



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

T-ES(2015)THE-SM

LANZAROTE CONVENTION

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

Replies to the thematic questionnaire

SAN MARINO

1st thematic monitoring round

“Sexual abuse of children in the circle of trust”

Replies registered by the Secretariat on 13 March 2015

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.

The Republic of San Marino has a single Court, with jurisdiction over the entire territory. Therefore, it is very easy to collect data on offences involving sexual abuse of children. It is not necessary to develop special statistics or data aggregations, because - unlike other countries with several courts and tribunals on their territory - the data provided by the Single Court are already complete and exhaustive.

San Marino legal system, namely art. 6, last paragraph of Qualified Law no. 2 of 16 September 2011, provides that the Head Magistrate of San Marino Single Court is required to draw up an annual report on the state of justice, to be submitted to the Great and General Council (Parliament) through the Minister of Justice.

This report provides an overview on the progress made by San Marino judicial system, including judicial activities, with a detailed analysis of data aggregated by types and sectors, observations, findings and considerations about any possible system optimisation and interventions, both administrative and legislative, to improve the sector of judicial administration. In addition, this report highlights, by specific type, individual offences for which judicial proceedings have been started, as well as their outcome.

The report is examined by the Parliamentary Commission for Justice (composed of ten Council's members elected by the Great and General Council and by the Minister of Justice), by the Judicial Council (co-governing body of the Judiciary, composed of the Parliamentary Commission for Justice and of an equal number of magistrates) and then by the entire Great and General Council. After the debate in the Great and General Council, the report is filed with the Institutional Registry and published in its entirety on the website of the Great and General Council.

Therefore, it is in particular the responsibility of the Head Magistrate to highlight in the annual report offences characterised by a significant and not physiological increase, new types of offences to be faced by society and new emergencies that may arise, as well as to provide guidance on the means and resources necessary to address them effectively. The report is submitted to the Parliament and is subsequently brought to the attention of the civil society, to enable the body exercising the legislative power to adopt the measures deemed necessary and appropriate, and the society to act as a civil observatory on this sector.

With reference to the offence of child abuse in question 1, this is specifically covered by art. 173 of the Criminal Code (Indecent acts against children or persons unable to consent or resist) and art. 174 (Indecent acts committed by authority figures). The latest report on the state of justice (relating to 2011) shows that this phenomenon is totally absent in San Marino. Annex "L" to the above report shows the flow of offences committed in the Republic of San Marino from 2002 to 2012 on the basis of the proceedings registered in the individual reference years. With regard to the field "indecent acts" (including the offences covered by

the above-mentioned articles 173 and 174 of the Criminal Code) no proceedings have been registered in the reference years.

Obviously, the data provided by the Court only refer to child abuses resulting in court proceedings, which can be initiated after the offence has been reported by any party or when the magistrate has been in any way informed of the alleged offence.

Court statistics do not include those abuses that have not been reported by any party or of which the magistrate has not been informed, or again in relation to which the magistrate deems not to have sufficient elements to institute the proceedings.

Responsibility for the latter cases lies primarily with the Authority for Equal Opportunities, which, according to art. 34 of Law no. 97 of 29 June 2008, is entrusted with the periodical collection of data on violence in the family environment and with the drawing up of an annual report to be published by the Authority itself. Data collection takes place in coordination with the Health Authority. The Authority for Equal Opportunities is composed of three members appointed by the Parliament, who remain in charge for 4 years, chosen from among legal experts, representatives of NGOs active in the field of equal opportunities and experts in communication and psychology.

Under Delegated Decree no. 60 of 31 May 2012, the Authority for Equal Opportunities is responsible for: promoting and supporting, through the use of standard international methodologies, any initiative aimed at preventing domestic violence; ensuring support for victims, also through the signing of specific operating protocols; favouring and supervising the activities carried out by associations promoting awareness of assistance services and able to start prevention processes.

Both the Single Court and the Authority for Equal Opportunities work in close synergy and collaboration with the Minors' Service of the Social Security Institute, which has the powers, means and professional skills to properly assist the victims of domestic violence.

In this regard, it can be inferred from the interviews with the operators of public services that the increase in requests for assistance is partly due to a greater awareness and understanding of the measures available to victims and to the increased sensitivity and professional skills of operators.

Herewith attached in the Appendix is a statistical report on children's cases taken care of by the minors' and adolescents' protection service following a report by the judicial authorities under Law no. 97/2008.

