



T-ES(2014)GEN-TR

LANZAROTE CONVENTION

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

Replies to the general overview questionnaire

TURKEY

Replies registered by the Secretariat on 31 January 2014

Replies to questions 1.b) and 5.a) updated on 8 April 2014

GENERAL FRAMEWORK

Question 1: Definition of "child"

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

ANSWER-1 (a): Yes. Under Indent (b), Article 6, Paragraph 1 of the "Definitions" section of the Turkish Penal Code, within the scope of the application of penal law, it is stated that "a child is any person who has not attained the age of eighteen." Additionally, Article 3, Paragraph 1, Indent (a) of the Law no. 5395 on the Child Protection Law defines any person who has not attained the age of eighteen, regardless of the fact that he/she has reached adulthood at an earlier age, as a child.

In parallel to this, a similar regulation is in order with regard to private law. Article 11 of the "Lawful Age" heading of the Turkish Civil Code no. 4721, rules that the age of majority is eighteen.

- 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?*

ANSWER-1 (b): Without a doubt, in the event of confusion regarding the age of the victim as well as reasons to believe that the victim, who has been subject to a sexual offence, is a child-throughout the process of determining the real age of the victim-there is not any legal obstacle preventing resort to protective measures regulated under the Child Protection Law, Turkish Penal Code and Code of Criminal Procedure, as well as other laws that provide for the protection of the child.

It should be indicated that with regard to the definition of child mentioned in the answer to Question 1/a, Turkish legislation does not make a distinction between the child as a victim and as an offender. Our approach is that the child as an offender, which we commonly refer to as the child drawn into crime both in theory and in practice, is in a way also a victim. Therefore, legislative or other measures shall be implemented for the protection of the children drawn into crime.

Moreover, if any hesitation occurs about the age of victim's age, the determination of the age of the victim is foreseen by law (Criminal Procedure Code Article 218/2).

- 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.*

ANSWER-1 (c): In general terms, our legislation specifies the age limit for sexual activities as eighteen. Besides that, in terms of penal law, under Article 104 of Turkish Penal Code, attaining fifteen years of age is sufficient to declare one's will to engage in sexual activities. That is to say that any person of fifteen years of age may by his/her own will engage in sexual activities. However, even though lawmakers accept the consent of a child of fifteen years of age with regard to sexual activities, they do not accord an absolute validity to such consent, because it is stated under Article 104 of the Turkish Penal Code that any person who engages in sexual activities with another person, who has attained fifteen years of age, upon his/her consent may be sentenced to six months to two years in prison if a complaint is lodged.

In terms of civil law, Article 124 of the Turkish Civil Code rules that men and women may not get married unless they attain seventeen years of age. As for extraordinary circumstances and highly significant reasons, it is stated that men and women, who have attained sixteen years of age, may get married only by permission of a judge.

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.*

ANSWER-2: Article 10 of our Constitution rules that everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.

For the purpose of protection of the child in the application of law, the principle of non-discrimination to the child and his/her family is accepted as one of the fundamental principles under Article 4 of the Child Protection Law.

Article 3 of Turkish Penal Code governs that persons cannot be discriminated as to race, language, religion, sect, nationality, colour, sex, political or other opinion or thoughts, philosophical belief, national or social origin, birth, economic and other social standing nor can a person be subject to privileged treatment.

Therefore, discrimination with regard to exercising the rights guaranteed under the Convention is prohibited both by our Constitution and laws.

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;*

ANSWER-3-(a)

In parallel with the provisions of the Convention, constitutional and legal arrangements concerning the protection of children against sexual exploitation and sexual abuse are as follows:

1- Article 41, Paragraph 3 of the Constitution rules that, “the State shall take measures for the protection of the children against all kinds of abuse and violence.”

Article 90 of the Constitution indicates that all international treaties, to which Turkey is party, can become a part of the Turkish legislation and be enforced directly. Hence, the provisions of the Lanzarote Convention can be directly applied under the domestic Turkish law.

Similarly, the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography was signed by our country in 2000 and entered into force in 2002 following its ratification.

In addition, with regard to the Child Protection Law and international treaties, the Optional Protocol to the Convention on the Rights of the Child, drafted on 19 December 2011, adopted via decision no. 66/138 of the 66th session of the UN General Assembly, which grants the UN Committee on the Rights of the Child the authority to receive and analyse individual applications, was adopted by Turkey on 24 September 2012 and in 2013 consultations on this adoption were held with public institutions. The process of ratification for the entry into force of the aforementioned Protocol as part of our domestic law is still under way.

2- Legal arrangements under the Turkish Penal Code:

- a- Sexual abuse of children is viewed as a crime against humanity (Article 77).
- b- Sexual abuse of children is recognised as an aggravated felony (Articles 103, 104).
- c- Exposing children to products that include obscene imagery, text or words or showing, reading to children, as well as having children read or hear such content; displaying in a flagrant manner such content in places where children may physically and visually have access to; using children in the manufacturing of products that include obscene imagery, text or words (Article 226) and encouraging children into prostitution (Article 227) constitute an offence.

3- Legal arrangements under the Code of Criminal Procedure, no 5271:

The offence of sexual abuse of children is listed among catalogue offences, for which the existence of reasons for arrest may be accepted. This facilitates a decision of arrest to be rendered against perpetrators (Article 100).

In cases where the offence of sexual abuse of children has been committed, provisions with regard to wire-tapping, recording and evaluating signal information may be applied (Article 135).

Article 236 of the Code of Criminal Procedure governs—in parallel with the provisions of the Convention—that child victims of sexual abuse are to be heard once during trial and be accompanied by an expert, who has expertise in the fields of psychology, psychiatry, medicine or education, during the hearing. Under the same Code, it is indicated that an attorney shall be appointed on behalf of the child victim, without seeking his/her request (Articles 234, 239).

4- Legal arrangements under Child Protection Law:

In accordance with the Child Protection Law, protective and supportive measures may be adopted for child victims of sexual abuse. These measures are first and foremost related to consultation, education, care, health and accommodation in order to ensure the protection of the child within his/her own family environment.

- a) Consultation measures aim to guide the persons responsible for the care of child on raising a child; as well as children on the solution of their education and development- related problems,
- b) Education measures aim to enrol the child to a boarding educational institution; to have him/her attend professional or artistic training courses or become an apprentice to a craftsman or obtain a position at a public or private institution in order for him/her have an occupation,
- c) In the event that the person in charge of the care of the child fails to perform his/her duties for whatever reason, care measures aim to make sure that the child benefits from public or private care institutions, as well as foster family services or to have him/her enrol in such institutions,

d) Health measures aim to temporarily or permanently rehabilitate and handle the medical care of the child, as well as the treatment of children who use addictive substances, in order to ensure that he/she is treated and that his/her physical and mental health are protected.

Additionally, judicial and administrative authorities, law enforcement officials, health and education-related institutions, non-governmental organisations are entitled to inform the Social Services and Child Protection Institution under Article 6 of the same law. This institution shall handle the investigation regarding the informed case without delay.

5- Legal arrangements under the Law no. 5651 on Regulating Broadcasting on the Internet and Combating Offences Committed through Internet Broadcasting

A decision to deny access shall be rendered to content broadcasted on the internet involving sufficient suspicion to constitute an offence of “sexual abuse of children,” “obscenity” or “prostitution” under Turkish Penal Code, no. 5237.

6- Decree law no. 633 on the Organisation and Functions of the Ministry of Family and Social Policies

Under this decree law, the Ministry of Family and Social Policies is responsible for protecting the child against all kinds of negligence and abuse, as well as for ensuring that he/she is raised in a healthy manner. For this purpose, the Ministry shall;

- coordinate the identification of national policies and strategies,
- conduct child-related social services and assistance activities,
- ensuring cooperation and coordination among relevant public institutions and voluntary agencies on the issue,
- execute and coordinate the measures listed under the Child Protection Law no. 5395.

7- Foster Family Regulation no. 28497, dated 14 December 2012

This Regulation aims to set out the practical foundations of foster family services with regard to ensuring that children in need of protection are raised in a family environment within the required time frame for their protection. It also serves the purpose of identifying the functions and duties of the Ministry and of foster families and ensuring that the service is run in an efficient manner.

8- Circular no. 2006/17 on Measures to Be Taken to Prevent Custom and Honor Killings and Violence Against Children and Women

This Circular, signed by our Prime Minister in person, aims to adopt and execute preventive and protective measures concerning violence against children and women. It also targets ensuring coordination among public institutions with regard to activities designed to supervise the execution of these measures.

9- Directive no. 815, dated 16/07/2013 on the Works, Procedure and Substance of Central, Provincial and Sub-Provincial Coordination Initiatives Adopted in Order to Execute the Protective and Supportive Measures under the Child Protection Law

This Directive regulates the works, procedure and substance of centers established for the purpose of executing the protective and supportive measures under the Child Protection Law.

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

ANSWER-3-(b): While there is not specifically any separate strategy document on combat against sexual abuse and exploitation of the children, a National Action Plan on Combating Violence against Children (2014 – 2018) was prepared by the Ministry of Family and Social Policies. In this Action Plan, the following main activity fields shall be put into practice:

- Increasing awareness within the society concerning violence against children,
- Regular monitoring of the extent of all kinds of violence against children,
- Strengthening legal grounds related to violence against children,
- Strengthening the position of children against violence,
- Strengthening institutional services intended for child victims of violence,
- Developing and implementing effective rehabilitation programs for persons who resort to violence against children,
- Protecting the highest benefit of children on the internet and media and developing broadcasting policies in line with the rights of children.

In a similar light, a Strategy Document on Coordination in Child Protection Services (2011 – 2015) was prepared against all kinds of exploitation and abuse of children. The preparatory work of this strategy document was carried out in coordination with the Ministry of Justice and technical support of UNICEF within the scope of the project entitled ‘Children First: Modelling Child Protection Mechanisms at Provincial Level’ funded by the European Union.

The efforts to be carried out at central, provincial and sub-provincial level to ensure the coordination between the Ministries, responsible for providing child protection services, and the institutions to be cooperated with were governed by the Regulation.

Department of Training under the Ministry of Justice, which carries out the secretariat of the coordination in a central level, has been monitoring the works in three levels since 2005 and has been conducting works intended for determining what is required in order to increase effectiveness.

The preparation of the Strategy Document was initiated upon the necessity identified during these works. The preparation of the Strategy Document was concluded following the completion of the stages indicated below:

1. A survey study regarding practice in twelve provinces to assess the opinions of workers in the field of child protection,
2. Field analysis in four provinces,
3. Model analysis in two countries,
4. Preparation of a model together with academicians and an advisory committee on child protection, consisting of the governor, the director of provincial social services and the head of the court of juvenile high criminal court,
5. Pilot implementation of the model in one province,
6. Sharing of the model through a central coordination initiative and taking the opinions of relevant institutions,
7. Revision.

Modelling works on the Early Warning System, run by the Ministry of National Education were conducted simultaneously with the preparatory works on the strategy document. The preparatory stage in place for the aforementioned works took place as follows:

1. Field analyses on four provinces,
2. Proposition development for an early warning system,
3. Preparation of tools for the developed model proposition,
4. Experimentation of the model in a pilot province,
5. Revision.

Both works were experimented in a coordinated manner in the same pilot province. As a result of this experimentation process, the need for a joint strategy covering both fields was determined. Consequently, the strategy documents under way were merged.

