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LANZAROTE CONVENTION

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

Replies to the thematic questionnaire

TURKEY

1st thematic monitoring round

“Sexual abuse of children in the circle of trust”

Replies registered by the Secretariat on 31 January 2014

DATA COLLECTION

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

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

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

ANSWER-1: One of the eight strategic objectives of the “National Action Plan on Combating Violence Against Children” (2014-2018), mentioned in the General Overview Questionnaire, is the establishment of a follow-up mechanism, which would be in operation on a regular basis within a circle of trust to monitor the children who have been subject to exploitation.

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.

Within this context, three subgoals have been identified:

- 1- to determine the concept of violence against children, its indications and institutions that collect data related to these indications, as well as their data collection strategies,
- 2- to identify strategies on the sharing of data collected by different institutions and on gathering these data in a common data repository,
- 3- to set 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.

PREVENTION

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

Question 2: Education for children

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

ANSWER-2:One of the strategic objectives of the “National Action Plan on Combating Violence Against Children” is the “strengthening of children against violence.” Within the scope of this objective, we are aiming to increase the level of awareness among children regarding violence and to strengthen them against violence through legal arrangements on settings where there is a high risk of subjection to violence. Works related to this matter have been mentioned in the answer to Question 8 in the General Overview Questionnaire.

In this respect, educating children within a circle of trust against violence, especially from his/her relatives and close acquaintances, (while keeping in mind that sexual abuse is the gravest form of violence against children) has been identified as a separate subgoal.

Additionally, a project on “Preventing Violence Against Children” has been initiated. The project, conducted by the Ministry of National Education and the Ministry of Justice, aims in general terms to contribute to the protection of children against all forms of violence of a physical, emotional, verbal and psychological nature to attain high level of health protection, well-being and social cohesion.

Project Components and Activities:

Component 1: Capacity-building on the prevention and monitoring of violence against children

- Legislative analysis and literature review on violence in schools
- A nationwide questionnaire on the perception of violence against children
- Policy Recommendation Instrument
- Memorandum of Understanding
- Review of “Strategic Action Plan on Reducing and Preventing Violence in Educational Environments”
- Development of an “e-guidance module within the framework of RAM module
- Training of the personnel on the new e-guidance module

Component 2: Developing a Model School “Students with Self Confidence and Developed Life Skills” which is free from physical, emotional, verbal and psychological violence.

- Informative meetings
- Workshops
- Study visits abroad
- Trainings (Training of Trainers)
- Booklets, brochures, posters and promotion on the internet

Component 3: Preventing domestic and other forms of violence towards children outside the schools

- Review of the current Family Training Programme (9th booklet)
- Preparation of a training programme for teaching and non-teaching staff in order to reduce violence among and against children
- Preparation and distribution of awareness-raising and informative materials
- Seminars, trainings and conferences
- Building, developing and operating a project website
- Media relations
- 5 short films (2 mins. each)

Expected results:

- Result 1: Increasing the capacities of follow up and prevent services on preventing violence against children
- Result 2: Developing a Model School with “Students with Self Confidence and Developed Life Skills” which is free from physical, emotional, verbal and psychological violence
- Result 3: Preventing domestic and other forms of violence towards children outside the schools

Question 3: Recruitment and screening

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

ANSWER- 3: The answer to Question 9 of the General Overview Questionnaire includes an explanation regarding this matter.

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

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

ANSWER-4: The answer to Question 8/b of the General Overview Questionnaire includes an explanation regarding this matter.

Question 5: Specialised training

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

ANSWER-5: For the cases described in the question, we aim to ensure that persons, units or services, responsible for investigation or prosecution, gain expertise in the matter of combating sexual abuse of children through in-service trainings in the institutions they are employed at within the scope of Article 34/1 of the Convention. In this respect, one should note the reality that the offence of sexual abuse of children is committed to a significant degree by family members and the child's close circle. Taking this fact into consideration, judicial authorities, law enforcement officials, social workers, pedagogy experts and other experts are periodically trained by their institutions and become well-equipped regarding the ever-changing and ever-developing legislation and the variety of offences.

