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LANZAROTE CONVENTION

CONVENTION DE LANZAROTE

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

Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels

Compilation of Replies to Question 9a of the Thematic Questionnaire

Compilation des réponses à la Question 9a du Questionnaire Thématique

The full replies submitted by States and other stakeholders are available at:

Les réponses intégrales des Etats et autres parties prenantes sont disponibles ici :

www.coe.int/lanzarote

Introduction

During its 7th meeting (9 December 2013, see §13 of the report as well as its Appendix III)[1], the Committee decided that the Secretariat should compile the replies to the General Overview and Thematic Questionnaires.

This document is aimed at responding to this request by compiling replies to question 9a of the Thematic Questionnaire.

If when replying to this question, States referred to another of their answers in both the General Overview and Thematic questionnaires, their replies will where possible, also be included in this compilation.

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Lors de sa 7e réunion (9 décembre 2013, voir §13 du rapport ainsi que son annexe III[2]), le Comité a décidé que le Secrétariat devait compiler les réponses au Questionnaire « Aperçu général » et au Questionnaire Thématique.

Le présent document vise à répondre à cette demande en compilant les réponses reçues à la question 9a du Questionnaire Thématique.

Si, en répondant à cette question, les Etats se réfèrent à des réponses données à d'autres questions du Questionnaires Général et Thématique, leurs réponses seront, dans la mesure du possible, également incluses dans cette compilation.

[1] The 7th meeting report is online at:
http://www.coe.int/t/dghl/standardsetting/children/T-ES(2013)12Report7thMeeting_en.pdf.
[2] Le rapport de la 7e réunion est en ligne ici :
http://www.coe.int/t/dghl/standardsetting/children/T-ES(2013)12Report7thMeeting_fr.pdf

Question 9a of the TQ: Legal safeguards to assist and protect the victim.

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)**

Question 9a du QT : Garanties juridiques pour aider et protéger la victime.

Le droit interne prévoit-il, et dans quelle mesure, la possibilité de retirer l'enfant de son milieu familial lorsque les parents ou les personnes qui en ont la charge sont impliqués dans les faits d'abus sexuels dont il a été victime ? Dans l'affirmative :

- les modalités et la durée de ce retrait doivent-elles être déterminées conformément à l'intérêt supérieur de l'enfant ? (**article 14, par. 3, Rapport explicatif, par. 99**) ;
- Des mesures législatives ou autres ont-elles été prises pour faire en sorte que les proches de la victime puissent bénéficier, si nécessaire, d'une assistance thérapeutique, notamment d'un soutien psychologique d'urgence ? (**article 14, par. 4, Rapport explicatif, par. 100**)

Relevant extracts from the Lanzarote Convention and its Explanatory report

Lanzarote Convention, Article 14 (3) & (4) – Assistance to victims.

(…)

3 When the parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse, the intervention procedures taken in application of Article 11, paragraph 1, shall include:

- the possibility of removing the alleged perpetrator;
- the possibility of removing the victim from his or her family environment. The conditions and duration of such removal shall be determined in accordance with the best interests of the child.

4 Each Party shall take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care

Explanatory report

(…)

99. Paragraph 3 provides for the possibility, where the parents or carers of the victim are involved in the case of sexual exploitation or abuse, of removing either the alleged perpetrator or the victim from the family environment. It is important to stress that this removal should be envisaged as a protection measure for the child and not as a sanction for the alleged perpetrator. The removal of a parent who is the alleged perpetrator of sexual abuse against his or her child could be a good solution when the other parent supports the child victim. The other option may be to remove the child from the family environment. In such case, the length of time of the removal should be determined in the best interests of the child.

100. The negotiators recognised that the application of paragraph 4 would be limited, but felt that in certain particularly serious cases it would be justified for those persons close to the victim, including for example family members, friends and classmates, to benefit from emergency psychological assistance. These assistance measures are not meant to benefit the alleged perpetrators of sexual exploitation and abuse, who can instead benefit from the intervention programmes and measures in Chapter V.

Extraits pertinents de la Convention de Lanzarote et de son rapport explicatif

Convention de Lanzarote, Article 14 (3) & (4) – Assistance aux victimes.