PREVENTION

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).

Activities to promote children's rights among the public, and more in general the rights of all minorities, are organised in particular by the Authority for Equal Opportunities.

In schools and in health and social services, also in the spirit of the International Convention on the rights of the child, children are properly listened to and are given the opportunity to talk to adequately trained personnel. The legislation and the decisions adopted to protect minor victims take inspiration from the utmost protection of the best interests of the child.

Moreover, a brochure was sent to the entire population containing the contact details of the competent services, which are able to receive all reports on the various forms of violence against children.

Question 3: Recruitment and screening

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

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

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

Worth specifying is that the Republic does not have an action plan specifically designed to counter the above-mentioned phenomena. Considering the small size of our territory and the existence of institutions and services for the protection of the best interest of minors in all its forms, as well as the awareness raising campaigns constantly carried out also through Italian TV and radio broadcasters, also to the benefit of San Marino population, the latter is fully aware of the above-mentioned phenomena, in all their forms; obviously, this does not exclude the possibility to transpose and adopt any action plans, based on proven and specific assessments of whether these plans are necessary.

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).

In order to protect children's rights, the Minors' Service Complex Operational Unit promotes information, training and prevention projects, also by networking with other services on the territory. The necessary resources are allocated by the State since this is a public social and health service.

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).

In addition to awareness raising campaigns conducted in Italy, which produce their effects also beyond the border, and activities promoting the rights of children organised by the Authority for Equal Opportunities, worth mentioning is the activity carried out by the Association "Pro Bimbi": <http://www.associazionisanmarino.org/portfolio-items/associazione-pro-bimbi/>

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).

In relation to risks of offences being committed, no ad hoc legislative measure is specifically envisaged guaranteeing the effectiveness of a preventive intervention.

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.

PROTECTION

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);

Anyone is required to report, and more specifically to immediately inform the authorities of any people needing care, with specific reference to their age, physical or mental condition. The Criminal Code provides for sanctions in case of non-reporting.

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 does provide for this:
- are the conditions and duration of such removal to be determined in accordance with the best interests of the child? (Article 14 (3), Explanatory Report, para. 99).
 - have legislative or other measures been taken to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care? (Article 14 (4), Explanatory Report, para. 100).
- b. Does internal law provide that sanctions for offences of child sexual abuse within the circle of trust include denying the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed? (Article 27 (3) (b), Explanatory Report, para. 187).
- a. Worth specifying is that Article 1 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order (Law no. 79 of 8 July 2002) provides that generally recognised rules of international law are integral part of San Marino constitutional order. Moreover, regularly signed and implemented international agreements on the protection of human rights and freedoms prevail over domestic legislation in case of conflict. Unlikely many other legal systems, in practice, in the Republic of San Marino no domestic legal provision is necessary to transpose international human rights treaties into the national legal system, nor specific rules to settle any conflicts between domestic and international law. Indeed, San Marino Declaration on the Citizens' Rights already provides that international treaties always prevail over domestic legislation.

More specifically, Law no. 49 of 26 April 1986, Family law reform, has recently been integrated with Law no. 68 of 28 April 2008, Regulations on intercountry adoption and protection of minors. Pursuant to article 20 of this Law, the following article is added to Law no. 49/1986:

"Art.86 bis, *Limitation of parental authority*:

1. *When a parent's conduct is detrimental to the child but not so serious as to determine the removal of parental authority, the Judge shall adopt any decision deemed appropriate for the interest of the child by reducing parental authority, in particular through obligations, including to accept the supervision and support of the Minors' Service.*
2. *If the parent violates such obligations, the Judge shall indirectly force him/her to comply therewith through stricter limitation of parental authority or, in the most serious cases, removal from the child. If, to protect the child, he/she needs to be removed from the family, the Judge shall order the most appropriate placement of the child to be arranged by the Minors' Service; the latter may be entrusted by the Judge with the enforcement of the removal and with the power to request the assistance of the Gendarmerie.*
3. *The Minors' Service or any other entity that has been given the power to protect the child's interest shall periodically inform the Judge. The latter may at any time change or revoke the measure, which shall in any case lapse when the protected child becomes of age."*

Law no. 97 of 20 June 2008 provides for the possibility to remove the victim from the alleged offender. In particular, article 22 reads as follows:

“Art. 22, Special precautionary measures in criminal proceedings:

When addressing an offence against personal safety, personal freedom or domestic violence by a co-habiting partner, the Investigating Judge may, upon the victim’s request, order the suspect or the defendant to stay away from the family house and not to return or enter it without his authorisation, and, if necessary, establish visitation rules.