The following experiences were made use of throughout the preparation stage:

1. Results of the pilot initiative concerning the strengthening of provincial coordination, conducted in İzmir and Kocaeli between 2006 and 2008 by the Social Services and Child Protection Institution,
2. Minutes of provincial coordination meetings,
3. Report of the 4-year assessment meeting on the Child Protection Law,
4. Trainings and meetings held with field workers such as judges, prosecutors, social caseworkers and social workers,
5. Works conducted by Internal Inspection Authority of the Directorate-General for Social Services and Child Protection.

The first section of the Strategy document includes the Coordination Model in Child Protection Services for Turkey, while the second section is comprised of the strategies to be followed in order to bring this model to life. The final section features an action plan on coordination in the application of the strategy. This document indicates the activities to be undertaken in order to achieve cooperation and collaboration among services, disciplines and workers to ensure cooperation in child protection services. Within this framework, the strategy aims indicated in the Strategy Document envisaged to be pursued are as follows:

- Awareness-raising
- Risk scan
- Developing and extending preventive services,
- Regulating entry into the child protection system,
- Protective and preventive measures,
- Application and supervision of protective and preventive measures,
- Coordination of the child protection system on a provincial and sub-provincial level,
- General structure of the child protection system,
- Implementation and monitoring of the strategic plan.

The guarantee for bringing the Strategy Document to life shall be the adoption of the strategies listed by the relevant Ministries and Provincial Coordination Initiatives. And the manifestation of that is the finalization of the preparatory work for implementation plans on both levels. Therefore, it is expected that the objectives and activities under this Strategy Document, adopted by the Central Coordination Initiative, are firstly listed under the work programmes of the Ministries and Provincial Coordination Initiatives and are subsequently realized. The 10th objective of the Strategy and the activities thereunder serve the purpose of a guarantee for the realization of this expectation.

Apart from these initiatives, the National Children's Rights Strategy Document and Action Plan, drafted by the Ministry of Family and Social Policies, was published in the Official Gazette

no. 28851, dated 14 December 2013 and entered into force. This Action plan governs the following strategic objectives:

- Establishment of a singular children's law,
- Handling of the necessary administrative arrangements to allow that duly approved international conventions on children's rights and fundamental human rights are implemented directly in courts,
- Prevention of sexual abuse of children,
- Adoption of necessary measures to protect child victims and their families.

(Note: The aforementioned Strategy Document is a hundred pages long and consequently has not been translated into English. The Turkish text may be sent out upon request.)

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.*

ANSWER-3-(c): Even though there is currently not such a concrete guideline in application, we do not have any difficulty putting child-friendly implementation of the domestic laws into practice. In this context, it is worth to mention that the issue of the protection and improvement of the rights of the children, who have been involved in a legal investigation or prosecution as either a victim or as an offender, has gained an international dimension. In Turkey, we approach the issue from two different aspects; the first being the child as a victim and the second being the child as an offender, which we particularly and commonly refer to as the child drawn into crime as child offenders are in a way also victims. As for Turkey, in parallel with this increase, we may also observe a rising prevalence in the preventive, protective and rehabilitating precautions taken. These precautions have yielded fruitful results. For instance, the number of detained or sentenced children in prisons in Turkey has decreased by approximately twenty-five percent in the last five years. This trend shows us that a child-friendly approach is being adopted by our criminal justice system. The legislative regulations in Turkey contain provisions, which provide for the improvement of the rights of the children, while taking into consideration the well-being of the child. Such provisions in Turkey, ranging from the Constitution to special legislation on children, women and family, leave no room for any loopholes. We would like to give you a brief outline with examples from our legislation. We take measures to protect children against all kinds of abuse and violence. As for civil law, the Turkish Civil Code provides for special provisions for the protection of the well-being of the child. In cases where parents are incapable of assuming their responsibilities, the Code orders the necessary measures to be taken upon the request of the parents or the child. The Code also envisages that the State is to cover the cost of such measures if the parents or the child cannot afford it. We seek for identifying the real problem and finding solutions. We concentrate on two sides: The first one is preventive and protective measures. It means the precautions to be taken to prevent the children from being subject to and being drawn into crime. These precautions, which are taken prior to the emergence of the crime, concern the administrative authorities. Within this context, the Ministry of Family and Social Policies has a responsibility to protect the family, prevent domestic violence and juvenile delinquency. In order to fulfil this responsibility, the Ministry has established nurseries for younger children and orphanages for older children, who are not under the protection of their families. Other initiatives include Family Courts, which have been in operation since 2003. These are specialized courts for tackling issues related to families, women and children. Currently, there are two hundred eighty-four (284) family courts nationwide. These courts have achieved great success in effectively and quickly solving possible problems related to the protection of the family and each member of the family. The second aspect

of the argument is what needs to be done during the period between the time the crime has been committed and the execution of the sentence. At this point, we need to focus on child victims and child offenders, who we generally would rather refer to as children drawn into crime. In Turkey, new initiatives in parallel with international standards have been introduced with regard to measures to be taken and implemented in cases where the victim or the offender is a child. As it is impossible to mention all of them, there are below some examples:

- Specialized courts, namely Juvenile Courts, have been established to ensure that children are judged and rehabilitated according to their developmental and personal traits. In these courts, pedagogues, psychologists, psychiatrists and social workers are employed to assist the judge. There are a total of ninety-six (96) juvenile courts in Turkey.

- Additionally, the general security measures regulated under the Turkish Criminal Law cannot be applied to children drawn into crime (Article 56).

- Also, domestic violence, even if it results in simple injury, constitutes an indictable [resen] crime (Article 86/3).

- Under the Code of Criminal Procedure, child victims are to be heard only once during the trial, accompanied by an expert who has received training in the field of psychology, psychiatry, medicine and education. Moreover, an attorney shall be appointed for them without the need for a request on their part (Article 236).

- Under the Law on the Protection of the Child, prosecution of children shall be conducted separately from that of adults (Article 17).

- Throughout the trial stage, children are not to be restrained in any way by handcuffs, chains, etc. (Article 18).

- Children cannot be arrested for petty crimes (Article 21).

- While child trials are closed to public, there are exceptional cases where the parent or guardian of the child may be allowed in the court for the sake of the well-being of the child (Article 22).

- The statement of the child is to be taken directly by the public prosecutor. The aim of this regulation is to ensure that the child does not come face to face with uniformed law enforcement officials so that he or she doesn't feel under pressure.

Question 4: Child participation

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

ANSWER-4-(a): In order to ensure the participation of children in state policies to be developed and conducted regarding child protection issues, the Directorate-General for Child Services of the Ministry of Family and Social Policies have established Provincial Child Rights Committees in 81 provinces. In this context, the Directive on the Procedure and Substance of the Works by Child Rights Committees was issued through the Ministerial Approval no. 1291, dated 29/11/2013.

Turkey celebrates the Universal Children's Day every year on 20 November and organises children's fora as part of the celebrations. The 14th National Children's Forum took place between 18 and 20 November 2013 in Ankara. In the forum, child representatives of the Child Rights Committee, 81 boys and 81 girls from 81 provinces, participated in workshops on the following topics: children's rights education, early marriages-child brides, right to education and educational

problems, child labour-economic abuse. Upon the views expressed by the children, the main theme of the forum was identified to be the right of “child participation.”

Additionally, in parallel with the United Nations Convention on the Rights of the Child, the Ministry of Family and Social Policies held a workshop entitled “Children’s Perspective in the New Constitution” in cooperation with UNICEF. Child representatives of the Child Rights Committee, being one boy and one girl from 81 provinces, took part in the workshop. At the end of the workshop, a “Conclusions Report” was drafted, reflecting the opinions of children with regard to the issues that they would like to see included in the new constitution. Furthermore, as part of the workshop, child representatives presented their handwritten letters and drawings to the President of the Turkish Grand National Assembly.

Besides children’s opinions and recommendations on education, health, justice, protection, housing, civic facilities, disability, children’s place in the family and children’s participation, the Report also included significant recommendations on the combat against sexual abuse of children.

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

ANSWER-4-(b): In general terms, under Article 4, entitled “Fundamental Principles,” of the Child Protection Law, guaranteeing the child’s right to life, of development, protection and participation and ensuring the child’s participation in the decision-making process, on condition that both the child and his/her family are made aware, are set out as fundamental principles. Article 13 of the Child Protection Law rules that “before rendering a decision for measure, the opinion of the child having adequate perception capacity shall be taken.” Additionally, the Court of Cassation considers that failure to obtain the child’s opinion on proceedings on family law or on other child-related cases is considered to be a reason for reversion of the decision.

It is of utmost importance that children from all social backgrounds are represented in the above-mentioned Provincial Child Rights Committees. In this respect, children, rich or poor, living with their parents, children who reside in children’s education homes, disabled children and child victims of sexual exploitation and abuse who are under the care and protection of the Care and Social Rehabilitation Centres in accordance with protective and preventive measures are also represented.

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));*

ANSWER-5-(a): The promotion and protection of children’s rights is a matter which needs to be considered within the scope of a broader title such as the “protection of human rights.” That is why the “Human Rights Institution of Turkey,” established by the Law no. 6332 which entered into force following publication in the Official Gazette no. 28339, dated 30.06.2012, is the independent institution tasked with the promotion and protection of children’s rights. This institution holds a legal personality, is administratively and financially autonomous and is accorded a special budget. It is authorized to act independently on matters that fall within the scope of its duties and

competence. Therefore, no organisation, body, authority or person may order, instruct, advise or urge the Institution to act in a certain way on such matters. In line with the aforementioned law, the Institution shall inform the public opinion on its activities.

The duties and responsibilities of the Board are listed under Article 4 of the Law no. 6332:

Duties and powers

ARTICLE 4 - (1) *The Institution is designated and authorized to carry out activities for protection and development of human rights as well as for prevention of violations; to fight against torture and ill-treatment; to review the complaints and applications and to follow up the results thereof; to take initiative with a view to solving issues; and to conduct researches and studies for monitoring and evaluation of the developments in the field of human rights.*

(2) *The Institution can denounce or place complaints when necessary for taking action in line with the general provisions, if it finds out that a crime has been committed during the performance of its duty to carry out inspections, research, visits or review of the applications.*

The decision-making body of the Human Rights Institution of Turkey is the Board of Human Rights, which is comprised of eleven members. The duties and powers of the Board are listed under Article 7 of the Law no.6332:

Duties and powers of the Board

ARTICLE 7 - (1) *The Board shall perform the following duties and exercise the powers listed below, in addition to those stipulated in this Law as well as in other legislation:*

a) To identify the purview and priorities of the Institution within the scope of duties designated by law;

b) To take decisions on making regulations about the Institution and its purview;

c) To monitor the implementation of international human rights conventions that Turkey is a party to. To report its opinion by also benefiting from the relevant civil society organizations, during the preparatory process of the reports that Turkey is obliged to submit to the review, monitoring and inspection mechanisms established through these conventions; to participate in international meetings where these reports will be presented by way of sending a representative;

ç) To decide on the establishment of bilateral and multilateral relations between the Institution and similar institutions in other countries operating at national or international level. To cooperate with the United Nations and the regional human rights organizations, and to decide on joint activities;

d) To decide on the membership of the Institution to the international organizations working in the same field or on representing Turkey at these institutions;

e) To prepare, publish and disseminate to the relevant persons and institutions the annual reports assessing the problems and developments in the field of human rights as well as the relevant performances of the public institutions and organizations. In addition to the regular annual reports, to publish ad hoc reports on human rights, when necessary;

f) To pay visits to places where persons deprived of their liberty or persons under protection are being kept, when necessary, with delegations composed of three members;

g) To carry out campaigns and programs aiming at encouraging the development of human rights and elimination of violations together with public institutions and organizations as well as nongovernmental institutions;

