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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**

**UKRAINE**

**1<sup>st</sup> thematic monitoring round**

**“Sexual abuse of children in the circle of trust”**

**Replies registered by the Secretariat on 5 March 2014**

Revised replies to questions 1, 9a, 10, 12, 13 and 14 registered by the Secretariat on 23 January 2015

## DATA COLLECTION

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

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

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

**Data of sexual abuse of children in the circle of trust separately are not collected.**

**At the same time we have data on crimes, which shall be punishable in line with stipulations of Article 18 “Sexual abuse” and are characterized as exclusively crimes of intent (such actions are stipulated by Articles 152 “Rape”, 153 “Forceful satisfaction of sexual passion by unnatural means”, 155 “Having a sexual intercourse with an individual who has not reached puberty”, 156 “Corruption of individuals under the age of majority”, 301 “Import, production, sale or distribution of pornographic items” as envisaged by the CCU).**

## 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**).*

### Question 3: Recruitment and screening

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

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

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

#### **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).*

#### **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).*

#### **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).*

### **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**).

#### **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**).*

In accordance with Article 170 of the Family Code of Ukraine regulates the removal of the child from the family environment if they are threatening his life, health and moral education. According to Items 8 and 31 of the Instruction on the proceedings of the Protection of Children's Rights by the guardianship, as approved by Cabinet Ministers of Ukraine 24.09.2008 № 866, if there is a direct threat to the life or health of the child, the guardianship authority, who became aware of it, takes the immediate removal of the child from the family.

Transfer of information is conducted in accordance with the Instructions on processing claims and appeals as to cruel treatment of children or realistic risk of such treatment, as approved by the Order #5/34/24/11 of the State Committee of Ukraine on Family and Youth, Ministry of Internal Affairs of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Health of Ukraine as of 16.01.2004.

The coordinating body tasked with protection of children from cruel treatment, including sexual exploitation and abuse, is the State Service for Children. The regulatory frameworks that ensure coordination include:

- Instructions as to collaboration of departments (units) for family, youth and sports, services for children, social service centres for family, children and youth and relevant units of the Ministry of Internal Affairs to take measures to prevent domestic violence;
- Instructions as to departments of the State Service for Children on registering children currently facing harsh life circumstances;
- Instructions as to operating the Unified electronic database of children currently facing harsh life circumstances;
- Instructions as to locating the families (individuals) currently facing harsh life circumstances, provision of relevant social services and social support to such families (individuals);
- Instructions as to collaboration of various institutions providing social support to families (individuals) currently facing harsh life circumstances.

Working within the framework of the CPCU, in accordance with European standards of work with children who have suffered from sexually-connected criminal offences and / or are witnesses thereof, the Juvenile Criminal Police in collaboration with the National Academy for Internal Affairs developed the so-called “green room” method. Its aim is to protect children’s rights in a criminal investigation, ensuring an atmosphere of trust and mutual understanding at the time of interviewing and overcoming fear of presenting witness accounts to unknown grown-up people.

The “green room” method is used, amongst others, during interviewing of children ages 4 to 14 and, at the discretion of the interviewing officer or court – at the ages between 14 and 16 in cases when a child is victim of a crime against sexual freedom and inviolability, other offences connected to violence or when a child was witness thereof.

During the interview, toys that resemble the human body (anatomical toys) or children’s drawings are used. Audio and video are recorded so as to be used during court hearings (which precludes the necessity of repeated interview of a child victim).

Manuals have been developed regarding “Psychological peculiarities of working with children in “green rooms””, “Recommendations for equipping the “green rooms””, “Regulations that guide the work of “green rooms””. All of these have been recommended for practical application by the Academy of Pedagogical Sciences and the G.S. Kostyuk Institute of Psychology and have been sent to all relevant units for practical application.

At present, the “green room” method has been spread to all regions of the country and is successfully used by the specialists of the Juvenile Criminal Police.

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).*

Sanction of Paragraph two, Article 155 of the Criminal Code of Ukraine (hereinafter referred to as CCU) foresees liability for sexual intercourse with an individual who has not reached puberty (sexual maturity). If the offense is committed by a guardian, trustee or other individual entrusted with obligations of bringing up the victim or caring for him or her, the core sanction foresees, in addition, deprivation of the rights to occupy certain positions or engage in certain types of activities up to three years.

Additional sanctions are foreseen for corruption of individuals under 16 years of age or minors if committed by the same category of individuals (Paragraph two, Article 156 of the CCU).

Circulation of child pornography or coercion of individuals under the age of majority or of minors to participate in creation of artefacts, images or film- or video-products, computer programmes of pornographic character (Paragraphs four and five, Article 301 of the CCU) also foresees – in addition to the core sanction – deprivation of the rights to occupy certain positions or engage in certain types of activities.

Sanctions of other Articles of the CCU, which describe liability for those actions that shall be criminalized under the present Convention, do not directly foresee deprivation of the rights to occupy certain positions or engage in certain types of activities.