In cases where the safety of the victim or of his/her close relatives needs to be protected, the Investigating Judge may, upon the victim’s request, order the suspect or the defendant to stay away from places usually frequented by the victim, in particular the workplace, the house of the family of origin or of his/her close relatives, unless this is necessary for work-related reasons. In this case, the Judge shall establish the relevant rules and may impose limitations.

Following the request, the Judge shall collect any relevant information and take measures through a motivated decree, after hearing the defendant and, if necessary, the requesting party, except in urgent cases.

Upon the victim’s request and in compliance with cross-examination procedure, the Investigating Judge may also order that an amount of money is regularly paid to the co-habiting persons who have no longer adequate subsistence means as a result of the precautionary measure adopted. The Judge shall determine the amount to be paid based on the offender’s income, as well as the methods and terms of payment. The Judge may order, if necessary, that the money be directly paid to the beneficiary by the offender’s employer, who deducts it from his/her remuneration. The order to pay such money is considered an enforceable act.

The provisions contained in the second and fourth paragraphs may be also adopted after the measure referred to in the first paragraph, provided that this measure has not been revoked or has not become null and void. Though adopted at a later time, these measures shall become null and void if the measure mentioned in the first paragraph has been revoked or has become null and void. If it is in favour of the spouse or the children, the measure envisaged in the fourth paragraph shall become null also when the Civil Judge adopts a measure in a legal separation case or another measure concerning the economic and property relationships between spouses or the financial support of children.

The measure envisaged in the fourth paragraph may be amended should the situation of the obliged person or of the beneficiary change, and it shall be revoked if co-habitation resumes.”

This Law also provides special assistance for victims of domestic and sexual violence. In particular, art. 4 reads as follows:

“Art. 4, Assistance to victims of violence:

To victims of domestic and sexual violence, the State shall:

- a) provide information on the measures envisaged by the law for the protection, safety and right to assistance and support for victims of violence;*
- b) provide specialised social services that are easily identifiable and accessible by victims and employing specifically trained staff;*

- c) *ensure that these services are able to face emergency situations and provide immediate support, including of psychological nature, and subsequently take care of these patients in the medium-term, also for the purpose of family reunification;*
- d) *provide social support, protection, support for education, training and employment;*
- e) *ensure that, in the most serious cases, where remaining in the family is deemed to be dangerous, victims are placed into family-like centres for the time necessary to develop a social reintegration project;*
- f) *create, if necessary, programmes for the protection and social reintegration of the victims of violence, which also meet the following: 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;*
- g) *specific training for the judges entrusted with the judicial proceedings mentioned in this Law and for law enforcement authorities.”*

PROSECUTION

Question 10: The offence of sexual abuse

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

- a. **what is understood by “intentional conduct” in internal law? (Explanatory Report, para. 117);**
- b. **what is understood by “sexual activities” in internal law? (Explanatory Report, para. 127);**
 - a. Intentional conduct means a legally relevant wilful behaviour in bad faith;
 - b. Sexual activities mean:
 - indecent acts: material acts with or without body contact; material acts where the child is only an observer; allusive acts; merely verbal acts that might cause scandal, disturbance or incitement to sexual corruption;
 - sexual acts: whenever the genital organ of the offender is introduced partially or fully in the body of the victim.

Question 11: Corporate liability

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

There are no other measures besides those mentioned in the GOQ.

Question 12: Aggravating Circumstances

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

In San Marino criminal law, this issue is regulated specifically by art. 173 and art. 174 of the Criminal Code. Art. 173 reads as follows: *"Anyone who commits the offences set out in the two previous articles without violence, threat or deception against children under the age of 14 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"*. Art. 174: *"Without prejudice to the cases covered by Articles 171, 172 and 173, anyone committing indecent acts against persons in hospitals, retirement homes, boarding schools or rehabilitation centres, or against detainees or prisoners, while holding a position of authority over the victims, or against persons officially entrusted to him, shall be punished with first degree imprisonment and with fourth degree disqualification from public offices, profession or art."*

According to case law, any consent given by persons who are unable to resist the offender owing to their inferiority or to specific physical conditions is valueless. Since such persons need special protection, abuse by the offender is in any case considered as violence or deception.