ğ) *To finalize studies, researches, reports and similar documents on human rights carried out by the Institution;*

h) *To discuss and decide on the budget proposal prepared in line with the strategic plan as well as the goals and objectives of the Institution.*

ı) *To approve the reports indicating the performance and financial status of the Institution;*

i) *To discuss and decide on the suggestions for purchase, sale and rental of real estate.*

Human Rights Institution of Turkey regularly exchanges information with public institutions, universities and NGOs in order to enhance the promotion and protection of human rights, including children's rights. Legal arrangements on this matter are provided by Article 14:

Regular consultations

ARTICLE 14 - (1) *The Institution shall conduct regular consultations to discuss human rights issues and to exchange information and views on matters related to human rights minimum every three months together with the public institutions and organisations, nongovernmental organisations, trade unions, social and professional organisations, higher education institutions, media organisations, researchers and other relevant persons, institutions and organisations.*

(2) *The Institution shall inform the Human Rights Inquiry Committee of Grand National Assembly of Turkey at least once a year regarding the duties and powers listed in Article 4.*

Board members, who are the decision-makers of the Human Rights Institution of Turkey, also have some liabilities. This issue is laid down in Article 18 of the Law. Accordingly,

Prohibitions and liabilities

ARTICLE 18 - (1) *The President and members shall be subject to the Law on Disclosure of Assets, Anti-Bribery and Anti Corruption no. 3628, dated 19/4/1990. The President and members shall disclose their assets within one-month of the date of taking office and the end date of their terms.*

(2) *The President, members and personnel of the Institution shall not disclose the confidential information on the public sector, relevant bodies and third persons, personal data, classified institutional data, commercial secrets and related documents obtained during the fulfillment of their duties except for the legally authorized bodies for this matter.*

Human Rights Institution of Turkey is an independent institution with regard to financial issues. Financial sources of the institution are consisted of general budget, any kind of donations and supports and incomes obtained from evaluating the incomes of the institution.

In order to increase the effectiveness of the mentioned institution, a Bill for amending the Law has been drawn up. It is aimed that the institution will get a more dynamic and effective structure by entry into force of this amendment.

On the other hand, the Law on Ombudsman no. 6328 entered into force by being published on the Official Gazette dated 29/06/2012 and no. 28338. The Ombudsman's Office is responsible for examining and investigating all manner of administrative acts, actions, attitudes and behaviour in terms of respect for human rights and freedoms, conformity with the law. The Ombudsman's Office is established within the umbrella of Grand National Assembly of Turkey (GNAT) and possesses public legal personality with autonomous budget. It started to accept the applications for complaints as of the date of 29/03/2013.

Even though this institution is not an independent institution – it acts on behalf of GNAT-, it is of significant importance with regard to supporting, improving and protecting the rights of the children in terms of human rights. Taking into account that it acts on behalf of Legislation (GNAT), it may be stated that it is a more independent institution compared to the other public institutions before the administration and at least it is not subjected to a hierarchy within the administrative structure (executive power). In our country, “Ombudsman’s Office” established especially for the protection of the rights of a certain social group (such as children’s, women’s) is not available as in some other countries (for example, Norway – Ombudsman for Children’s Rights – 1981). Instead of this, the duty to protect the rights of all of the social groups or to combat against discrimination is given to the ombudsman by GNAT. In this respect, the Ombudsman’s Office has a mission to support and protect the rights of the children. Such that it is stated under the Law that one of the ombudsmen working for Ombudsman’s Office will be assigned exclusively to the area of the rights of the women and children (Article 7/1-e of the Law no. 6328).

Even though the Ombudsman’s Office is linked to GNAT, it is an institution which acts independently and impartially on the issues falling into its field of activity. This issue is expressed under Article 12 of the Law no. 6328 as follows:

Independence and impartiality

ARTICLE 12 - (1) *No authority, organ, institution or person can issue orders or instructions or circulars or advices to the Chief Ombudsmen or ombudsmen in the exercise of their duties.*

(2) *The Chief Ombudsman and ombudsmen must act in compliance with the principle of the independence and impartiality during the exercise of their duties.*

The budget of this institution is consisted of the treasury grants obtained from the budged of the GNAT and the other incomes.

b. *Which legislative or other measures have been taken to set up or designate mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection? (Article 10, para. 2, letter (b));*

ANSWER-5-(b): This matter is regarded as significant within the framework of the preparations for “National Action Plan on Combating Violence against Children (2014-1018),” which was prepared by the Ministry of Family and Social Policies in cooperation with relevant institutions and which is currently at the implementation stage. Therefore, one of the eight strategic objectives included in the Action Plan is devoted to address it.

The second Strategic Objective in the draft Action Plan is “Regular Monitoring of the Extent of Violence against Children.” This strategic objective aims to achieve two goals: 1-to ensure the systematic follow-up of the qualitative and quantitative extent of the violence against children issue by official data and studies to be conducted among the general child population. 2-to assess the efficiency and performance of public policies which are already in place and which will soon be in place.

In order to realize the said Strategic Objective, 3 main targets and activities to be carried out in order to reach them have been identified. These targets are as follows:

- 1- Determining the concept of “violence against children,” its extent, indications and institutions that collect data related to these indications, as well as their data collection strategies,
 - 2- Identifying strategies on the sharing of data collected by different institutions and on gathering these data in a common data repository,
 - 3- Setting standards for studies to be conducted on a regular basis on the “experience of violence” among the general child population and to collect data through at least one study.
- 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).*

ANSWER-5-(c): Because collection and storage of data related to DNA of persons whose convictions have been finalized for the offences which is related to public morality and public order such as sexual exploitation of the children is closely related with protection of personal data, any proceedings cannot be conducted without a legal regulation.

Article 20/3 of Turkish Constitutional Law titled “Privacy and Protection of Private Life” governs that “*Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person’s explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.*” In accordance with this article, collection and storage of DNA samples which is in the nature of personal data can only be possible under a legal regulation.

With regard to this issue, within the scope of the mentioned article of Turkish Constitutional Law and article 37 of the Convention, the legal works have been started and they are about to be concluded. It is expected that the law concerning this issue will take effect.

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);*

ANSWER-6-(a): According to the provisions of “the Decree Law numbered 633 on the Organization and Functions of the Ministry of Family and Social Policies” and Regulation on Execution of the Protective and Supportive Measures under the Child Protection Law”, all of the coordination related with execution any kind of protective and supportive measure, including the measures protecting the child against sexual abuse and exploitation, and with defining policies and strategies on social services intended for children is conducted by the Ministry of Family and Social Policies. Secretariat services of the coordination are carried out by the Directorate General for Children Services of the Ministry of Family and Social Policies.

To that end, “Central Coordination Board” has been established under the chairmanship of the Undersecretary of the Ministry of Family and Social Policies or a Deputy Undersecretary assigned by the Undersecretary and with the participation of the Deputy Undersecretaries from the Ministry of Justice, the Ministry of Interior, the Ministry of National Education, the Ministry of Health, the Ministry of Labour and Social Security and the General Directors of Directorate General for Children Services and Directorate General for Penal Affairs of the Ministry of Justice.

In accordance with the article 20 of the mentioned Regulation, the coordination in the provinces with regard to execution of the measure is carried out under the chairmanship of the governor or deputy governor and with the participation of the Chief Public Prosecutor or the Deputy Chief Public Prosecutor or another Public Prosecutor assigned by him and Director of Provincial Police Department, Provincial Gendarme Commander, Director of Provincial National Education Directorate, Director of Provincial Health Directorate, Mayors of Metropolitan Municipality, Provincial Municipality and Central District Municipality, Regional Director of the Ministry of Labour and Social Security, where not available, Provincial Director of Turkish Labour Institution, Director of Provincial Directorate of Youth and Sports, Provincial Director of the Ministry of Family and Social Policies, General Secretary of Provincial Special Administration or their deputies assigned by them, and Branch Manager of probation and support centers and a representative from the Bar Association. In the districts, the coordination is carried out by the district governorships.

In this framework, in order to plan the services intended for children effectively and implementing these services, it aimed to strengthen the coordination between institutions and organization and therefore a coordination system was established in central, provincial and district level. Therefore, “Guideline on Working Principles and Procedures of Central, Provincial and District Coordination Established for Execution of the Protective and Supportive Measures Taken according to Child Protections Law” is issued. A training program is established for the training of the operational personnel who are assigned for the execution of the protective and supportive measures and the coordination members. The aim of this program is to render effective service by the coordination boards. This program is implemented within the framework of “Justice for Children Project” financed by European Union and supported by UNICEF. This training program is decided to be conducted by developing a multi-sectoral training program in provincial level and making this program for 400 provincial coordination board members in 20 provinces.

The mentioned training program is expected to be conducted with the participation of deputy governor, judge of juvenile court, judge of family court, chief public prosecutor, director of provincial police department, provincial gendarme commander, director of provincial national education directorate, director of provincial health directorate, mayors of municipality or his/her representative and other representatives from the other public institutions and non-governmental organizations. These trainings started on 23 September 2013 and after training of the trainers, the training are still ongoing. As of the date of 26 December 2013, the trainings for 20 provinces were completed.

In the Justice for Children Project, it is aimed to develop software which is compatible with the activity of Extending of Coordination Strategy in the Child Protection Services and National Judiciary Informatics System which is used in the court houses for the recording and monitoring of security measures and protective and supportive measure intended for children. In this sense, developing software program is still ongoing called “Information System on Interlocutory Injunctions” which is compatible with UYAP and intended for monitoring the protective and supportive interlocutory injunctions. Therefore a Workshop was organized on 16 - 17 December 2012 for evaluating the business flow and work analyse with the Ministry of Family and Social

Policies and related judicial and administrative organization and exchange opinions concerning the substructure of the software to be developed. This program is about to be put into practice.

In addition to this, “*Strategy Document on Coordination in Child Protection Services and Implementation Plans*” prepared by the Ministry of Family and Social Policies was approved at the 12th Central Coordination Meeting organized on 27/11/2013. Thus the mechanism has been established for all of the public institutions to work in coordination within the scope of prevention of violence against children.

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;*

ANSWER-6(b): “*Directive on the Works Principles and Procedures of Central, Provincial and Sub-Provincial Coordination Initiatives Adopted in order to Execute the Protective, Supportive Measures under the Child Protection Law*” gives particular importance to the participation of the non-governmental organizations to this works. Accordingly, it stated under the articles 10 and 20 of the Directive that working groups may be established among public institutions, non-governmental institutions, universities, representatives from trade bodies and experts in the subjects such as education, training, research and planning within the scope of protecting the children against any kind of exploitation.

Article 11 of this Directive states that public institutions will coordinate and support the projects prepared by non-governmental organizations, universities and other initiatives so as to develop services intended for children.

In this respect, technical support has been taken from UNICEF for ensuring the cooperation between non-governmental organizations and private sector. Within the scope of the common communication web which is conducted by the UNICEF together with non-governmental organizations, “National Action Plan on Combating Violence against Children” is shared with the non-governmental organizations.