The High Council of Judges and Prosecutors Circular no (10) entitled "Procedures and Principles Governing Investigation," dated 18/10/12, includes a section on the distribution of work for chief public prosecutors, which draws attention to the importance of gaining expertise in a particular field with regard to the prosecution phase with the following expression: "Ensuring the efficiency of investigations by establishing the sufficient number of offices to be determined by the nature and quantity of the offences submitted to the chief public prosecutor's office, in order to truly combat crime and criminality through strict coordination with the relevant law enforcement offices or departments and to realize the provisions of various laws and, in particular, those on offences against children in a suitable manner to fit their purposes." Moreover, juvenile penal courts, which have a specialized court status, have started to operate to handle such offences.

Furthermore, Article 48 of the conclusions section of the Circular instructs that "investigation proceedings are handled in the Child Monitoring Centers, founded under the umbrella of hospitals/institutions affiliated with the Ministry of Health in order to ensure the an efficient protection for especially child victims of sexual abuse, prevention of secondary victimization, conclusion of all judicial and medical operations in a single session by experts in the field and implementation of measures to prevent abuse." Similarly the Council's announcement on "Child Protection Units and Centers of Universities," numbered

B.03.1.HSK.0.70.12.04-010.07.02-1-2012/144/8134, requests all chief public prosecutor's offices to show the necessary care and attention regarding the fact that "investigative operations can be handled at universities' child protection units or centers that are fully equipped in accordance with the procedures and principles (affiliation-cooperation) of the Ministry of Health on the operation of Child Monitoring Centers. It still rests with the chief public prosecutor's offices to assess and render a decision on the matter."

Then again, within the framework of regular training sessions organized by the High Council of Judges and Prosecutors, works on providing its members with training seminars on the "Juvenile Justice System," conducted with the support of UNICEF, has been completed. The seminars started on 15 January and will continue until 30 May 2014. The participating judges and prosecutors will be divided into 9 groups.

The seminars aim to,

- ensure fair trial for children,
- prevent secondary victimisation of children,
- apply the legal arrangement which aims at making sure that restriction of freedom is used as a last resort,
- fully implement the coordination strategy,
- benefit from the developments achieved so far,
- develop an electronic research assessment form (ARDEF) software that determines the risk level and necessities of each child arriving at the penitentiary institution and performs all necessary referrals for settlement and intervention,
- start trials for UYAP (National Judicial Network) integration in 20 institutions,
- ensure the use of BİSİS in all penitentiary institutions in an efficient manner and to prepare training materials for sustainability,
- train all the personnel in the training centers.

In this way, all responsible and authorized institutions will be gathered together and identify the problems arising in this framework, as well as lay the foundations of systematic and long-term activities.

Similarly, law enforcement officials employed by the Ministry of the Interior give special care to the occupational training of the police working in the Juvenile Office. Their works are coordinated in harmony with the public prosecutors working in special investigation offices within the courthouses established and operating under Article 15 of the Child Protection Law.

Furthermore, special investigation offices, responsible for child victims and children drawn into crime, have been established in courthouses under the umbrella of the chief prosecutor's offices in major city centers.

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

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

ANSWER-6: Within the framework of the works of the "National Action Plan on Combating Violence Against Children," the Regional Meeting on Children's Rights was held in Erzurum on 20 September 2013 in order to incorporate children's perspective in the Action Plan.

Directive on the Works, Principles and Procedures of Central, Provincial and Sub-Provincial Coordination Initiatives Adopted in Order to Execute the Protective and Supportive Measures under the Child Protection Law, mentioned in the answer to Question 4/a of the General Overview Questionnaire, puts special emphasis on the participation of non-governmental organisations in the activities.

Question 7: Preventive intervention programmes or measures

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

ANSWER-7: The answer to Question 10 of the General Overview Questionnaire includes an explanation regarding this matter.