At the same time, provisions of Article 55 of the CCU allow to impose this type of additional punishment without reference to a specific sanction of an article (paragraph of an article) of the CCU. This may take place if a court, having regard to the nature of the offense committed by an individual in office or in connection with a certain activity, the character of the individual convicted and other circumstances of the case, decides that such individual should be deprived of the right to occupy certain positions or engage in certain activities.

## 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);*

According to Article 23 of the CCU, guilt shall mean a mental stance of a person in regard to the performed act or omission under the CCU and to the consequences thereof, as expressed in the form of intent or recklessness.

According to Article 24 of the CCU, intent may be classified as direct and indirect.

The intent is considered to be direct where a person was conscious of the socially dangerous nature of his or her act (action or omission), anticipated its socially dangerous consequences, and wished them to be fulfilled.

The intent is considered to be indirect where a person was conscious of the socially dangerous nature of his or her act (action or omission), foresaw its socially dangerous consequences, and, while not wishing them to be fulfilled, could anticipate their emergence.

Crimes, which shall be punishable in line with stipulations of Article 18 "Sexual abuse", are characterized as exclusively crimes of intent (such actions are stipulated by Articles 152 "Rape", 153 "Forceful satisfaction of sexual passion by unnatural means", 155 "Having a sexual intercourse with an individual who has not reached puberty", 156 "Corruption of individuals under the age of majority", 301 "Import, production, sale or distribution of pornographic items" as envisaged by the CCU).

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

The CCU does not contain definition of "sexual activities".

### 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.*

### 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**).*

**According to the provisions of Paragraphs one and four, Article 67 of the CCU, aggravating circumstances shall be taken to include, amongst others, commission of a crime against a minor, an individual in financial, official or other dependence on the culprit or through a minor.**

**If the aggravating factor is already mentioned in the Special Section of the CCU as a characterizing feature of a crime, which impacts its qualification, court may not count it twice against the culprit to make liability more severe.**

**At the same time, liability for having a sexual intercourse with an individual who has not reached puberty (Paragraph two, Article 155 of the CCU) or corruption of individuals under the age of majority (Paragraph two, Article 156 of the CCU) by a father, mother, stepfather, stepmother, guardian, trustee or other individual entrusted with obligations of bringing up the victim or caring for him or her, foresees stricter sanctions than the principal (baseline) crime (c.f. Paragraph one of both Articles). Stricter criminal sanctions (Paragraph two, Article 303 of the CCU) are also foreseen for panderage or involvement of an individual into prostitution if committed through abuse of financial or other dependence of the victim.**

### Question 13: Best interest of the child

- a. *Please specify whether in situations where the alleged perpetrator is a member of the victim's family or has otherwise been in a recognised position of trust or authority towards him or her, legislative or other measures have been taken to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim of sexual abuse. (**Article 30, para. 1, Explanatory Report, para. 215**);*
- b. *The reply to question 22(d) of the GOQ will be examined by the Committee to assess the implementation of **Article 31, para. 4** of the Convention with respect to the theme of the monitoring round;*

In accordance with Article 56 of the CPCU, throughout the entire criminal proceedings, a victim shall have the right to:

- 1) be advised in his or her rights and duties as set forth in the Code;
- 2) know the substance of suspicion and charges, be informed of imposition, change or revocation of measures taken in respect of the suspect / accused to make criminal proceedings possible, as well as of pre-trial investigation being terminated;
- 3) produce evidence to investigator, public prosecutor, investigating judge, court;
- 4) propose disqualifications and submissions;
- 5) in the presence of legitimate grounds, [shall have the right] to be provided security in respect of himself/herself, his or her close relatives or family members, property and home;
- 6) give explanations, testimonies or refuse to do so;
- 7) challenge decisions, acts, and omission by the investigator, public prosecutor, investigating judge, court in accordance with the procedure laid down by the present Code;
- 8) have an authorized representative and at any time during criminal proceedings waive his or her services;
- 9) give explanations, testimonies in native language or any other language in which he or she is fluent, benefit from free interpretation at the government expense if he or she has no knowledge of the State language or the language in which the criminal proceedings is conducted;
- 10) receive compensation of the damage caused by criminal offence, as prescribed by law;
- 11) examine materials directly related to the criminal offense committed in his or her respect, according to the procedure established by this Code, including their disclosure under its Article 290, as well as examine the materials of criminal proceedings directly related to the criminal offense committed in his or her respect, in case the proceeding has been closed;
- 12) in compliance with the requirements of the present Code, use technical means during the conduct of procedural actions he or she takes part in. Investigator / public prosecutor / investigating judge / court may prohibit the victim to use technical means during the conduct of a specific procedural action or at a certain stage of criminal proceedings in order to prevent disclosure of data containing a secret protected by law or related to intimate sides of human life, as prescribed (ruled) by a motivated decision (ruling);
- 13) obtain copies of procedural documents and receive written notifications in cases specified by the present Code;
- 14) enjoy other rights provided for by this Code.