Moreover, in 2013, with technical support of UNICEF and with the contributions of the Ministry of Development, the Ministry of Family and Social Policies, the Ministry of National Education, the Ministry of Health, the Ministry of Youth and Sports and the Ministry of Labour and Social Security, “Instrument for Child Well Being” has been prepared. By this instrument, it is aimed to deal with the policies of Turkey intended for children in a way to increase the children well-being and in this respect to prepare “**Indications of Children Well Being in Turkey**”. Therefore, “Children Well Being Conference” was organized on 25 April 2013 and a workshop was carried out on 12 – 13 December 2013 with the participation of the representatives from non-governmental organizations and private initiatives.

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)?*

Answer-6(c): No information has been received from the relevant governmental bodies on this question yet.

Question 7: International cooperation

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

Answer-7: No information has been received from the relevant governmental bodies on this question yet.

PREVENTION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 8: Education, awareness raising and training

- a. *Which legislative or other measures have been taken to:*
- *ensure that children, during primary and secondary education receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacities? (Article 6, Explanatory Report, paras. 59-62). Please also specify whether this information includes the risks of the use of new information and communication technologies (Article 6, Explanatory Report, para. 63);*
 - *encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities? (Article 5, para. 1);*
 - *ensure that persons, referred to while replying to the bullet point above, have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility of reporting suspicions of a child being the victim of such acts? (Article 5, para. 2).*

ANSWER-8-(a): Within the framework of abovementioned “Action Plan on Combating Violence against Children (2014 – 2018)”, the education targets have been defined. In the plan, the sexual exploitation of the children is approached as a separate form of the violence. In this respect, “strengthening the children against violence” is defined as a strategic mean of education. In order to carry out this aim of the strategy, the followings will be ensured:

- 1 - Including the information intended for the children to protect themselves from the acts of violence into the curriculums of education and counselling courses,
- 2 - Developing training, supervision, monitoring, supporting, observation and evaluation mechanisms for prevention of the violence in the work places,
- 3 - Strengthening the mechanisms of social solidarity and supporting the children and their families who are in the risk group with the perception of sustainable support,
- 4 - Prevention of the children to live and work on the roads and developing service models intended for this children,
- 5 – Giving training to the disabled children and their families concerning protection from the cases of exploitation and negligence, defining and informing about these cases.

In accordance with the Law numbered 633, prevention of any kind of violence against children and therefore ensuring regular communication with the children are among the main responsibilities of the Ministry of Family and Social Policies. Thus the mentioned Ministry conducts its responsibilities in coordination with the other Ministries, particularly the Ministry of

Justice, National Education, Interior. In respect with this purpose, child – mother education and education on the rights of the child are given in the society centers, family counselling centers, nurseries, orphanages and in schools.

In addition to this, “Trainers Training for Rights of the Children” is given within the bodies of the Provincial Committees of Rights of the Children which was established in 81 provinces and have been active since 2000. The main philosophy of these trainings is to ensure that the trainings which will constitute the awareness and sensibility in the rights of the children will be given by the children personally (the technique of fellow to fellow). It is aimed to ensure to raise awareness among the children about social and domestic problems and their resolutions and also protective – preventive service is rendered intended for the decrease the possible risk factor.

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);

ANSWER-8-(b): Another strategic purpose within the framework of “Action Plan on Combating Violence against Children (2014 – 2018)” is defined as “Increasing the Consciousness Level of the Society concerning the Violence against”. It is aimed that every segment of the society understands the fact of violence against children and its social and legal consequences. In this way, the society will be moved away from the acts which constitute violence against children and they will become conscious about what to do when encountered with such an act.

Two sub-targets have been defined so as to practice this aim:

- 1 – Organizing campaigns for raising awareness / increasing conscious intended for the public on violence against children which will include every segment of the society,
- 2 – Organizing training programs for increasing consciousness and awareness intended for professionals working at the institutions in contact with the children.

So as to actualize these defined targets, various training seminars and programs are organized and informative brochures are distributed in each province through the governorships.

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).

ANSWER-8-(c): Article 1 of the Law on Protection of Minors from Sexually Explicit Materials numbered 1117 states that the periodical and non-periodical publications shall be subject to legal limitations for leaving negative effect on the psychologies of the minors are. Whether the periodical or non-periodical published works are harmful for the mental health of the mental health of the children is decided by a “board” constituted by the experts from various Ministries and envisaged by the Law.

It is to be stated that this Law is enacted so as to protect the children from explicitly sexual material which may be harmful for them. Production, possession, distribution of the materials in which the children are used as a sexual object are governed as separate offences. Article 226/3 of Turkish Penal Code concerning this issue is as follows:

Article 226/3 of Turkish Penal Code: A person who uses children in the production of obscene written or audio-visual materials shall be sentenced to a penalty of imprisonment for a term of five to ten years and a judicial fine of up to five thousand days. Any person who conveys such material into the country, who copies or offers for sale such material or who sells, transports, stores, exports, retains possession of such material or offers such material for the use of others shall be sentenced to a penalty of imprisonment for a term of two to five years and a judicial fine of up to five thousand days.

Paragraph 5 of the same article states that “Any person who broadcasts or publishes the materials described in sections three and four or who acts as an intermediary for this purpose or who ensures children see, hear or read such materials shall be sentenced to a penalty of imprisonment for a term of six to ten years and a judicial fine of up to five thousand days.”

In this regard, within the scope of article 8 of the Convention, publication and distribution of the materials which make the advertisement of the offences laid down in the Convention are governed as offence.

Question 9: Recruitment and screening

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

ANSWER-9-(a): The majority of persons employed in positions that require regular contact with children such as teachers, social service experts, child development and education experts, pre-school and dormitory staff are civil servants.

In order to be a civil servant within the Turkish public personnel regime, it is necessary to hold the general and special provisions set out in the Code for Civil Servants. To be taken into employee status; as well as specific provisions provided for institutions' own law or private legislation, there exists general provisions like citizenship, education, age, military service, health conditions, not to be banned from public rights, not to be sentenced imprisonment more than any limited period and not to be convicted for some certain crimes. Without carrying these qualifications being a civil servant is not possible besides losing any of these qualifications during the time terminates the status. In Turkish law system the capability of being a civil servant may be lost because of imprisonment. Especially every kind of convection for the crimes listed by the article 48 / A-5 of Code for Civil Servants terminates the employee status. Even the institutions such as amnesty and postponement can't omit this incapability situation.

The qualifications sought in the employment procedure and arranged under Paragraph 48/A of the Code for Civil Servants, are “not be deprived of public rights” (48/A-4) and “not to be convicted of an offence, against the security of the state, against the Constitutional order and the operation of such order, against national defence, against state secrets, or of espionage, embezzlement, malversation, bribery, theft, fraud, forgery, abuse of trust, fraudulent bankruptcy, bid rigging, involvement in fraudulent act during fulfilment of obligations, laundering of assets acquired as a result of offense or smuggling even if a pardon or a sentence to one year or more in prison due to an intentional offence has been rendered, regardless of the fact that the time periods specified under Article 53 of the Turkish Penal Code have been exceeded” (48/A-5 as amended by Article 5728/317, dated 23.1.2008). Therefore, those who are banned from public rights or those who do not possess the requirements stated under Sub-Paragraph 5 cannot become civil servants. The status of those who no longer hold the qualifications listed under Article 48, Paragraph 1, Subparagraph A during their service as civil servants, or those who commit an offence listed under Indent 5 of Subparagraph A, is terminated (Art. 98/b of the Code for Civil Servants).

Another professional group who are required to be in direct contact with children is school bus drivers that provide transportation of children to schools. Regarding this matter, the “Regulation on School Bus Services,” which entered into force after its publication in the Official Gazette no. 26627, dated 28.08.2007, includes direct references to persons who have committed the offences of sexual abuse of children, substance abuse and procurement. It is stated under Paragraph c), Article 8, entitled “Persons working in transportation” of the law that the person cannot “have been convicted of offences listed under Articles 103,104, 109, 188, 190, 191, 227 of the Turkish Penal Code and Article 35 of the Law no. 5326 of Misdemeanours, even if previously pardoned.”

b. Does the screening of candidates apply to voluntary activities (Explanatory Report, para. 57)?

ANSWER-9-(b): Necessary evaluations are being conducted by the Ministry of Family and Social Policies depending on the nature of the voluntary activity.

Question 10: Preventive intervention programmes or measures

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

b. Which legislative or other measures have been taken to ensure that persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention, may have access to effective intervention programmes or measures?

Please specify under which conditions, if required (Articles 15 to 17). Please indicate in particular: who has access to these programmes and measures (convicts, persons subject to criminal proceedings, recidivists, young offenders, persons who have not committed a crime yet?);

- how the appropriate programme or measure is determined for each person;*
- whether there are specific programmes for young offenders;*
- whether persons have a right to refuse the proposed programme/measures?*

ANSWER-10-(a,b): We have not received any detailed information regarding the ongoing or proposed Intervention programme/measures. On the other hand, in case of an application by persons who fear that they may commit any of the offences established in accordance with the Convention, the Ministry of Health shall provide effective psychological support.

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*
- b. *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**); 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**).*

ANSWER-11-(a, b, c): No information has been received from the relevant governmental bodies on this question yet.

Question 12: Effectiveness of preventive measures and programmes

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

ANSWER-12-(a, b): No information has been received from the relevant governmental bodies on this question yet.

**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);*

ANSWER-13-(a): Professionals working in contact with children are bound by confidentiality rules. Such confidentiality is determined with regard to the ethical rules of each profession. However, these rules do not constitute an obstacle for reporting in the case where the child is a victim of sexual exploitation or sexual abuse. On the contrary, Article 278 of the Turkish Penal Code renders it obligatory for public officials to inform the authorities of the crime they have come to know of in the capacity of their professions. Article 278 reads;

ARTICLE 278- (1) Any public officer who neglects or delays in notification of an offense to the authorized bodies being aware of commission of an offense, which requires investigation or prosecution, is punished with imprisonment from six months to two years.

(2) In case of commission of this offense by an officer undertaking duty in judicial department, the punishment to be imposed according to above subsection is increases by one half.

- 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.*

ANSWER-13-(b): There is not any separate or specific legal arrangement to encourage persons to report actions of abuse and exploitation of children which fall within the scope of the Convention and which constitute an offence. However, in general terms, any person who witnesses an offence being committed is under to the obligation to report it to the competent authorities. Article 277 of the Turkish Penal Code rules that any person who fails to inform the competent authorities of an offence being committed or of the commission of an offence when it is still possible to limit its consequences is to be sentenced to prison. Paragraph 3 of the same Article governs that in case the victim happens to be a child not yet attained the age of fifteen, or a person lacking the capacity to protect himself/herself due to corporal or spiritual disability or pregnancy, the sentence to be imposed is to be increased by one half.

There are no conditions to the reporting of such an offence. Upon coming to know of the commission of an offence, one shall inform the nearest public prosecutor's office, police station, gendarmerie, district governorship or provincial governorship.

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).

ANSWER-14: To that end, “183 - social services help line for families, women, disabled and elderly citizens” was established in line with the above-mentioned constitutional and legal arrangements in order to ensure reporting and intervening at the very instant possible in abuse cases, including cases of sexual abuse and exploitation of children. Calls received by the communication center are processed 24/7 by citizen representatives, legislative experts, vocational experts, field coordination experts and Emergency Action teams stationed in every province. The calls are heard, assessed and redirected for counselling and consultation services. Additionally, in cases, which necessitate protective and preventive measures, emergency action teams and/or law enforcement officials are instantly notified.