Prosecutable acts are indecent acts covered by art. 171 with the aggravating circumstances listed in the same article, paragraph 2 and in article 172. The victims covered are the following: children under the age of 14 or persons of any age suffering from mental disease at the time the offence is perpetrated, or persons unable to resist owing to their physical or mental inferiority. The punishments applying to the offence referred to in art. 173 are the same as provided for in articles 171 and 172.

Art. 174 covers indecent acts committed by authority figures. This expression means that the offender may be a person entrusted with the custody of and exercising authority over the victim, who is in certain conditions. Therefore, anyone committing indecent acts against a person in hospital, retirement home, boarding school, or is under arrest or detention, or against a person entrusted to the offender ex officio, is subject to punishment. Also in this case, violence or deception is not necessary for this conduct to be considered an offence.

Worth specifying is that the concept of "indecent acts" in art. 173 of the Criminal Code is very broad: it includes all manifestations of sexual instinct and all forms of lust, every act, even merely allusive or verbal, that can cause scandal, disturbance, fear or incitement to sexual corruption. On the contrary, sexual intercourse of any kind is considered an aggravating circumstance of the above mentioned offences.

Question 13: Best interest of the child

- a. **Please specify whether in situations where the alleged perpetrator is a member of the victim's family or has otherwise been in a recognised position of trust or authority towards him or her, legislative or other measures have been taken to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim of sexual abuse. (Article 30, para. 1, Explanatory Report, para. 215);**
- b. **The reply to question 22(d) of the GOQ will be examined by the Committee to assess the implementation of Article 31, para. 4 of the Convention with respect to the theme of the monitoring round;**
- c. **Please also indicate whether internal law provides that sanctions, as a result of offences committed by a person considered to be in the victim's circle of trust, include withdrawal of parental rights or monitoring or supervision of convicted persons (Article 27, para. 4, Explanatory Report, para. 191).**

The already mentioned art. 171, paragraph 2 of the Criminal Code covering violation of sexual freedom reads as follows: *"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"*.

Art. 277 "Disqualification from exercising parental authority and guardianship", specifies that: If the offences provided for by articles 268, 269, 272 and 274 are committed by parents, adopters or guardians against their children, also disqualification from exercising parental authority and guardianship is envisaged in addition to the other applicable punishments.

The loss of parental authority is among the punishments provided for by the Criminal Code (the so called "disqualification") and can be applied according to various degrees, based on the duration of the punishment. The loss of parental authority and guardianship implies disqualification from said assignments and deprivation of any rights parents have on their children's assets, except for succession rights.

For example, lifetime disqualification from parental authority is envisaged for the offence of incest, which is regulated by art. 228 of the Criminal Code.

Art. 22 of Law no. 97 of 20 June 2008 provides for special precautionary measures in criminal proceedings. In particular, when judging an offence against personal safety, personal freedom or domestic violence by a co-habiting person, the Investigating Judge may, upon the victim's request, order the suspect or the defendant to stay away from the family house and not to return or enter it without his authorisation, by establishing, if necessary, visitation rules.

In cases where the safety of the victim or of his/her close relatives needs to be protected, the Investigating Judge may, upon the victim's request, order the suspect or the defendant to stay away from places usually frequented by the victim, with particular reference to the workplace, the house of his/her family of origin or close relatives, except where this is necessary for work reasons. In this latter case, the Judge establishes the relevant rules and may impose limitations.

Question 14: Child-friendly justice

- a. Please specify whether in situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her, a protective approach towards victims has been adopted to ensure that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate (Article 30, para. 2 and Explanatory Report, paras. 211-215);
- b. Which legislative or other measures been taken to ensure that investigations or prosecution of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement, especially in cases where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (Article 32, Explanatory Report, para. 230); (Article 32, Explanatory Report, para. 230).
- c. Have legislative or other measures been taken to ensure that a judge, in a criminal trial regarding an offence which can be considered to involve sexual abuse of a child within the circle of trust, may order the hearing to take place without the presence of the public or that the victim may be heard in the courtroom without being present? (Article 36, para. 2 and Explanatory Report, para. 242).

As already mentioned before, international rules and conventions on this matter prevail over domestic legislation, without the need for implementing rules. However, Law no. 97 of 20 June 2008 provides for various protection measures for children in criminal proceedings. In particular, Title II "Protection measures in criminal proceedings" provides that:

- Art. 18, *Children's representatives in criminal proceedings:*

When the victim of an offence against personal freedom or of violence is a child and the offence is committed by the ascendant, the guardian, the adopter or other relatives or third parties having a close relationship with the child or his/her parents, a special tutor is specifically appointed by the Guardianship Judge, upon immediate request by the Investigating Judge, to represent the child in court with a view to protecting his/her rights.