(…)

3 Lorsque les parents ou les personnes auxquelles l'enfant est confié sont impliqués dans les faits d'exploitation ou d'abus sexuels commis à son encontre, les procédures d'intervention prises en application du paragraphe 1 de l'article 11 comportent :

- la possibilité d'éloigner l'auteur présumé des faits;
- la possibilité de retirer la victime de son milieu familial. Les modalités et la durée de ce retrait sont déterminées conformément à l'intérêt supérieur de l'enfant.

4 Chaque Partie prend les mesures législatives ou autres nécessaires pour que les proches de la victime puissent bénéficier, le cas échéant, d'une aide thérapeutique, notamment d'un soutien psychologique d'urgence.

Rapport explicatif

(…)

99. Le paragraphe 3 prévoit la possibilité, lorsque les parents ou les personnes auxquels l'enfant est confié sont impliqués dans les faits d'exploitation ou d'abus sexuels commis à son encontre, d'éloigner l'auteur présumé des faits ou la victime de son milieu familial. Il convient de souligner que cet éloignement doit être envisagé comme une mesure de protection de l'enfant et non de sanction de l'auteur présumé. L'éloignement d'un parent qui est l'auteur présumé d'abus sexuels à l'encontre de son enfant peut constituer une bonne solution lorsque l'autre parent apporte un soutien à l'enfant victime. L'autre solution consiste à retirer l'enfant de son milieu familial. Dans ce cas, la durée de ce retrait sera déterminée conformément à l'intérêt supérieur de l'enfant.

100. Les négociateurs ont reconnu que le paragraphe 4 aurait une application limitée. Ils ont estimé cependant que dans certains cas particulièrement graves, il serait justifié que les personnes de son entourage, y compris par exemple les membres de sa famille, les amis et ses camarades de classe, puissent bénéficier d'une assistance psychologique d'urgence. Ces mesures d'assistance n'ont pas vocation à bénéficier aux auteurs présumés des faits d'exploitation et d'abus sexuels, qui peuvent en revanche bénéficier des programmes et mesures d'intervention du chapitre V.

COMPILATION
of replies / des réponses[3]

By the States to be assessed in the 1st monitoring round / Des Etats devant faire l'objet du 1er cycle de suivi

ALBANIA / ALBANIE

Question 9a of the TQ / du QT

Based on Law No. 9669, dated 18.12.2006 "On Measures Against Domestic Violence " in cases of sexual abuse against a person (child) in family relationships, is required from the court an „Emergency Protection Order". After evaluating the case, one of the measures that can be undertaken by court, is the immediate establishment of victim / s (minor) in temporary shelters, by considering in any case the best interests, of the child (Article 10)

In the meantime at the National Center for Rehabilitation of Domestic Violence, victims are provided with psychological, rehabilitation and educational services.

AUSTRIA/AUTRICHE

Question 9a of the TQ / du QT

1st indent:

The Civil Code (Section 211) allows youth welfare authorities to remove a child from the family (persons responsible for their care) when it is in imminent danger. The youth welfare authorities have to apply by court for approval of this decision within eight days.

The youth welfare law determines the conditions and duration of such removal as always the least severe measure possible has to be chosen (principle of subsidiarity in Section 1 par. 5 of the Federal Child and Youth Services Act).

2nd indent:

1. The Austrian social system offers thorough medical and therapeutical care to child victims and their relatives via the health system and the health insurance respectively. If necessary, psychotherapy is also given to the victim`s relatives (decision of a doctor).
2. Close relatives of child victims of abuse are entitled to benefits of the Victims of Crime Act as well.
3. According to the standards for the procedural assistance, in cases of possible infringements of the sexual integrity of a person under age the assistance during the

[3] The replies are reproduced here in the language they were received / Les réponses sont reproduites ici dans la langue où elles ont été reçues. Some states have divided their answers according to the indents found in question 9a. / Certains Etats ont structuré leurs réponses en fonctions des différents alinéas propres à la question 9a.

criminal proceedings is also granted to the reference person of the person under age concerned.

BELGIUM / BELGIQUE

Question 9a of the TQ / du QT

1er alinéa:

Au niveau de la Communauté flamande :

Voir les articles 47 et 48 du Décret du 12 juillet 2013relatif à l'aide intégrale à la jeunesse.