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.*

ANSWER-15-(a): In order to approach children who have been subject to sexual abuse or exploitation in a conscious and effective manner and to ensure that the course of action alleviates the trauma they must be going through as much as possible, “Child Observation Centers” (COC) were established through the Prime Ministry Circular no. 2012/20. Such centers operate in hospitals and institutions belonging to the network of the Ministry of Health. The primary purpose of these centers is to prevent child victims of sexual abuse or exploitation from being subject to the same treatment a second time. To that end, all legal and medical procedures related to such child victims are carried out in these centers.

Additionally, the Directorate-General for Child Services of the Ministry of Family and Social Policies carries out protective and supportive measures such as consultancy, education, care, health and housing to child victims of sex crimes.

In the event that parents or persons responsible for the care of the child are involved in the sexual exploitation or abuse of the child, and thus if it is decided that the child victim stays with a foster family, Article 236 of the Code of Criminal Procedure rules that the child, who has suffered psychological damages as a result of the committed offence, shall be heard only once as a witness in relation to the investigation or prosecution of the said offence and be accompanied by an expert in psychology, psychiatry, medicine or education.

In line with the Law no. 5402 on Probation Services, a directorate of probation shall be established under the Public Prosecutor's Office in the vicinity of the justice commissions of the trial court. The law lists the following among the duties of the directorate: consultancy for the solution of psycho-social and economic problems faced by persons who have been adversely affected by the offence and assisting to these persons during the investigation and prosecution stages (Articles 10-13).

Then again under the same Law, protection boards shall be set up in the vicinity of the justice commissions of the trial court. Article 17 of the law, citing the duties of such boards, governs that the boards shall take part in the solution of social and economic problems of persons adversely affected by the offence, which have been referred to them by the probation directorates.

As a result of the studies conducted at the Council of Europe, European Convention on the Compensation of Victims of Violent Crimes was opened for signature on 24/11/1983 and was signed by Turkey on 24/04/1985. However, our country has not yet ratified the Convention. European Convention on the Compensation of Victims of Violent Crimes envisages an all-encompassing legal arrangement without discrimination to children or adults.

Under the Section entitled "Political Criteria" of the Turkish National Programme for the Adoption of the European Union Acquis, published in the Official Gazette dated 31/12/2008, it is envisaged that a "Draft Law on the Assistance to Child Victims of Violent Crimes" is drawn up and submitted to the Turkish Grand National Assembly.

Taking note of the aforementioned National Programme and Convention, a "Draft Law on the Assistance to Victims of Offences" was drawn up by our Ministry. This draft law does not make a discrimination between adults and children and aims to regulate the substance and procedures with regard to the provision of assistance by the State, in line with the "principle of social state" under Article 2 of the Constitution, to the direct victims of crimes, which constitute an attack to the physical, mental or sexual integrity, or to those responsible for the care of such persons in the event of their deaths. The draft law has been submitted to the assessment of related institutions and organization and the opinions received are currently being sorted and evaluated.

- 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.*

ANSWER-15-(b): It is possible to request the measures cited under Article 5 of the Child Protection Law no 5395 for the sake of the child victim. Upon request, the Family Courts decide on the most appropriate of these measures after consulting to the opinion of the experts in its employ.

The Child Law defines the child in need of protection as a neglected or exploited child whose physical, mental, moral, social and emotional development and personal safety is in danger or who falls victim to an offence.

According to the Child Protection Law, preventive and protective measures to be taken for the child in need of protection are listed under Article 5 of the Law as consultancy, education, care, health and housing.

Judicial and administrative authorities, law enforcement officials, health and educational institutions, non-governmental organisations are entitled to inform the provincial and district Directorate-Generals of Family and Social Policies of the child in need of protection. The child him/herself as well as persons responsible for the care of the child may also apply to the Directorate-Generals of Family and Social Polices in order to ensure that the child is taken under protection.

Provincial and district Directorate-Generals of Family and Social Policies immediately perform the necessary research on the reported case and apply to the judge responsible for juveniles for a decision for measure to be taken.

A protective and supportive decision for measure may be rendered upon the request from the mother, father, guardian of the child, the person responsible for the care of the child, Ministry of Family and Social Policies Directorate-General for Child Services, as well as public prosecutor or ex-officio by the judge responsible for juveniles. It is possible to perform a social analysis concerning the child prior to the decision for measure.

In the case of an urgent necessity to take the child under protection, after the child is transferred to the care and surveillance of the Ministry of Family and Social Policies Directorate-General for Child Services, a request is submitted within five days at the latest to the judge responsible for juveniles for a decision for protection to be rendered urgently and the judge decides on the request within three days.

The judge's decision for care and housing is executed by the provincial and district Directorate-Generals of Family and Social Policies. The Directorate-Generals take the necessary measures without delay and place the child in the formal or private institutions indicated in the decision rendered by the judge (Child Protection Law, Articles 6-10).

- a. *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).*

ANSWER-15-(c): Under Article 7 of the Child Protection Law, the judge may revoke or amend the protective and supportive measure while keeping in mind the development of the child regarding whom the measure was decided upon. In urgent cases, this decision may also be rendered by the judge, whose jurisdiction encompasses the location of the child, on condition that the judge or court responsible for the previous decision is informed. The implementation of the measure expires when the child reaches eighteen years of age. However, upon the child's consent, the judge may decide on the continuation of the measure for a while longer so that the child may resume his/her studies. In addition to the decision for protective and supportive measures, in line with the provisions of the Turkish Civil Code no. 4721, dated 22.11.2001, the court is also competent as to decide on the matters regarding custody, guardian, curator, alimony and access rights on behalf of the child in need of protection.

- b. *Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (Article 38, para. 2, Explanatory Report, paras. 258-259).*

ANSWER-15-(d): Within the scope of the answer to the second question, as a requirement of the ban on discrimination, every person in Turkey may lodge a complaint against an offence before the Turkish judicial authorities even if the offence in question has not been committed in Turkey. In this regard, if the offence of sexual abuse or exploitation of the child, indicated in the Convention, has been committed in Turkey, the victim may of course lodge a complaint against such acts in Turkey. In that case, Turkish judicial authorities shall first and foremost resort to Article 13 of the Turkish Penal Code. Under the aforementioned article, Turkey's jurisdiction with regard to certain offences is recognised within the framework of the principle of universality in offence and sentence even if the location where the offence was committed is not in Turkey.

In this context, child exploitation with a view to prostitution (Article 227/1 of the TPC), child abuse with a view to human trafficking (Article 80/3 of the TPC) or systematic sexual abuse of children for purposes against the ban on discrimination are recognised as "universal offences" in our legal system. It is possible to initiate an investigation and prosecution in Turkey against such offences even if the offences in question have not been committed in Turkey.

In the case where the act does not fall within the scope of the abovementioned offences, Turkish judicial authorities shall receive the complaint of the victim in writing. This written complaint letter shall be sent to the competent judicial authority of the country where the offence has been committed via the Ministries of Justice and Foreign Affairs in order for an investigation to be initiated.

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.*

ANSWER-16-(a, b, c, d): Under Article 103 of the Turkish Penal Code, any attempt at physical contact with the child with a sexual aim, shall be sentenced with imprisonment. Under this article, all kinds of sexual attempt against children who are under the age of fifteen or against those attained the age of fifteen but lack of ability to understand the legal consequences of such act, as well as sexual abuse of other children by force, threat or fraud, or any other reason having an influence on the will of the child are defined as sexual abuse.

According to Article 104 of the said Code, any person who is in sexual intercourse with a child who completed the age of fifteen without using force, threat and fraud, is sentenced to imprisonment from six months to two years upon filing of a complaint. Then again, other than the abovementioned offences, in the event of sexual molestation without physical contact, the perpetrator shall also be punishable under Article 105 of the Turkish Penal Code.

However, under Article 109 of the Turkish Penal Code, unlawfully restricting the freedom of a person by preventing him from travelling or living in a place is sentenced to imprisonment from one year to five years. The fact that the victim is a child or that the offence was committed with a sexual aim are among the aggravated circumstances of such offence.

On the other hand, the section entitled “Obscenity” under Article 226 of the Turkish Penal Code provides that those, who give, show, or read to the child any products containing obscene imagery, text or words, shall be sentenced to imprisonment. Paragraph 3 of this Article rules that employing children in the manufacturing of obscene products is punishable with five to ten years imprisonment, while Paragraph 5 stipulates that those who publish or cause the publication of any obscene imagery, text or words via the press, or act as intermediaries thereof, or those who cause children to see, hear or read such products, shall also be punishable with imprisonment and fines. Then again, Article 227 of the said Code governs that encouraging the child or facilitating the way of the child into prostitution, or procuring or abetting with this aim or acting as an intermediary of a child prostitute, shall be punishable with imprisonment and judicial fine. Also under the same Article, an as an intentional offense, the preparatory acts with a view to the commission of such offence shall be punishable as if the offence itself has been thoroughly committed.

The institutions of criminal attempt and perpetration are arranged under Articles 35 and 41 of the Turkish Penal Code.

Sexual Abuse (Article 18)- *Article 103 of the Turkish Penal Code*

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

Child Prostitution (Article 19)- *Article 227/1 of the Turkish Penal Code*

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

Child Pornography (Article 20)- *Article 226/3,5 of the Turkish Penal Code*

1. Producing child pornography;
2. Offering or making available child pornography;
3. Distributing or transmitting child pornography;
4. Procuring child pornography for oneself or for another person;
5. Possessing child pornography;

6. Knowingly obtaining access, through information and communication technologies, to child pornography.

Participation of a Child in Pornographic Performances (Article 21)- Article 226/3,5 of the Turkish Penal Code

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

4. Corruption of Children (Article 22)- Article 105, 225 or 226/3 of the Turkish Penal Code can be implemented depending on the qualification of the concrete fact.

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

Solicitation of Children for Sexual Purposes ("grooming") (Article 23)- Article 103 or 226/3,5 of the Turkish Penal Code

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

Aiding or abetting and attempt (Article 24)- Article 38-41 and 35-36 with the Articles 103, 104, 226/3, 5,227/1, 80/3 of the Turkish Penal Code.

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

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.

ANSWER-17: It is indicated under Article 20 of the Turkish Penal Code that legal persons cannot be subject to criminal sanctions due to the commission of an offence, however that sanctions provided by the law against the offence such as security measures may be implemented.

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);*

ANSWER- 18-(a): The explanation regarding criminal sanctions was included in the answers to question 16 and 17. Other than those indicated, Article 8 of the Law No. 5651 on *Regulating Broadcasting in the Internet and Fighting Against Crimes Committed through Internet Broadcasting* rules that a decision shall be rendered to deny access to content broadcasted on the internet, involving sufficient suspicion to constitute an offence of “sexual abuse of children,” “obscenity” or “prostitution” under Turkish Penal Code, no. 5237.

- 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).*

ANSWER 18-(b): Under Article 58, Paragraph 4, Sentence 3 of the Turkish Penal Code, excluding offenses such as felonious homicide, felonious injury, plunder, swindling, production and trading of narcotic and harmful drugs or counterfeiting of valuable stamps, the decisions taken by the foreign courts shall not be taken as basis in recidivism.

On the other hand, in line with the provisions of European Convention on the International Validity of Criminal Judgments, it is possible to execute in Turkey the sentence, which has been finalised, pronounced against a person whose conviction of an offence committed in a country party to the Convention. In this respect, the sentence against a person who has been convicted abroad of sexual abuse and exploitation of a child, may be enforced in our country upon the request of the relevant country. If such a request is submitted by a country that is not party to the Convention, it shall be assessed in accordance with the principle of reciprocity.

