under the age of fourteen years. A fourth-degree imprisonment shall be applied if the offence provokes one of the aggravating events referred to in article 156 and a fifth-degree imprisonment shall apply in case of the victim's death".
6. **violation of sexual freedom** (art. 171, Criminal Code): "Anyone who, using violence, threat, hypnosis or other appropriate means, compels or misleads a person to lewd acts, is punished by third-degree imprisonment. If the offence is committed by an ascendant, an adopting parent, a guardian, an educator, a teacher, a health worker or by a person entrusted with the custody of a child for supervision, education, training or care purposes, fourth degree disqualification from parental authority, guardianship, profession or art shall be jointly applied"; **aggravating circumstance** (art. 172, Criminal Code) "Anyone committing sexual copulation under the circumstances provided for in the previous article is punished by a term of imprisonment increased by one degree"; **sexual abuse of minors or persons unable to consent or resist** (art. 173, Criminal Code): "Anyone committing the offences set out in the two previous articles without violence, threat or deception against children under the age of fourteen years or persons who are unable to resist owing to specific physical or mental conditions shall be subject to the punishments established in said articles. The offender shall not plead ignorance of the minor age of the victim in excuse of his conduct".

Having regard to the above, the offences referred to in San Marino legislation and the criminal conducts sanctioned by the Lanzarote Convention are essentially the same, except for the particular offence referred to in art. 177quater of the Criminal Code. Said article criminalizes the organization and advertisement of journeys aimed at the exploitation and abuse of children.

Aiding, abetting and attempt are provided for by San Marino Criminal Code relating to the offences referred to therein, by general rules on participation and cooperation (arts. 73 and ff.) and on attempted or failed offence (arts. 26 and 27).

With regard to the age of the child, in San Marino legal system it is considered as an aggravating element modifying the penalty level to be imposed on perpetrators of offences against children. In the determination of the sanctions, in fact, the judge must take into

consideration the age of the child, since in San Marino legal system the offences committed against a child under the age of fourteen years are considered even more serious and abhorrent, given the fact that this category of children is thought to be even more unable to act and to self-determine in the field of sexual activities.

In the fight against children exploitation, being aged less than 18 years is frequently considered as an aggravating element, increasing the penalty for offences other than those listed above. For example, art. 168 of the Criminal Code provides for that **trafficking in human being** committed against children aged less than eighteen shall be punished by a penalty increased by one degree (see also art. 167 of the Criminal Code entitled **coercion or maintenance in slavery or servitude**).

### **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.**

Liability of legal persons was introduced in the Republic of San Marino by Law no. 6, 21 January 21 2010 and expanded by Law no. 99, 29 July 2013.

According to the law, legal persons are held liable for intentional offences committed on their behalf or in their interest by a person having the power to act on their behalf. They are also liable for offences committed while performing their activities, if such offences were due to an organization shortcoming attributable to the legal person, to a lack of supervision or control or on instructions of the legal person's top management.

Legal persons are also held liable for criminal offences committed in the context of an activity subject to the direction or control of another legal person considering that liability under this Law also applies to the legal person exercising the direction or control. Such liability shall continue to apply in case of transformation and merger of the legal person.

### **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).**
- a) The sanctions listed in the answers to previous questions (in particular, question no. 16) for the offences established by national law in accordance with the Convention may be criminal, civil and administrative.
  - b) As for the convictions handed down by judges of another State, San Marino legal system allows the judicial authority, although it does not oblige it, to carry out investigations abroad on the offender's criminal records. In this regard, please refer to the Hague Convention of 28 May 1970 on the International Validity of Criminal Judgements as between the Member States (ratified on 17 April 2002); to Article 89 of



San Marino Criminal Code, which provides that the judge, in exercising its discretion, must take into account the offender's personality as inferred from "his/her previous life"; and to art. 4 of the implementing rules of the Criminal Code (Law no. 86 of 1974) relating to the defendant's personality and living environment.

### **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).**

The provisions of the Criminal Code generally apply to anyone, even foreigners or stateless person, committing an offence within the territory of the Republic of San Marino. (Art. 5 C.C). Law no. 61 of 30 April 2002 "Law for the repression of the sexual exploitation of minors" added an important exception for the offences referred to in articles 177*bis*, 177*ter* and 177*quater* of the Criminal Code, and for art. 169: in case of offences against children, San Marino jurisdiction is competent even for offences committed abroad by or to the detriment of San Marino citizens.

### **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).**

The circumstances referred to in art. 28 do not constitute under San Marino legal system aggravating circumstances for the offences provided for in accordance with the Convention, with the exception of the offence referred to in letter d), when it is committed by a parent, adopter or guardian (see art. 171ff. CC). Some of such circumstances represent other types of offence (acts of torture or severe violence, crime committed by several persons jointly, or as part of a criminal organization); in other cases aggravating circumstances are provided for regardless of the type of offence (recidivism as referred to in letter g) art. 28 of the Convention); others form part of the constituent elements of the offence (damage to the physical or mental health of the victim, particularly vulnerable victim).