If the offence referred to in the first paragraph is not prosecutable ex officio, the complaint is filed by the special tutor, and the time-limit for the filing of the complaint runs from the date when the tutor is appointed.

Procedural acts detrimental to the child's interests in which the special tutor has not taken part are considered null and void.

With regard to the legal assistance of children represented by a tutor, the provisions of article 17 of this Law apply.

- Art. 19, *Reporting requirements:*

Social services, police forces and all health professionals, both public and private, are required to report to the Law Commissioner acting as civil Guardianship Judge any act of violence against women, children or gender violence of which they may become aware because of their tasks or professions, including in case of offences that are prosecutable upon complaint of a party.

Teachers of schools of any level and grade are required to timely report to the Minors' Service any act specified in the preceding paragraph of which they have become aware.

Reporting does not entail any violation of official or professional secrecy; the Law Commissioner shall ensure that the report and procedural acts are kept confidential.

Violation of the reporting obligation is punished with a pecuniary administrative sanction amounting to € 500 and applied by the Law Commissioner.

Upon receipt of a report, the Law Commissioner mandates the social services to carry out all necessary verifications. Once the findings are available, and following the drawing-up of a specific document, the Law Commissioner summons the victim, and, if necessary, adopts the protection measures provided for by this Law, entrusting the competent services with their application.

When, based on the facts, the offences committed may be prosecuted ex officio, or when the victim has personally filed a complaint, the report mentioned in paragraph 1 shall be made to the Law Commissioner (Investigating Judge), who shall adopt, if necessary, protection measures and programmes. If the victim of violence is a child, the Investigating Judge is required to promptly report the notitia criminis to the Guardianship Judge for any necessary action falling within his competence.

- **Art. 20, Right to participate in criminal proceedings:**

The Authority for Equal Opportunities has the right to participate and bring suit as a civil party in proceedings for violence against women, children or gender violence.

To this end, the Investigating Judge immediately notifies the Authority for Equal Opportunities of the criminal proceedings.

- **Art. 21, Prohibition to ask questions on the victims' private life or sexuality:**

In criminal proceedings for sexual offences, including during police investigations, it is prohibited to ask any questions, including by experts, concerning the victim's private life or sexuality, unless they are deemed necessary for evidentiary purposes.

- **Art. 22, Special precautionary measures in criminal proceedings:**

When judging an offence against personal safety, personal freedom or domestic violence committed by a co-habiting partner, the Investigating Judge may, upon request of the victim, order the suspect or the defendant to stay away from the family house and not to return or enter it without his authorisation, establishing, if necessary, visitation rules.

In cases where the safety of the victim or of his/her close relatives needs to be protected, the Investigating Judge may, upon request of the victim, order the suspect or the defendant to stay away from places usually frequented by the victim, with particular reference to the workplace, the house of his/her family of origin or of close relatives, except where this is necessary for work reasons. In the latter case, the Judge establishes the relevant rules and may impose limitations.

Upon receipt of the request, the Judge collects any relevant information and, having heard the defendant and, if necessary, the requesting party, issues a motivated decree, except in urgent cases.

Upon request of the victim, and in compliance with cross-examination procedure, the Investigating Judge may also order that an amount of money be periodically paid to co-habiting persons who have no longer adequate subsistence means as a result of the precautionary measure adopted. The Judge establishes the amount to be paid based on the circumstances and on the offender's income, as well as the modalities and terms of payment. The Judge may order, if necessary, that the amount be directly paid to the

beneficiary by the offender's employer, who deducts it from his remuneration. The order to pay such money is considered an enforcement act.

The measures contained in the second and fourth paragraphs may also be adopted after the measure referred to in the first paragraph, provided that the latter measure has not been revoked or has not become null and void. Though adopted at a later time, these measures become null and void if the measure mentioned in the first paragraph is revoked or becomes null and void. Moreover, if it is in favour of the spouse or the children, the measure set forth in the fourth paragraph becomes null and void if the Civil Judge adopts the measure in a legal separation case or another measure concerning the economic and property relationships between spouses or the financial support of children.

The measure envisaged in the fourth paragraph may be amended should the offender's or the beneficiary's conditions change, and it is revoked if co-habitation resumes.