« Art. 47. Le juge de la jeunesse prend connaissance de situations inquiétante sur requête du ministère public afin d'imposer des mesures judiciaires aux mineurs concernés et, éventuellement, à leurs parents et, le cas échéant, à leurs responsables de l'éducation :

1° si le ministère public démontre que les conditions suivantes sont remplies de manière cumulative :
a) il n'est pas possible d'accorder des services volontaires d'aide à la jeunesse ;
b) tout a été mis en œuvre pour réaliser des services volontaires d'aide à la jeunesse en ce sens où il a été fait appel au centre de soutien ou au centre de confiance pour enfants maltraités et que ce centre a déféré le mineur vers le ministère public en application de l'article 39 ou 42, § 3.
2° si le ministère public démontre que les conditions suivantes sont remplies de manière cumulative :
a) une mesure judiciaire s'impose d'urgence ;
b) il existe suffisamment d'indications que le mineur doit être protégé immédiatement contre une forme de violence physique ou mentale, des lésions ou abus, une négligence physique ou mentale ou un traitement négligent, des faits de maltraitance ou d'exploitation, y compris les abus sexuels ;
c) l'octroi de services volontaires d'aide à la jeunesse n'est pas possible immédiatement car les autorisations nécessaires n'ont pas réellement été obtenues.
Art. 48. § 1er. Le tribunal de la jeunesse et le juge de la jeunesse peuvent, après une requête telle que visée à l'article 47, 1°, prendre les mesures suivantes :

1° fournir une directive pédagogique aux parents du mineurs ou, le cas échéant, à ses responsables de l'éducation;
2° mettre le mineur sous surveillance du service social pendant maximum une année ;
3° ordonner un accompagnement de contexte pendant maximum une année ;
4° imposer un projet éducatif au mineur pendant maximum six mois ou confier le mineur à un projet, éventuellement conjointement avec ses parents ou, le cas échéant, ses responsables de l'éducation ;
5° faire visiter une structure ambulante par le mineur pendant maximum une année ;
6° faire vivre de manière autonome, pendant maximum un an, le mineur qui a atteint l'âge de dix-sept ans et dispose de revenus suffisants ;
7° faire vivre, dans une chambre et sous surveillance permanente, pendant maximum un an, le mineur qui a atteint l'âge de dix-sept ans;

8° mettre le mineur sous l'accompagnement d'un centre d'accueil et d'orientation pendant maximum trente jours;
9° mettre le mineur sous l'accompagnement d'un centre d'observation pendant maximum soixante jours;
10° confier le mineur à un candidat accueillant ou à un accueillant tel que visé à l'article 14, § 1er ou § 3, du décret du 29 juin 2012 portant organisation du placement familial pendant maximum trois ans, en application ou non de l'article 5 du décret susmentionné;
11° à titre exceptionnel et pour maximum un an, confier le mineur à un établissement ouvert approprié;
12° à titre exceptionnel et pour maximum trois mois, confier le mineur qui a atteint l'âge de quatorze ans, à un établissement fermé approprié, s'il est démontré que le mineur s'est soustrait aux mesures visées aux points 10° et 11, à deux reprises ou plus, et que cette mesure s'impose pour conserver l'intégrité de la personne du mineur;
13° confier le mineur, pour maximum un an, à un établissement psychiatrique si cela s'avère nécessaire après une expertise psychiatrique.

L'application des mesures, visées à l'alinéa premier, 5° à 13° inclus, doit permettre un fonctionnement axé sur le contexte, entre autres en réduisant la distance entre le lieu d'exécution de la mesure et le domicile du mineur, à moins qu'il ne soit démontré que l'intérêt du mineur requiert exclusivement qu'il en soit autrement.
Le juge de la jeunesse motive la raison pour laquelle le mineur ne peut pas, en application du § 1er, 11°, être confié à un candidat accueillant ou à un accueillant tel que visé au § 1er, 10°.
Le tribunal de la jeunesse et le juge de la jeunesse motivent la raison pour laquelle plusieurs mineurs issus d'une même famille ne peuvent pas, en application du § 1er, 10°, être confiés au même candidat accueillant ou accueillant.