PROTECTION

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

Question 8: Reporting suspicion of sexual abuse

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

ANSWER-8: The answer to Question 13 of the General Overview Questionnaire includes an explanation regarding this matter.

Question 9: Assistance to and special protection for victims

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

ANSWER-9-(a): The possibility that the victim be removed from the family environment is envisaged in domestic law in the event that the persons, who are responsible for the care of the parent or the child, subject the child to abuse. In such a case, as indicated in the answer to Question 22/d of the General Overview Questionnaire, the custody right of the mother and father shall be abolished. If the child was warded and if his/her guardian abused him, the guardian shall be immediately discharged.

The courts decide on the care measure to be implemented for children in such circumstances and the children are taken under the care and surveillance of the state institutions. The experts in these institutions attend to all their material and moral problems. Throughout this process, the conditions for the removal of the child from his/her parents, as well as the duration, are decided upon according to the best interest of the child.

As mentioned in the answer to Question 3/a of the General Overview Questionnaire, “foster family” services are also in place under Article 5 of the Child Protection Law.

On the other hand, taking into consideration the best interests of children, the Ministry of Family and Social Policies has developed a project entitled “Compassion Houses.” This project ensures that children, who have been taken under the protection of the state because they were subject to sexual abuse or because they were orphans, have a family environment in homes designed for a regular family where they stay in groups of 4-6 children, accompanied by an expert. In this way, child victims of sexual abuse are taken under protection and harboured in a warm family environment. Consequently, they are granted the possibility of becoming integrated in the society and recover swiftly from their ordeal.

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

ANSWER 9-(b): The answer to Question 9/a of the General Overview Questionnaire includes an explanation regarding this matter.

PROSECUTION

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

Question 10: The offence of sexual abuse

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

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

ANSWER-10: With regard to penal law, intentional act has been identified as the intentional and wilful commission of an act defined in the law as an offence. This matter has been expressed in Article 21 of the Turkish Penal Code as follows: “*Malice is an intention to cause harm being aware of the legal consequences of the crime defined in the laws.*” Paragraph 2 of the same Article includes legal arrangements regarding eventual malice: “*Execution of an act by a person being aware of its legal consequences defined in the law is considered as eventual malice. In that case, the offender is sentenced to life imprisonment in offences which require heavy imprisonment and to imprisonment between twenty years and twenty-five years in the offenses which require life imprisonment; in other offenses the basic punishment is abated from one third to one half.*”

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

ANSWER-10-(b): The definition and scope of sexual activities have not been indicated in a concrete manner under the Turkish legislation. However, the system of the Turkish Penal Code, by its nature, considers in broad terms all acts (real or abstract) performed with a sexual motivation as sexual acts. For example, the offence of sexual harassment arranged under Article 105 of the Turkish Penal Code considers all acts performed verbally, in writing or by bodily movements that target the sexuality of the other person within the scope of sexual acts.

On the other hand, in more narrow terms, sexual act is defined as “all actions that target the inviolability and integrity of a person’s body in a sexual manner.” In this respect, not only sexual intercourse, but also sexually motivated acts such as kissing, touching, stroking, etc. are also considered as sexual acts. While in general terms performing such acts with mutual consent does not constitute an offence, it was indicated in the answer to Question 1/c of the General Overview Questionnaire that an exception was made in the case of children. As stated before, under Turkish law, the consent given by children who have not attained the age of 15 for any sexual act is not valid. The consent given by children aged 15 to 18 is considered valid on condition that no complaint is filed subsequently.