During pre-trial proceedings, the victim shall have the right to:

- 1) have his or her application regarding a criminal offence committed against him or her and to be recognized as a victim accepted and registered promptly;
- 2) obtain from a competent body, which has received such application, a document confirming the filing and registering of the application;
- 3) produce evidence to support his or her application;
- 4) take part in investigatory (search) and other procedural actions in the course of which ask



questions, submit his or her comments and objections with regard to the conduct of procedural action, such comments and objections being put on the record of the procedural action concerned, as well as review the records of the investigatory (search) and other procedural actions conducted with his or her participation;

- 5) after the completion of pre-trial investigation, obtain copies of materials which directly relate to criminal offence which has been committed against him or her.

During trial in any court instance, the victim shall have the right to:

- 1) be informed well in advance on the time and place of trial;
- 2) participate in trial conducted by court of any level;
- 3) participate in direct examination of evidence;
- 4) support the charges in court if the public prosecutor waives prosecuting on behalf of the state;
- 5) express his or her opinion when the issue of imposing a punishment on the defendant as well as express his or her opinion when the issue of applying compulsory medical or educational measures, is being disposed;
- 6) review the decision made by the court, journal of court session and technical recording of criminal proceedings in court;
- 7) challenge court's decision as prescribed in the present Code.

In accordance with Articles 59 and 44 of the CPCU if the victim is a natural person under the age of majority or who, according to the law, is lacking legal capacity, his or her legal representative shall be involved in such procedural action as well.

Parents (adoptive parents), and in their absence, custodians or caregivers of the individual, other adult close relatives or family members, as well as representatives of custody or trusteeship agencies, institutions and organizations under whose tutorship or custody the underage, legally incapable or partially legally capable individual is may be involved as legal representatives.

In such case, the public prosecutor shall issue a ruling, and investigating judge or court shall adopt a decision on committing a legal representative. A copy of the relevant decision shall be handed to the legal representative.

Where actions or interests of legal representative contradict the interests of the represented individual, such legal representative by decision of investigator, public prosecutor, investigating judge, court shall be replaced with another one chosen from among individuals specified in part two of this Article.

Legal representative shall enjoy procedural rights of the individual he represents, with the exception of such procedural rights that are realized directly by the suspect / accused and cannot be assigned to a representative.

One of the effective areas for preventive interventions, aimed at curbing violence and undertaken in educational establishments, is awareness-raising amongst children and adolescents.

Law enforcement specialists, in close collaboration with school administrations and social workers, conduct outreach and preventive work with the children, informing them of the existence of hotlines where the children can appeal to for help, should they experience violence.

Practical psychological assistance and relevant awareness-raising work is being conducted, as a rule, by specialists of psychological services (practicing psychologists, social pedagogues).

Amongst the main types of outreach activities regarding prevention of violence are:

- Lectures;
- Competitions, festivals, public activities;
- Launch of legal awareness clubs;
- Demonstration of educational videos that raise legal awareness;
- Launch of consultation centres at educational establishments where all participants of the educational process can receive advice from a practicing psychologist, social pedagogue or a lawyer, and where meetings with representatives of law enforcement agencies may take place;
- Activities aimed at explaining and delivering knowledge regarding current legislation and international agreements, conducted as appropriate for the evolving capacities (both age-specific and individual) of children and adolescents;
- Collective forms and methods of awareness-raising work (mini-lectures, thematic talks, debates, human library, video-lectures, etc.) are designed for delivering the information to a large number of children and adolescents and create an enabling environment for information retention;
- Conducting preventive interventions regarding violence against children and adolescents stimulates evolution of their legal awareness and shapes relevant behaviours, increases the sense of responsibility for one's life, stimulates pro-activeness, self-reliance, creativeness and creates an enabling environment for the children to grow personally.

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).*

Prosecution for crimes against an individual under the age of majority (minor) does not depend on whether the perpetrator belongs to the circle of trust or not.

#### 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);*

Working within the framework of the CPCU, in accordance with European standards of work with children who have suffered from sexually-connected criminal offences and / or are witnesses thereof, the Juvenile Criminal Police in collaboration with the National Academy for Internal Affairs developed the so-called “green room” method. Its aim is to protect children’s rights in a criminal investigation, ensuring an atmosphere of trust and mutual understanding at the time of interview and overcoming fear of presenting witness accounts to unknown grown-up people.

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);*

The CPC of Ukraine does not foresee an opportunity to revoke an application in case of a crime against an individual under the age of majority or against a minor.

At the same time, it needs to be noted that Article 25 of the CPC of Ukraine stipulates that a public prosecutor / investigator shall be required, within the scope of their respective competencies, to initiate pre-trial investigation based on the report (information) on a criminal offence and take all statutory measures to establish the occurrence of crime and perpetrator thereof.

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).*

It is also worthwhile mentioning that the CPCU provides for a distance pre-trial and court proceedings. Thus, for instance, recognition of individuals or items at the pre-trial investigation stage may be conducted under conditions of videoconference from a distant location (distance pre-trial investigation) in cases that include:

- 1) certain individuals are unable to directly participate in pre-trial proceedings because of their state of health or for other valid reasons;
- 2) necessary protection of individuals is required;
- 3) when interviewing of a minor or of an individual who has not reached the age of majority is taking place in the status of a witness or victim.