Un projet éducatif, tel que visé à l'alinéa premier, 4°, doit satisfaire de manière cumulative aux conditions suivantes :

1° il s'adresse à un groupe-cible spécifique ou est axé sur une situation problématique particulière;
2° il est organisé par un offreur d'aide à la jeunesse ou par une organisation qui a conclu à cet effet une convention avec le Gouvernement flamand;
3° il est axé sur le renforcement des propres soins ou sur le renforcement des soins dans son propre milieu.
Si le tribunal de la jeunesse décide d'une combinaison de différentes de ces mesures, visées à l'alinéa premier, cette décision vaut pour maximum six mois et il faut, le cas échéant, prévoir la coordination des mesures.
§ 2. En cas de combinaison de mesures, telle que visée au paragraphe 1er, une seule mesure peut être d'application au même moment.

Par dérogation à l'alinéa premier, le Gouvernement flamand peut fixer les mesures pouvant être appliqués simultanément. »

Voir également le Décret relatif à la position droit du mineur dans l'assistance intégrale à la jeunesse (Rechtspositie van de Minderjarige in de Jeugdhulp) du 7 mai 2004.

Au niveau de la Fédération Wallonie-Bruxelles

Voir l'article 9 du Décret du 4 mars 1991 relatif à l'aide à la jeunesse :

« Article 9. - Les mesures et les décisions prises par le conseiller ou par le directeur de l'aide à la jeunesse tendent par priorité à favoriser l'épanouissement du jeune dans son milieu familial de vie. Toutefois, si l'intérêt du jeune exige qu'il faille l'en retirer, l'aide apportée au jeune doit, en tout cas, lui assurer les conditions de vie et de développement appropriées à ses besoins et à son âge. Le conseiller, le directeur et le tribunal de la jeunesse veillent, sauf si cela n'est pas possible ou si l'intérêt du jeune s'y oppose, à ce que le jeune ne soit pas séparé de ses frères et soeurs. »

L'article 38 de ce même décret prévoit que le tribunal de la jeunesse peut, après avoir constaté la nécessité du recours à la contrainte, décider, dans des situations exceptionnelles, que l'enfant sera hébergé temporairement hors de son milieu familial de vie en vue de son traitement, de son éducation, de son instruction ou de sa formation professionnelle ou permettre à l'enfant, s'il a plus de seize ans, de se fixer dans une résidence autonome ou supervisée.

L'article 39 prévoit qu'en cas de nécessité urgente, le tribunal de la jeunesse peut placer un enfant dont l'intégrité physique ou psychique est exposée directement et actuellement à un péril grave et à défaut d'accord des personnes.

L'ordonnance bruxelloise prévoit dans ses articles 8 et 9 que, soit après avoir constaté que la santé ou la sécurité d'un jeune est actuellement et gravement compromise et que l'aide volontaire a été refusée ou a échoué , soit dans les situations de danger nécessitant un placement en urgence, le Tribunal de la jeunesse pourra prendre une mesure de placement telle que prévue à l'article 10 :

- placer le jeune dans un centre d'accueil en cas d'urgence ;
- placer le jeune dans un centre d'observation et/ou d'orientation ;
- placer le jeune dans une famille ou chez une personne digne de confiance ;
- décider, dans des situations exceptionnelles, que le jeune sera hébergé temporairement dans un établissement ouvert approprié en vue de son traitement, de son éducation, de son instruction ou de sa formation professionnelle.

2ème alinéa:

Oui, il est référé aux réponses données sous la question 15 du questionnaire général.

Question 15c du Questionnaire Général :

Interdiction de résidence

Souhaitant renforcer la lutte contre les violences intrafamiliales, le législateur a récemment adopté deux nouvelles lois, notamment la loi du 15 mai 2012 relative à l'interdiction temporaire de résidence en cas de violence domestique et la loi du 15 juin 2012 tendant à réprimer le non-respect de l'interdiction temporaire de résidence en cas de violence domestique et modifiant les articles 594 et 627 du Code judiciaire. L'entrée en vigueur de ces deux lois était accompagnée par une Circulaire commune du ministre de la Justice, du ministre de l'Intérieur et du Collège des procureurs généraux relative à l'interdiction temporaire de résidence en cas de violence domestique (COL 18/2012)