### **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).**

- a) Law No. 97 of 20 June 2008 provides for measures to protect children in criminal proceedings. In particular, under art. 18, entitled "*Minor's representation in criminal proceedings*", in case of children abuses committed by their ascendant, adopter, other relatives or third parties having significant relationships with the children, a special curator shall be appointed to protect the child victims and to provide them with all relevant information from the Court.
- b) This Law also provides child victims of violence with psychological support during the criminal proceeding. Specifically, art. 23 provides that victims shall always be assisted by a child psychologist and that for their hearing a one-way mirror and an intercom system or other appropriate instruments should be used to grant confidentiality. Art. 24 states that the hearing or cross-examination of a minor shall not be repeated if there is a serious risk that the minor's conditions may worsen. This rule also provides that sessions shall always be in camera, in order to protect the privacy and the image of the child.
- c) In addition to the activities of the general Social and Health Services, see answers a) and b).
- d) San Marino legal system provides for measures aimed at protecting the secrecy of judicial proceedings by fixing severe penalties for breaches of the prohibitions laid down in this law.

In this regard, art. 192*bis* of the Criminal Code - publication of secret documents related to criminal proceedings - rules: "[...] *The publication of personal details and the image of minors involved for any purpose in the criminal proceeding shall be prohibited, until they reach the age of majority. It is also forbidden to publish material which may lead to the identification of these minors.*"

- e) According to Law no. 97 of 2008 the judicial authority may, upon the victim's request, order the defendant or the suspect to stay away from the family house. The judge may also adopt a measure prohibiting the defendant or suspect to approach places usually frequented by the victim.

- f) The criminal enforcement judge and the staff of the Social Services Centre for Adults are responsible for the enforcement of the penalty and oversee the reintegration process of offenders into society and in the labour market. In the event of release, they also create the conditions to prevent offenders from repeating the crime or from endangering public order.
- g) Please refer to the previously described appointment of a special curator to protect the interest of the child and to the procedures for children hearings, which also apply in case of cross-examinations with the offenders.
- h) Article 17 of Law no. 97 of 2008 grants free legal assistance. This rule provides victims with the assistance of experts, even when the conditions for legal aid are not fulfilled, in case they are objectively not able to arrange for their defence.

## **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).**
- a) Please refer to answers 21, letters a) and b).

- b) Art. 178 of the Criminal Code provides that for the prosecution of offences against children committed by the ascendant, guardian, adopter or person taking care or having the custody of the victim, no complaints of the victims are required. This provision states that, in any case, the complaint shall be duly filed by the envisaged deadline.
- c) Article 178 of the Criminal Code specifically provides that for offences related to child prostitution and pornography as well as the involvement of children in pornographic performances, the limitation period of the offence and the deadline for filing the complaint shall begin from the date on which children reach the age of majority.
- d) Please refer to answers 21, letter a).
- e) Judicial practice has given this possibility to associations, governmental and non-governmental organizations (see A.F.A.S., San Marino Association of Adoptive and Foster Families).
- f) Art. 7 of Law no. 61 of 30 April 2002 establishes that the Law Commissioner may authorise qualified personnel of the Police Forces to carry out investigations aimed at repressing the sexual exploitation of children.
- g) San Marino legal system pursues the protection of the best interests of the child. To this end, Police forces and the Law Commissioners carry out activities using the most suitable techniques to ensure confidentiality.

### **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 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).**
- a) According to the competent Minors' Service, interviews with child victims under the age of 18 years are carried out in due time after the facts have been reported to the judicial authority, in premises properly designed, with a one-way mirror. Interviews are carried out by professional psychologists and may be attended by the victim's legal representative or expert, unless otherwise reasonably decided. These professionals are trained for this purpose and take part in all meetings with the child.

- b) Interviews with children are videotaped, so that they may be accepted as evidence during the criminal proceedings.
- c) Law No. 97 of 20 June 2008 provides for measures to protect children in criminal proceedings. In particular, Title II "Protection measures in criminal proceedings" provides that:
- Art. 23 - Psychological support for victims of violence in criminal proceedings and other protection measures in criminal preliminary investigations: [...] *The examination of the victim in court shall take place so as to avoid having to repeat it. To this end, the Investigating Judge adopts any appropriate measure, including the possibility to videotape the examination. When the victim is a minor, the Investigating Judge carries out a cross-examination of the victim of the offence and the defendant or witnesses, by using a mirror glass and an inter-phone device, or other suitable tools ensuring confidentiality. The examination shall be videotaped. The minor shall always be assisted by a child psychologist auxiliary to the Judge.*
  - Art. 24 - Protection of victims during the hearing: *"In criminal proceedings for offences against personal safety, personal freedom or violence, the hearing always takes place behind closed doors if the victim is a minor, and upon request of the victim if this is an adult. Testimonies and cross-examinations shall not be repeated if the defendant's right to defence has been guaranteed during preliminary investigations and, in any case, if they have been videotaped. If the hearing or cross-examination has to be repeated, the provisions of article 23 apply. When the victim is a minor, the hearing shall not be repeated if there is a serious risk that the minor's conditions may worsen. Such risk shall be proven by legal experts, through cross-examination with the technical experts of the parties in the proceedings".*