- *Art. 23, Psychological support for victims of violence in criminal proceedings and other protection measures in criminal preliminary investigations:*

In case of proceedings involving offences against personal safety, personal freedom or violence against a person, psychological support shall be ensured to the victim by experts when the victim is heard as a witness or during cross-examination with the defendant or other witnesses.

When a legal and medical examination has to be conducted by experts during the proceedings for one of the offences mentioned in the first paragraph, experts shall be preferably chosen among professionals of the same sex of the victim.

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 supported by a child psychologist assisting 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 or cross-examination 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.

- *Art. 25, Probation with social services of persons convicted of sexual and domestic violence offences:*

Probation with social services of persons convicted of sexual or domestic violence offences, where allowed by the law, may take place only if the convicted persons also participate in a specific rehabilitation programme.

As regards civil matters, appropriate protection measures are provided for in Title III of the above-mentioned Law "Measures of civil protection" and in Title IV "Preventive measures by police forces", as indicated hereunder:

○ TITLE III - MEASURES OF CIVIL PROTECTION

● Art. 26, *Protection against domestic violence:*

Where the conduct of the spouse or of another cohabitant seriously harms the physical or moral integrity, or the freedom of the other spouse or cohabitant, the Judge may adopt, upon request of a party and through a decree, one or more of the measures referred to in the following article, provided that the offence is not prosecutable ex officio or, if of private initiative, that no complaint has been submitted.

In any case, the conducts mentioned in the first paragraph constitute a valid reason for removal of the offender from the family house, pursuant to Article 30 of Law no. 49 of 26 April 1986.

The rules referred to in this title apply, insofar as compatible, even if a family member other than the spouse or the cohabitant is responsible for the detrimental conduct. In this case, the complaint shall be filed by the family member victim of the detrimental conduct.

● Art. 27, *Orders of protection against domestic violence:*

The Judge orders the spouse or the cohabitant responsible for the detrimental conduct to refrain from this conduct and orders that he/she be removed from the family house. Furthermore, if necessary, the Judge orders him/her to stay away from the places usually frequented by the victim, in particular from the workplace, the house of the victim's family of origin or the house of other close relatives. In addition, the Judge orders the offender to stay away from the schools attended by the couple's children, unless he/she needs to frequent these places for work-related reasons.

The Judge may also order, if necessary:

- *the involvement of social services, family intermediation centres, as well as of associations whose statutory aim is to provide support and shelter to women, children or other persons victims of abuses and violence;*
- *regular maintenance payments in favour of cohabitant persons who, as a result of the measures referred to in the first paragraph, no longer have adequate subsistence means, by establishing the terms and methods of payment and by ordering, where appropriate, that the amount be paid directly to the beneficiary by the offender's employer through deduction from his/her remuneration.*

By virtue of the same decree and in the cases mentioned in the preceding paragraphs, the Judge establishes the duration of the protection order, which runs from the date of enforcement of the order. The protection order shall not last more than six months; however, it may be extended, upon a party's request and only if there are serious reasons, for a period of time deemed strictly necessary.

By virtue of the same decree, the Judge establishes the enforcement modalities of the order. If the Judge orders the offender's removal from the family house, the Law Commissioner requests the assistance of the police forces and orders the forced

removal of the offender in case he/she fails to leave voluntarily. The Law Commissioner may also establish appropriate measures to prevent further violations of the measure, including supervision and assistance by police forces.

The decree is always notified to the Gendarmerie and to the Neuropsychiatric Service for the possible adoption of measures concerning weapons and ammunitions.

- Art. 28, Procedure concerning protection orders against domestic violence:

The complaint can also be filed personally by the victim. In this case, after receiving the complaint, the Judge appoints an advocate among those included in the list referred to in article 17, paragraph 2.

After hearing the parties, the Law Commissioner starts the necessary preliminary investigations, in the manner deemed most appropriate, including by collecting, even ex officio, any appropriate information; subsequently, the Judge issues a reasoned decree, which is immediately enforceable.

In urgent cases, after collecting, where appropriate, summary information, the Judge may immediately adopt a protection order, by fixing the date, within a period not exceeding fifteen days, when the parties shall appear before the court. During such hearing, the Judge confirms, modifies or revokes the protection order.