Question 11: Corporate liability

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

ANSWER-11: As indicated in the answer to Question 17 of the General Overview Questionnaire, security measures may be ordered for offences listed in the Convention against legal entities in accordance with Article 20 of the Turkish Penal Code. Article 60 of the Code specifies what these measures are and rules that if the legal entity subject to special law is intentionally involved in an offence, the operating license of this entity may be cancelled and, depending on the circumstances provisions relating to partial or total confiscation may be applied on the entity’s assets. However, it should be noted that these provisions shall be applied if the law presents explicit provisions. In this respect, Article 226/6 of the Turkish Penal Code includes explicit provisions on the matter. Provisions of Article 60 of the Turkish Penal Code are as follows:

Security Precaution For The Legal Entities

ARTICLE 60-(1) *In case of conviction of a crime through participation of the organs or representatives of a legal entity subject to special law and operating under the license granted by a public institution or misuse of authorization conferred upon by this license, the court may decide cancellation of this license.*

(2) The provisions relating to confiscation are applied also for the legal entities involved in commission of offense.

(3) In cases where application of the provisions of the afore subsections is likely to create heavier consequences, the judge may refrain from imposition of such precautions.

(4) The provisions of this article are applicable for the cases specifically defined by the law.

Question 12: Aggravating circumstances

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

ANSWER-12: Turkish Penal Code regards the commission of the offences indicated in the Convention by the child’s close relatives, guardian, educators, whom the child trusts and who are within the child’s circle of trust, as an aggravating circumstance. In relation to this, Paragraph 3, Article 103 of the Turkish Penal Code, which provides legal arrangements with regard to the

“offence of sexual abuse of children,” is as follows:

“(3) In case of performance of sexual abuse by antecedents, second or third degree blood relations, step father, guardian, educator, trainer, nurse and other persons rendering health services and responsible from protection and observation of the child, or by undue influence based on public office, the punishment to be imposed according to the above subsections is increased by one half.”

Question 13: Best interest of the child

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

ANSWER-13-(a): As explained in the answers to the General Overview Questionnaire, in the case that the child is sexually abused or exploited by the persons within his/her circle of trust, protective measures are applied. These measures may be that the child is taken from the mother and father, a guardian is appointed, the child is taken under protection or given to foster care while being monitored by the state. An attorney is appointed to represent the child without seeking his/her request. In this way, the system ensures that the child’s rights and best interests are guaranteed.

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

ANSWER-13-(b, c): The answer to Question 22/d of the General Overview Questionnaire includes an explanation regarding this matter.

Question 14: Child-friendly justice

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

ANSWER-14-(a): In the event that the person claimed to be the perpetrator is someone from the victim’s family or someone that the child trusts or someone who has authority over the child, certain protective approaches are adopted and are in place as part of the CMC’s activities in operation. These approaches ensure that investigation and prosecution proceedings are conducted in a way that does not aggravate the trauma that the child is going through and, if appropriate, in a way that will allow for support to the child after the proceedings have been concluded.

- b. *Which legislative or other measures been taken to ensure that investigations or prosecution of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement, especially in cases where the alleged perpetrator is a member of the victim's*

immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (Article 32, Explanatory Report, para. 230);

ANSWER-14-(b): As indicated in the answers to the General Overview Questionnaire, the investigation and prosecution of the offences indicated in the Convention are not dependent upon the statement or complaint of the victim. The principle of ex-officio investigation and prosecution is in place. In this respect, if the perpetrator turns out to be a member of the child's family, someone that the child trusts or someone who has authority over the child, and if, as a result, the victim revokes his/her statement, the proceedings continue to be in place. Moreover, as indicated in the answer to Question 12, Turkish Penal Code regards the commission of the offence by persons who are within the child's circle of trust, as an aggravating circumstance.

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

ANSWER-14-(c): Under Article 187, Paragraph 3 of the Code of Criminal Procedures, the court may decide to hold the trial closed to the public and may obtain the statement of the child from outside of the courthouse via visual equipment.

Besides, as there is no obligation to hear child victims a second time, the court may find the statement obtained in the investigation phase via audio-visual recording equipment to be sufficient, in order not to victimise the child victim twice, especially in the prosecution of sexual offences committed against children. Taking into consideration especially the Lanzarote Convention, which is part of our domestic laws, and the international practice on this matter, our courthouses has adopted and started to apply the principle of obtaining the child victim's statement via visual equipment in a single session, as indicated in the answer to Question 22 of the General Overview Questionnaire.