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).

ANSWER 19: Article 8 of the Turkish Penal Code rules that Turkish laws shall be applied for the offenses which are committed in Turkey. Where the act constituting an offense is partially or entirely committed in Turkey, or the result is obtained in Turkey, the offense is assumed to have been committed in Turkey. The Article also states that if the offense is committed in Turkish territory, or airspace and Turkish territorial waters, in open seas and the space extending above these waters, and in/by the Turkish vessels and airplanes, in/by Turkish war ships and aircrafts, in the stationary platforms exclusively constructed in the territorial boundaries of Turkey or in industrial zones, then this offense is assumed to have been committed in Turkey.

Under Article 11 of the Turkish Penal Code, if a Turkish citizen commits an offence in a foreign country which requires punishment with a minimum limit of less than one year imprisonment according to the Turkish laws, and if the offender is found in Turkey, then he is punished according to the Turkish laws provided that he is not convicted in the said foreign country for the same offense and there is possibility to proceed a trial in Turkey. Where the offence requires a punishment with a minimum limit of less than one year imprisonment, the trial is filed only upon rise of complaint by the injured party or the foreign country. In such case, the complaint has to be brought within six months as of the date of entry of the citizen into Turkey.

Article 12, Paragraph 1 of the Turkish Penal Code governs that if a foreigner commits an offence in a foreign country causing injury to Turkey, which requires a punishment with a minimum limit of less than one year imprisonment, and if the offender is found in Turkey, then he is punished according to the Turkish laws and the trial is filed upon request of the Minister of Justice. Under Paragraph 2, if the offence mentioned in Paragraph 1 is committed with the intention of causing injury to a Turkish citizen or a legal entity incorporated according to the Turkish laws, and if the offender is found in Turkey, then the perpetrator is punished according to the Turkish Laws upon complaint of the injured party provided that that he is not convicted in the said foreign country for the same offense.

Under Paragraph 3 of the aforementioned Article, if the aggrieved party is a foreigner, he is tried upon request of the Ministry of Justice.

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**).*

ANSWER- 20: Paragraph 3 of article 103 of Turkish Penal Code envisages that the sentence is aggravated in case of sexual abuse by an antecedent relative, second or third degree blood relative, stepfather, adoptive parent, guardian, tutor, trainer, caretaker, persons providing health care services or persons who are responsible for protecting and caring for the child, or by abusing the influence gained through a service relationship, or by more than one person.

Moreover article 27 of Social Services Law numbered 2828 titled “Criminal Liability” states that *“any imprisonment and fine to be imposed to staff of care institutions, who commit any crime to persons cared for and protected by social service institutions, shall be increased by one third”*. In the event that staff of the social services institution where the child who has been taken under custody of the State commits sexual exploitation, the sentence to be given to the staff shall be increased by one third.

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;*

ANSWER-21-(a): In parallel with the modern legal system, the Turkish legal system places particular importance to the protection of the rights of child victims, and especially those of child victims who have been subject to a sexual offence, to the provision of protective and supportive measures including legal assistance services to the child victim through informing the child about the incident (the offence) while keeping in mind his/her age and ability to understand.

In this respect and in parallel with the provisions of the Convention, the law envisages that the statement of child victims of sexual offences be taken in the absence of the law enforcement official or the prosecutor, after his/her rights have been explained in a suitable manner by a pedagogy expert or a child psychologist, through the use of audio and video recording equipment.

In order to put this practice into action, in other words to prevent child abuse and to intervene in a conscious and effective manner, Child Monitoring Centers (CMC) have been established under the leadership of the Prime Ministry and in cooperation with the Ministries of Health and Justice. These centers aim to cause minimum degree of secondary damage to sexually abused children and to ensure that judicial and medical procedures are handled in a single session and in a single institution comprised of trained persons in this field. These centers are currently in operation in 13 provinces. Works to extend these centers nation-wide are under way.

Taking the statement of a child victim is a technical matter which requires special training. A child-friendly setting and appropriate techniques of communication should be in place when taking the child's statement. CMCs have achieved certain success in taking statements in a single session and the initiation of pilot schemes. Although the CMCs currently operate only in 13 provinces, the number of child victims who benefit from these centers as of November 2013 is 2832. The circular issued for the establishment of the Child Monitoring Centers ensures the implementation of Paragraphs 2 and 3 of Article 236 of the Code of Criminal Procedures through a reference to the High Council of Judges and Prosecutors Investigative Principles and Procedures. The fact that the legal arrangements emphasize the investigation stage of the proceedings does not constitute an obstacle for it to be also valid for the prosecution stage.

Regarding the Child Monitoring Centers, a Prime Ministry Circular no. 2012/20, dated 4 October 2012 was issued. The Circular aims to implement protective measures to ensure effective protection from sexual abuse, in particular of child victims, prevention of secondary victimhood, handling of judicial and medical procedures in a single session by persons specially trained in this field. In order to achieve these goals, it is envisaged that the investigation proceedings, conducted by chief public prosecutor's offices, are handled in line with the relevant section of the Circular entitled "Investigative Principles and Procedures," published by the High Council of Judges and Prosecutors. Under this Circular, statements of children can now be taken in Child Monitoring Centers. The most significant objective of this is to prevent revictimization of children. In this respect, these centers may be considered to fulfil a mission in a way to set an example to other countries.

We are aiming to render the Child Monitoring Centers operational in the whole country in 2014. The training and all other preparatory work related to the staff to be employed are being handled at full speed. CMCs keep in mind the best interest of the child in taking the child victim's statement and handling his/her examination, as well as in the preparation of the report. The activities of the Child Monitoring Centers, established to prevent a secondary damage to child victims, are the following:

- Law enforcement officials, who are made aware of the abuse, inform the public prosecutor in duty at the Child Monitoring Center.
- The child is taken to the center on a 'civilian vehicle' by specially trained law enforcement officials.
- The forensic expert, child psychiatrist and paediatrician run a detailed examination of the child's body (including the reproductive organs) and record all physical findings on a video camera.
- The child's statement is taken in a 'two-way mirrored' room and audio-visually recorded by specialised staff (judicial interview). Public prosecutor, law enforcement official, juvenile attorney, forensic expert, child psychiatrist take position in the room behind the mirror and watch the interview.
- Expenses related to the child's housing, nutrition, clothing, health and security are covered until a suitable model for treatment and service are identified.

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));*

ANSWER-21-(b): The rights of the victim and the complainant during the investigation and prosecution stages are listed under Article 234 of the Code of Criminal Procedure as a motion for evidence to be collected; in cases where it would not jeopardize the secrecy and aim of the investigation, to demand from the public prosecutor copies of documents; in cases of sexual assault and in crimes that carry imprisonment of five years at the lower level and less; if he has no representative, to demand the appointment of a lawyer on his behalf by the Bar Association; ask his representative to review the documents of investigation and items that have been seized and taken under protection; to utilize his right of opposition against the decision of the public prosecutor to not prosecute as laid down in the Code; to be notified about the main trial; the right to intervene in the public claim; to demand copies from the records and documents; to demand the witnesses to be summoned; and under the condition to have taken the position of intervening party in the lawsuit, to attack the decisions that end the lawsuit by legal remedies.

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));*

ANSWER-21-(c): The Child Protection Law governs, in general terms, services to be rendered and supportive measures to be taken for child victims of sexual offences and their families. Starting from Article 5, the Law specifies what these measures are, how they are implemented, who the competent authorities are and other legal procedures. The best way to answer this question would be to quote exactly the relevant articles in the Law:

Protective and Supportive Measures

Article 5- (1) *Protective and supportive measures are measures to be taken in terms of consulting, education, care, health and shelter, for the purpose of protecting the juvenile within his/her own family environment before all else. These measures are as follows:*

a) *Consultancy measure, is a measure oriented to providing guidance on child rearing to those who are responsible for the care of the juvenile, and guidance to juveniles on solving problems related to their education and development;*

b) *Education/training measure, is a measure oriented to ensure that the juvenile attends an education institution as a day-student or boarding student, attends a vocational training course or arts & crafts course, or is deployed with a master of profession or at a workplace belonging to the public or private sector for the purpose of acquiring a job or a profession,*

c) *Care measure, is a measure to make governmental or private care centre services or foster family services available for the juvenile or place the juvenile under the care of such institutions, in the event that the person responsible for the care of the juvenile fails to fulfil his/her care duties due to any reason,*

d) *Health measure, is a measure to ensure necessary temporary or continuous medical care and rehabilitation for treatment and protection of the juvenile's physical and physiological health, and treatment and therapy for juveniles who use addictive substances,*

Applying to the Agency

Article 6- (1) *Judicial and administrative authorities, law enforcement officers, health and education institutions and nongovernmental organizations have the obligation to notify the Social Services and Child Protection Agency of any juveniles that are in need of protection. The juvenile and the persons who are responsible for the care of the juvenile can apply to the Social Services and Child Protection Agency to take the juvenile under protection.*

(2) *The Social Services and Child Protection Agency shall immediately carry out the necessary enquiry regarding the events notified to it.*

Taking Protective and Supportive Court Decisions

Article 7- (1) *Protective and supportive court decisions regarding juveniles can be taken by the juvenile judge either suo sponte or upon the request of the juvenile's father, mother, guardian, the person responsible for the care and supervision of the juvenile, the Social Services and Child Protection Agency or the Public prosecutor.*

(2) *Before rendering a court decision, a social enquiry regarding the juvenile shall be carried out.*

(3) *The type of the measure shall be indicated in the decision. The judge may decide for one or more measures.*

(4) *The judge may also decide for taking under supervision the juvenile about whom he/she has decided for a protective and supportive measure.*

(5) *Taking into consideration the development of the juvenile, the Judge may decide to change or abrogate the protective and supportive measure. In case of emergencies, this decision may also be rendered by the local judge where the juvenile is located. However, in such a case, the decision shall be notified to the judge or court that had rendered the original decision.*

(6) *The execution of the measure shall terminate automatically when the juvenile completes age eighteen. However, the judge may decide to continue with the implementation of the measure for a certain period of time in order to allow the juvenile to continue his/her training or education, provided that the consent of the juvenile is taken.*

(7) *Aside from rendering decisions for protective and supportive measures regarding juveniles that are in need of protection, the court shall also have the authority to decide with regard to custody, guardianship, caretaker, trustee, alimony and personal contact, in accordance with the provisions of the Turkish Civil Code dated 22.11.2001 and numbered 4721.*

Capacity with regard to Measures

Article 8- (1) *Protective and supportive measures regarding juveniles in need of protection shall, for the benefit of the juvenile, be decided by the juvenile judge of the locality where the juvenile, his/her mother, father, guardian or those with whom he/she lives are located.*

(2) *The implementation of the decision for a measure shall be inspected by the deciding judge or court at intervals of maximum three months.*

(3) *The judge or the court may, suo sponte or upon the request of the supervision officers, the juvenile's parent, guardian, caretaker or supervisor, the representative of the institution or person implementing the measure and the Public prosecutor, examine the results of the measure being implemented with regard to the juvenile, and abrogate, extend or change the measure.*

Urgent Protection Decisions

Article 9- (1) *In case of a situation which requires taking the juvenile under immediate protection, the juvenile shall be taken under care and supervision by the Social Services and Child protection Agency, and then the Agency shall apply to the juvenile judge within five days at the latest following the day the Juvenile was brought to the Agency, in order for an urgent protection decision. The judge shall decide with regard to the request within three days. The judge may decide for keeping the juvenile's location confidential and, when necessary, establishment of personal contact.*

(2) *An urgent protection decision can only be rendered for a limited period of maximum thirty days. Within this period, the Agency shall carry out a social enquiry regarding the juvenile. If, following the enquiry, the Agency concludes that there is no need to decide for a measure, it shall notify the judge of its opinion and the services it will provide. Whether the juvenile is to be delivered to his/her family or whether any other measures are to be taken shall be decided by the judge. (3) In case the Agency concludes that a measure is required for the juvenile, it shall file a request to the judge demanding for a protective and supportive measure.*

Carrying out care and shelter measures

Article 10- (1) *The Social Services and Child Protection Agency shall take the necessary measures immediately with regard to events referred to it, and shall place the juvenile under the care of governmental or private organizations.*

d. *Please describe the measures taken to protect the privacy, the identity and the image of child victims (Article 31, para. 1, letter (e));*

ANSWER-21-(d): The provisions relating to the secrecy of the investigation apply. Article 182 of the Code of Criminal Procedure governs that in cases, where it is strictly necessary in respect to public morale or public security, the court may rule that the main hearing be conducted partially or wholly closed to the public.