It is possible to file a complaint for nullity before the Civil Judge of Appeal against the decree with which the Judge has adopted the protection order or has rejected the appeal, under the second paragraph, or has confirmed, modified or revoked the protection order previously adopted in the case referred to in the preceding paragraph. Such complaint shall not suspend the enforcement of the protection order, unless otherwise specified by the Judge of Appeal.

- Art. 29, Sanctions:

Anyone violating the protection order provided for in article 27 of this Law, or any other measure having the same content adopted in proceedings related to separation, dissolution or termination of the civil effects of marriage, shall be punished according to article 366 of the Criminal Code.

- Art. 30, Scope of application of protection orders:

Articles 27 and 28 of this Law shall not apply when the offence is committed by the spouse who submitted a request for separation, dissolution or termination of the civil effects of marriage, or against whom such request was submitted, if the relevant proceedings have involved the spouses' appearance in court under articles 110 and 127 of Law no. 49 of 26 April 1986. In this case, the Judge may adopt protection orders during these proceedings.

Protection orders adopted according to articles 27 and 28 shall become ineffective if a decree containing temporary and urgent measures is subsequently issued in proceedings related to separation, dissolution or termination of the civil effects of marriage brought by the applicant spouse or against him/her.

- Art. 31, Suspension of parental authority:

When violence is committed against children, and until liability is established, the Law Commissioner may suspend parental authority exercised by the suspect or the parent who has tolerated such violence.

○ TITLE IV - PREVENTIVE ACTIONS BY POLICE FORCES

• Art. 32, *Request for assistance from police forces:*

If the victim of violence, or a third party present during the offence, reports it to police forces, they are required to intervene immediately, and in any case no later than one hour following the report, unless there are serious reasons not to intervene.

Police forces may enter the victim's house or other places or private buildings where the victim is, even by force; they are required to interrupt the violent conduct and inform the victim of his/her rights, including the right to request protection orders; if they fear that a serious and irreparable damage may occur, police forces are required to immediately inform the relevant social services thereof, unless the offence can be prosecuted ex officio or the victim has filed a complaint; in this case the report shall be made to the Investigating Judge, who may adopt appropriate precautionary measures, including those referred to in this Law.

Police forces shall in any case seize any weapons present in the offender's house and notify this seizure to the Law Commissioner and the Command of the Gendarmerie, in order to proceed to the suspension or revocation of the firearm or hunting licences.

Police forces shall immediately intervene also whenever anyone reports to them that an offender is driving or is about to drive a vehicle under the effects of alcohol; in this case, they shall adopt the necessary preventive and precautionary measures.

If the request for intervention relates to acts of persecution as defined by the law, police forces are required to remove the harasser and make the necessary report as envisaged in this Law, also in the absence of the victim's complaint.

A verbatim record shall be drawn up for all interventions and shall be transmitted to the Command of the Gendarmerie and the Neuropsychiatric Service.

Data so collected shall be transmitted to the Authority for Equal Opportunities and are also available to the Civil Judge responsible for issuing protection orders.

Appendix to Question 1

STATISTICS ON CHILDREN'S CASES DEALT WITH BY THE MINORS' AND ADOLESCENTS' PROTECTION SERVICE FOLLOWING REPORTS MADE BY THE JUDICIAL AUTHORITIES UNDER LAW NO. 97 OF 20 JUNE 2008 "PREVENTION AND ELIMINATION OF VIOLENCE AGAINST WOMEN AND GENDER VIOLENCE" OR BY SOCIAL AND HEALTH SERVICES

The Authority is responsible for keeping and disseminating data on violence against children according to art. 34 and art. 20 of the above-mentioned Law "in that it participates and brings suit as a civil party in proceedings concerning violence against women, children and gender violence". The Authority for Equal Opportunities cooperates with the Health Authority for the collection of data (Art. 5 of Delegated Decree of 31 May 2012).

The Minors' Protection Service closely cooperates with the judicial authorities and with social, health and education services and always intervenes when children experience a situation of malaise, neglect, abandonment and development-related risk requiring family support and protection for the child-parent relationship, with particular reference to cases involving conflict-generating separations.