Under Article 4 of the Child Protection Law, taking measures to prevent others from detecting the identity of the child in the implementation of the law, transactions related to children, trials and when carrying out the decisions is adopted as an essential principle.

- 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));*

ANSWER-21-(e): Under Article 58, Paragraph 2 of the Code of Criminal Procedure, If there is a fear of gravely endangering the witness or his relatives if the witness's identity is revealed, necessary precautions shall be taken in order to keep the identity a secret and personal data about the witness shall be kept with the public prosecutor, judge or the court.

Paragraph 3 of the same article, if there is a probable grave danger for the witness in being heard in the presence of others, and if there are no other means of preventing this danger, or other measures would endanger the aim of revealing the factual truth, the judge is empowered to hear the witness in the absence of others who have the right to be present. During the hearing of the witness, voice and image shall be transmitted.

The measures, which shall be applied after the witness has testified, in order to keep his identity as a secret, or measures about his security, shall be ruled by an Act in this respect in accordance with Paragraph 4.

Paragraph 5 indicates that the provisions of paragraphs 2, 3 and 4 are only applicable for crimes committed within the activities of an organized crime gang.

Witness Protection Law no. 5726, dated 5/1/2008, was published in the Official Gazette no. 26747. The law includes legal arrangements regarding the principle and procedures on measures to be taken in order to ensure the protection of persons whose protection is essential and whose life, physical integrity and material wealth, as well as those of their relatives', are in grave and serious danger due to their duty as witness in criminal procedures.

- 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));*

ANSWER-21-(f): They are not informed. However, within the framework of the activities of the "Department of Victim Rights," established within the Ministry of Justice Directorate-General for Penal Affairs, we are aiming to put into place a separate arrangement regarding child victims of sexual offences.

- 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));*

ANSWER-21-(g): Within framework of Child Monitoring Centers' (CMC) the mission, mentioned in the answer to Question 21 (a), utmost care is given to prevent an encounter between the victims and the perpetrators over the course of the investigation or prosecution conducted regarding child victims of sexual offences. For this purpose, the procedure in practice ensures that the victim's statement is taken in a single session through the use of audio-visual recording equipment. This matter is arranged within Article 236 of the Code of Criminal Procedures, and with reference to this article, within Article 52/3 of the same Code. The related provisions are follows:

Hearing of the victim and the claimant

Article 236 – (1) *In cases where the victim of the crime is heard as a witness, provisions related to the witness-stand shall apply, excluding the oath.*

(2) *A child or the victim who has suffered psychological damages from the committed crime, shall be heard only one time in relation to the investigation or prosecution of the committed crime. Cases which pose a necessity with respect to revealing the factual truth are exceptions.*

(3) *During the hearing as a witness of a child victim or other victim who has suffered psychological damages in relation to the committed crime, there shall be an expert present who has expertise in the fields of psychology, psychiatry, medicine or education. The provisions related to the court appointed experts shall be applicable to these individuals.*

Hearing of the witnesses

Article 52 – (3) *It is permissible to make image or voice recordings during the witness-testimony. However, recording is required in cases, where;*

a) *A child victim is the witness, or;*

b) *The witness is an individual, who cannot be brought before the court because of some impossibility but their testimony is indispensable for revealing the factual truth.*

(4) *The voice and image recordings obtained as described in the provision of subsection 3, shall only be used at criminal proceedings.*

Through these provisions we also aim to prevent a confrontation between the child victim and the perpetrator. The law rules that the victim may be heard a second time only for the purpose of revealing the material truth. However then again, the child victim is not confronted with the suspect or accused as in the practice followed in the CMCs regarding obtaining the statement of child victims of sexual offences. In such a case, there is no obstacle preventing the use of video-conference method or special rooms for taking the victim's statement where the suspect or accused can see and hear the victim but not vice-versa. In this respect, CMCs, which are envisaged to be established in each province, are highly significant. With the operation of CMCs in every province, these services will be available for all our citizens. In addition, in cases where a confrontation between the victim and the perpetrator cannot be avoided, the use of "two-way mirrored rooms" in CMCs and in police units will be able to prevent a face-to-face encounter.

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).*

ANSWER-21-(h): As indicated in the answers given to various questions, under Article 234, Paragraph 2 of the section entitled "The rights of the victim and the claimant" of the Code of Criminal Procedures, in cases where the victim has not attained the age of 18, in other words, is still a child, a representative shall be appointed on his/her behalf, without seeking his/her request. To receive legal aid of such, it is sufficient that the victim is a child; no other condition is sought. This provision is valid for all offences as the victim is a child. The aforementioned Article is as follows:

The rights of the victim and the claimant

Article 234 – (2) *In cases where the victim has not attained the age of 18, is deaf or dumb, or is handicapped so far that he cannot express himself, and has no representative, a representative shall be appointed on his behalf, without seeking his request.*

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);*

ANSWER-22-(a): Again, as mentioned in the answers, given to question 21 of the survey (asked in different paragraphs), the Child Monitoring Centers are aiming at preventing children, victim of sexual crimes, to be victimized for a second time, through the provisions of the Code of Criminal Procedure concerning taking statements of victims and witnesses and through criminal investigations and prosecutions. For a detailed explanation, please see answers to questions to Art. 21, paragraphs a, b, c, d, g and h.

- 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);*

ANSWER-22-(b): Article 103 of the Turkish Penal Code (TPC), regulating child abuse and Article 22/3 of TPC, regulating the offense of obscenity, committed by using a child as a tool for sexual exploitation and Article 227/1 of TPC, regulating soliciting a child to prostitution, have been set up among the crimes, which are being conducted officially according to the principles of investigation and prosecution. In other words, in case these crimes are committed, even if the victim does not file a complaint, judicial authorities shall automatically initiate an investigation.

In this regard, as mentioned in the reply to question 1, in Article 104 of the Turkish Penal Code, headed “Sexual intercourse with a minor,” an exception is provided as to the sexual activities of children aged fifteen to eighteen. Investigation and prosecution on children at this age group entering into sexual intercourse, has been subjected to a complaint.

Again, the follow-up of the offense in Article 105 of TPC, sub-headed “Sexual abuse”, is subject to a complaint, the follow-up of offenses other than this, is being carried out officially.

- 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);*

ANSWER-22-(c): Paragraph 1 of Article 66 of TCP, states that except for situations, described differently in the Law, for public case offenses, requiring more five and less than twenty years imprisonment – the case is discontinued in fifteen years, and for offenses that require maximum five years imprisonment or fines – the case is discontinued in eight years.

Paragraph six of the article stipulates that for offenses committed by someone who is a lineal kinship of the child or who has a direct command and influence over the child, the statute of limitation shall be counted as of the day the child attains eighteen years of age.

Paragraph two of the article states that in determining the terms, specifies in par. 1, the upper limit of the penalty of the offense, stipulated in the law shall be taken into consideration.

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;*

ANSWER-22-(d): Article 348 of the Turkish Civil Code (TCC) provides that in case the parents neglect their responsibilities arising out of their parental rights towards the child, as a result of which the child remains unprotected, the parental rights of the parents shall be lifted and a guardian shall be appointed for the child by the court.

It is important, however, to point out that parent's responsibility of meeting the child's care and education expenses shall continue (TCC, Art. 350).

In cases of sexual abuse or sexual exploitation of a child, in situations where the parents are incapable or fall short of protecting the child, or in places where the child is sexually abused by its own mother or father, the court decides in favour of lifting the parental right and placing the child under a guardianship. The guardian, appointed by the court based on special conditions, required by TCC, is also vested with the right and responsibility to represent the child in any and all the cases the child is a party of and to protect its interests.

According to the provisions of TCC, regulating guardianship, the guardian shall be appointed by the Civil Court of Peace of the location of the child. The Court may appoint an adult who is capable of fulfilling his duties as a guardian (TCC, Art. 413).

The court, in appointing the guardian, primarily takes into consideration relatives with close personal relations and location proximity to the child (TCC, Art. 414). Persons, who are appointed as guardians, are obligated to accept the duty. However, those of age sixty and above, those who are handicapped or have a chronic illness, those who are parents to more than four children, those who are already guardians, the President, members of the Parliament, members of the Council of State, judges and prosecutors, are not obligated to accept this task (TCC, Art. 417). Besides, according to article 418 of TCC, those who are handicapped, banned from public service or those who lead an infamous way of life, those whose interests conflict significantly with those of the guarded person or those who have enmities with him and judges of the related guardianship offices, may not be appointed as guardians.

From this perspective, the court which is a guardianship authority, shall decide upon the guardianship after having conducted a comprehensive research on personal traits, morals, and criminal past of the individual who is intended to be appointed as a guardian.

In this regard, that the child is a victim of sexual abuse and exploitation, and therefore observing the interests of the child, in cases when the child is taken under guardianship with the purpose of being protected, the criminal past of the future guardian is of utmost importance and those, convicted for a sexual offense, even if the legal consequences (such as being banned from public services) of the conviction may have died out, may not be appointed as guardians.

- 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;*

ANSWER-22-(e): Article 237 and its subsequent articles regulate the process of participating in a lodged public case. Accordingly, the victim, real and legal persons, who have endured damages from the offense and those who are materially responsible, shall be entitled to attend the public case by declaring their complaints at each stage of the first instance court's prosecution, until a decision is reached.

Generally stated, the Turkish Supreme Court of Appeals under this article interpretes very broadly the concept of "victims of crime" and accepts the participation to a public case only of those who have endured direct damages from an offense. The Supreme Court does not accept the right of those who have suffered indirect damages to participate in the case. Therefore, NGOs, foundations or associations, which can be accepted to have endured societal indirect damages, do not have the right to participate in public cases, even if the case may be related to their fields of service.

On the other hand, in case an offense is committed towards children, protected by Law 2828, articles 22 and 25, the right to participation in public cases of the Ministry of Family and Social Policies (city and district representative offices), has been accepted.

Further, Article 20/2 of Law 6284 stipulates that "*The Ministry, if it deems it necessary, can participate in any cases of administrative, penal and civil nature concerning violence and violence threat towards women, children and family members.*" According to this provision, as agreed in international instruments and by the domestic law, where cases of "sexual abuse and exploitation", the most serious crime of violence against children, the Ministry of Family and Social Policies is entitled to participate in any criminal, civil or administrative cases to protect the interests of the victims.