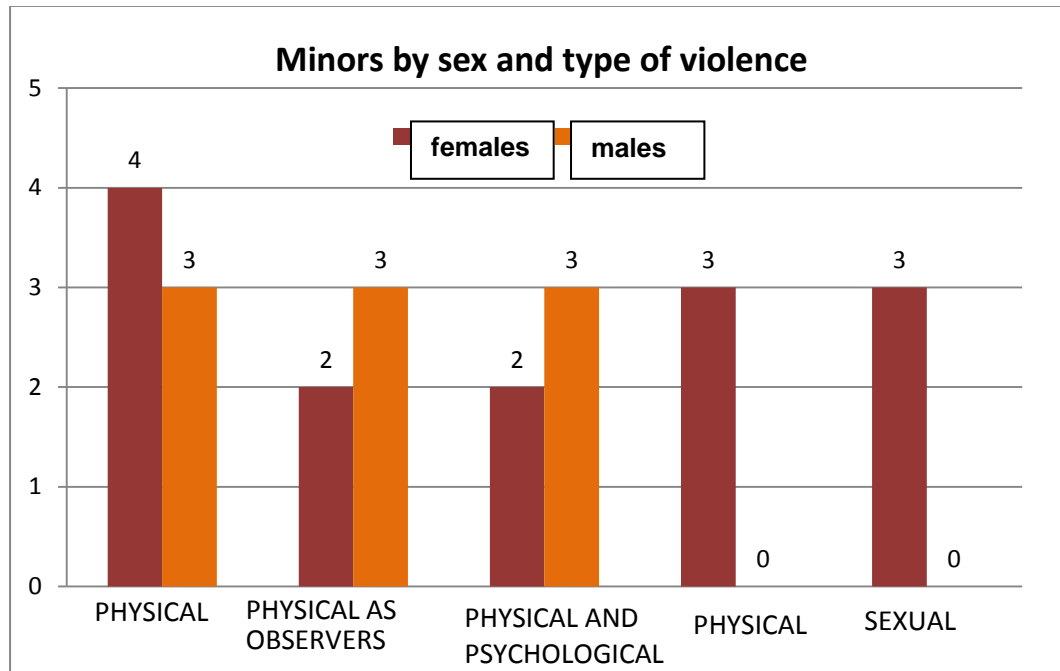
The following tables refer to the period June 2008 - 31 October 2013.

Summary: CASES - AGE - SEX period 2008-2013

YEAR	0-6			7-12			13/17			total		
	m	f	tot	m	f	tot	m	f	tot	m	f	tot
2008	0	0	0	2	0	2	0	1	1	2	1	3
2009	5	1	6	2	1	3	1	0	1	7	2	10
2010	5	1	6	3	3	6	0	4	4	10	6	16
2011	3	3	6	5	1	6	1	0	1	9	4	13
2012	0	3	3	4	0	4	1	5	6	5	8	13
2013	4	7	11	2	4	6	3	3	6	9	14	23
Total	17	15	32	18	9	27	6	13	19	42	35	78

2013 TYPE OF VIOLENCE	0-6			7-12			13-17			TOTAL		
	F	M	Tot	F	M	Tot	F	M	Tot	F	M	Tot
physical	1	1	2	2		2	1	2	3	4	3	7
physical as observers	1	1	2	1	1	2		1	1	2	3	5
physical and psychological	1	2	3	1	1	2				2	3	5
psychological	3		3							3	0	3
sexual	1		1				2		2	3	0	3
TOTAL	7	4	11	4	2	6	3	3	6	14	9	23

VIOLENCE	Females	Males
physical	4	3
physical as observers	2	3
physical and psychological	2	3
psychological	3	0
sexual	3	0



Number of cases dealt with by the Minors' Protection Service in 2013	
following a decree issued by the Judge	18
following anonymous reports	4
upon the family's request	1
In cooperation with the Mental Health Service	8

Summary of children's cases jointly dealt with by the Minors' Protection Service and the Mental Health Service

YEAR	Reports on violence ¹	Cases already dealt with by the Minors' Service ²	Total reports on violence jointly dealt with by the two services ³
2008	1		
2009	2	1 ^a	3
2010	3	3 ^b	6
2011	2	4 ^c	6
2012	1	2 ^d	3
2013	5	3 ^e	8

1. Reports received by the Court and dealt with by both services (Mental Health Service and Minors' Service) since related to gender violence and violence against children
2. Cases already dealt with by the Minors' Service by type:
 - a) case already dealt with by the Minors' Service involving separation following a request by the Court;
 - b) conflict-generating separation and social malaise;
 - c) social malaise, removal order, court order, social malaise;
 - d) separation and social malaise;
 - e) conflict-generating separation.
3. Total number of violence-related reports dealt with by the Mental Health Service following a request by the Court and dealt with by the Minors' Service with or without a request by the Court.