- 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);*

ANSWER-22-(f): Generally speaking, employing "secret operations" in investigations, carried out in combating crimes, covered by the Convention, is possible without being subject to any conditions. Because according to Article 157 of the Turkish Penal Code, provided that the rights of defence are kept intact, procedural actions in the investigation stage are confidential. Accordingly, where obtaining evidence by other ways is not possible, judicial authorities shall be entitled to resort at any time to secret operations in the investigation stage, for uncovering the crimes and evidence.

On the other hand, Article 139 of the Turkish Code of Criminal Procedure, regulates the subject of appointing a secret investigator.

This article provides that "*Where strong reasons for doubt exist as to how was the investigated crime committed, and if evidence cannot be obtained in any other way, in cases where the matter is urgent and its delay may render negative results, by the order of a judge or a chief prosecutor, public officials can be appointed as secret investigators.*"

In order, however, to appoint in this way a secret investigator the crime that is under investigation must be one of the crimes, considered as time-limited.

In this regard, where the crime of sexual exploitation and abuse of a child is processed within the scope of a criminal organization, it will be possible to employ the “secret investigator”, mentioned in this article. For instance, in an investigation on an organization, which instigates children to prostitution, a secret investigator can be appointed according to Art. 139 of the Code of Criminal Procedure. Under the same article, the identity of the person, appointed as a secret investigator, can be changed when necessary, an ID card can be issued with this purpose. Information about the secret investigator are kept in the public prosecutor’s office. (Code of Criminal Procedure, Art. 139)

g. Please also describe what techniques have been developed for examining material containing pornographic images of children (Article 30, para. 5).

ANSWER-22-(g): Examining materials containing pornographic images of children is carried out in two stages, by expert on the issue units. These are:

- 1- Identification of the pornographic contents in the digital tool.
- 2- Finding out if the individuals in the pornographic contents are real persons.

At the first stage, files in multimedia format within the tool that contain pornographic images are detected via various software, used by all the developed countries’ judicial IT experts, such as Encase, Android and Photo Forensics. At this stage, encoded, deleted and hidden files are scanned. In this scanning process not only filtering, but also the visual control method is applied. In this way it becomes possible to detect child pornographic images that are mounted in a video that is not pornographic. To detect child pornography via scanning, key words are being used, that are used nowadays throughout the world in combating cyber crimes.

At the second stage, the experts work on whether the child images, found in digital tools, within which child pornography is detected, are children in reality or not. During this process, particularly children who are clearly seen to be in their pre-puberty stage of development, or those that have not yet completed their puberty at that time, are not subjected to age determination. And for those who cannot be clearly distinguished as children, instead of just scrutinizing the pornographic images on the screen, “age determination according to the growth-development indicators” method that is based on scientific data is applied. In this study anthropologists and image experts work together.

Further, research is made on where the materials, containing child pornography, have been produced in, where from and how were they obtained. In case the place where the images were formed is located, a two-fold distinction is made. Accordingly;

- In case the materials, containing child pornography are found to be produced in Turkey, a separate investigation is initiated about the individuals who have prepared those materials, and for identifying the children, used in those materials.

Even though there is no specific regulation on the issue, the provisions of the Code of Criminal Procedure are sufficiently equipped to locate the perpetrators and the victims. Further, certain clauses stipulate that special evidence collection techniques can be used in the investigation of these kinds of offenses. For example, Article 135 of the Code of Criminal Procedure, provides that in any investigation and prosecution, conducted with a view to sexual exploitation and abuse of children, where there are substantial grounds for suspicion as to whether an offense has been committed or not, and where there is no other way of gathering evidence, by the order of a judge or

in case of urgency - by the order of a chief prosecutor, the contact of the suspect or the accused can be identified through telecommunication, he can be tapped and recorded and his signal information can be analyzed.

In case it is found out that the materials in question are produced in another country or uploaded to the internet or that is possessed by users in other countries too, that country's relevant judicial authorities are notified within the framework of international judicial assistance and they are requested to initiate an investigation for identifying the perpetrators and the victims. Similarly, notifications, made in our country are strictly examined and the required investigations are started.

Question 23: Child friendly interviewing and proceedings

- a. *Please describe how interviews (Article 35) with child victims are carried out, indicating in particular whether:*
- *they take place without unjustified delay after the facts have been reported to the competent authorities;*
 - *they take place, where necessary, in premises designed or adapted for this purpose;*
 - *they are carried out by professionals trained for this purpose;*
 - *the same persons are, if possible and where appropriate, conducting all interviews with the child;*
 - *the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of proceedings;*
 - *the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.*

ANSWER-23-(a): The explanation was made in the answer of the question in paragraph (a) of the question 21 above. In line with the above explanations, the proceedings of investigation and prosecution concerning child victims are carried out by taking into account the other provision mentioned in the other answers of the questionnaire, especially the provisions of articles 52, 201, 217 and 236 of Code of Criminal Procedure.

As it is explained in the answer of the 21st question, Child Monitoring Centers which is established for the proper protection of the rights of the child victims, prevention of the delays in the prosecution phases, taking the testimonies by the experts and, most of all, if not obligatory, limiting the interview with the victim just for one time so as not to cause victimhood is of significant importance. There is already a dual implementation on the taking testimonies of the child victims. Accordingly;

If Child Monitoring Center is available in the place where the investigation is conducted, the testimony of the child victim is taken in the attendance of an expert under the minimum conditions which the law envisages. Because the testimony of the child victim is taken in the Child Monitoring Centers in the judicial interview room with mirror and by an expert in this field with voice and video recording. During taking testimony, Public Prosecutor, law enforcement officer, attorney of child victim, forensic expert and child psychiatrist are beyond the two sided mirror and observe the testimony taking.

If Child Monitoring Center is not available in the place where the investigation is conducted, the Public Prosecutor decides on whether the testimony of the child victim is to be taken before law enforcement, prosecutor's office or court. If, with regard to discussing and collecting the evidence during the investigation, it is required to take the preliminary testimony of the child victim who is mentally depressed owing to the committed offence, the Public Prosecutor decides whether law enforcement or prosecutor's office takes the testimony. In accordance with Code of Criminal Procedure, wherever the testimony is taken, the voice and video recording should be carried out. Because the legislation envisages that it is obligatory to record the taking testimony in company with the expert.

Second paragraph of Article 236 of Code of Criminal Procedure envisages in principal that the testimony of the child victim which is taken in company with an expert in the field of psychology, psychiatry, medicine or education is used during the proceedings before the court and the child is heard only once. The case law of the Court of Cassation is developed in line with this.

By the verdict of 5th Criminal Chamber of Court of Cassation dated 20/05/2008 and decision numbered 11696-4617: Even though, in accordance with Article 236/3 of Code of Criminal Procedure, the presence of an expert in the field of psychology, psychiatry, medicine or education is mandatory during taking testimony of the child victim and reaching a conclusion after taking the opinions of this expert concerning the testimony of the child victim is obligatory, second paragraph of the same article envisages that the child is to be heard only once, except the obligatory cases, as a witness during the investigation or prosecution related to this offence because each hearing will make the child more depressed. Therefore, when witness testimonies which support the testimonies of the victim and the report of 6th Expertise Board of Forensic Medicine dated 18/12/2008 and numbered 3684 stating that "... *there is not any medical reason not to rely on the declarations of the victim if it is supported by the other evidence...*" are taken into account altogether, the declarations of the child victim is not taken as basis alone. So it is not obligatory to hear the child for a second time and the opinion in the letter of notification in line with this is not shared..."

By the verdict of 5th Criminal Chamber of Court of Cassation dated 13/06/2007 and decision numbered 3982-4731: Even though, in accordance with Article 236/3 of Code of Criminal Procedure, the presence of an expert in the field of psychology, psychiatry, medicine or education is mandatory during taking testimony of the child victim and reaching a conclusion after taking the opinions of this expert concerning the testimony of the child victim is obligatory, second paragraph of the same article envisages that the child is to be heard only once, except the obligatory cases, as a witness during the investigation or prosecution related to this offence because each hearing will make the child more depressed. Therefore, when medical reports which support the testimonies of the victim and confessions of the convict before law enforcement, prosecutor's office and judge of Court of Peace are taken into account altogether, and if article 103/6 of the Law numbered 5237 is implemented to the convict, it is not obligatory to hear the child victim for the second time and article 103/4 does not affect the final sentence.

However, in accordance with article 201 and 217 of Code of Criminal Procedure, the parties have right to "interrogate" the heard person and the court has "discretionary power on the evidence". So when the preliminary testimony of the child victim and the other evidence are evaluated altogether, in the event that a medical reason is defined so as not to take into account the preliminary testimony of the child victim, the court may request to hear the child in addition to watching the recorded preliminary testimony video and the parties may request to interrogate the child victim directly. Even though second paragraph of article 236 of Code of Criminal Procedure states that the child who has suffered from psychological damage owing to the committed offence

may be heard only once, it reserves the cases requiring the hearing of the child for revealing the truth. In this case, the law envisages that the child victim may be heard separately before the court so as to reveal the material fact.

According to article 19 of the Bylaws on Apprehension, Arrest and Taking Statement, all of the proceedings related to the child let into the offence are carried out by the Public Prosecutor personally. However such an obligation is not envisaged for taking the testimony of the child victim. First of all, hearing the child victim only once is taken as principle however hearing the child more than once is enabled by referring to the obligatory cases. The Court of Cassation states by the case laws that the child victim, in principle, should be heard only once, however when the preliminary testimony of the child victim and the other evidence are evaluated altogether, in the event that a medical reason is defined so as not to take into account the preliminary testimony of the child victim, the child may be heard for the second time. In other words, if the cases or evidence come up after hearing the child for the first time make the previous testimony suspicious, the child victim may be heard once again.

In addition to this, it will be appropriate to extend Child Monitoring Centers around the country, to develop Child Monitoring Centers, during the process of investigation, to increase the sensitivity of the Public Prosecutor's in taking the testimonies of the child victims, not to discriminate the children as who has suffered from psychological damage or not suffered owing to the effect of the committed offence. Even though the child has not suffered from psychological damage owing to the committed offence, it is an accepted issue in the comparative law to hear the child by an expert. It is thought that the abovementioned comparative law applications may be taken into consideration related to this issue.

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;

ANSWER-23-(b): As stated before, in accordance with article 52 of Turkish Code of Criminal Procedure, it is obligatory to make voice and video recordings in the event of the child witnessing. Thus the obtained voice and video recordings are only be used in the cognizance of the sentence. Therefore the testimonies taken in the way defined in the question may be accepted as evidence before the criminal courts.

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).

ANSWER-23-(c): In accordance with article 182 of Code of Criminal Procedure, it is governed that the trial is open to anyone however, in the cases where public morality or public security requires, some part or the whole of the trial may be conducted closed to the public and this is decided by the court.

Article 180 of Code of Criminal Procedure titled "Hearing witnesses and experts through a delegated member of court or the way of rogatory" states that in cases where a to appear at the trial for a long time period, the duration of which is unknown beforehand, because of an illness, disability or because of another reason that cannot be overcome, then the court may rule that he shall be heard by a member of the court or by letter of the rogatory. It is governed in the mentioned article that, if it is available to communicate using video or voice transfer technique at the same

time, the witness or the expert may be heard through this way and also the principles and procedures concerning installation and usage of this technique are defined in the bylaws.