Ce dispositif prévoit un outil pour le ministère publique d'intervenir en urgence. Le procureur du Roi peut ordonner une interdiction de résidence à l'égard d'une personne majeure si sa présence représente une menace grave et immédiate pour la sécurité d'une

ou de plusieurs personnes qui occupent la même résidence. Une interdiction de résidence ne peut être décidée que si le danger résulte clairement des faits ou des circonstances. L'interdiction de résidence entraîne, pour la personne éloignée, l'obligation de quitter immédiatement la résidence commune, l'interdiction d'y pénétrer, de s'y arrêter ou d'y être présente et l'interdiction d'entrer en contact. L'interdiction de résidence ne s'applique que pour un maximum de dix jours. Une décision de prolongation est du ressort du juge de paix uniquement.
Le procureur du Roi communique le contenu de son ordonnance à la personne éloignée et à celles qui occupent la même résidence. Une copie de sa décision est également notifiée au chef de corps de la police locale. Le procureur prend contact avec le service d'accueil des victimes de son parquet afin qu'il assiste et informe les personnes qui occupent la même résidence que la personne éloignée. Le procureur peut ordonner la levée de l'interdiction de résidence s'il estime qu'il n y a plus de danger. Il peut également modifier les modalités de cette mesure si les circonstances le justifient.

Le non-respect de l'interdiction de résidence est passible d'une peine de prison de six mois au plus ou d'une amende.

Le procureur communique sa décision au juge de paix, au plus tard le jour suivant la date de l'ordonnance. Les procès-verbaux ayant donné lieu à l'interdiction de résidence et, le cas échéant, sa décision de lever l'interdiction ou d'en modifier les modalités, ainsi que les procès-verbaux constatant des infractions à l'interdiction doivent également être communiqués, aussi bien au juge qu'aux parties.

Le juge de paix détermine le jour et l'heure de l'audience, qui doit avoir lieu pendant la durée de l'interdiction, dans les 24 heures de la communication de l'ordonnance.
Si une des parties ou le procureur demande au juge de paix de se prononcer sur l'interdiction de résidence, il en examine la légalité et l'opportunité. Il entend les parties. Il examine d'abord si la procédure de l'interdiction de résidence a été respectée. Si cela n'est pas le cas, l'ordonnance est levée. Si l'ordonnance a été prise dans les formes, il examine si la décision d'interdiction doit être levée ou au contraire prolongée.

Le juge a deux possibilités: lever ou prolonger l'interdiction de résidence. La prolongation ne peut excéder trois mois, pour autant que les faits ou circonstances ayant justifié l'interdiction soient toujours de mise à la date du jugement. Le juge de paix peut à tout moment, à la requête d'une des parties ou du procureur du Roi, modifier les modalités de la mesure d'interdiction de résidence ou la lever.

En principe, l'audience doit se dérouler à huis-clos. Mais elle peut être rendue publique suite à une demande du procureur, d'une des parties ou d'office.
La cause reste inscrite au rôle de la justice de paix jusqu'à ce que l'interdiction de résidence prenne fin. En cas d'éléments nouveaux, elle peut être ramenée devant le juge de paix par conclusions ou par demande écrite.

L'interdiction de résidence prend fin si le juge de paix n'a pas statué dans un délai de dix jours après la notification de la décision, ou si la résidence commune a fait l'objet d'une décision judiciaire. Par exemple, dans le cadre de mesures urgentes ou provisoires, d'une

décision du tribunal de la jeunesse concernant une mesure de protection ou d'un jugement en référé à propos de la résidence conjugale.

Déchéance de l'autorité parentale
La déchéance de l'autorité parentale est une mesure de protection qui vise à sauvegarder les droits de l'enfant. Il s'agit d'une mesure de protection du mineur obtenu par le moyen d'une privation de droits civils dans le chef des parents et par le remplacement de ceux-ci dans l'exercice de ces droits par une personne désignée par le tribunal de la jeunesse, notamment le protuteur. La déchéance de l'autorité parentale peut être prononcée par le tribunal de la jeunesse, sur réquisition du ministère public.

La mesure consiste à exclure le père ou la mère de tout ou partie des droits attachés à l'autorité parentale, soit à l'égard de tous les enfants, soit à l'égard de l'un ou plusieurs d'entre eux, dans le but de les protéger.

La déchéance est applicable aux père et mère quelle que soit la source de la filiation légalement établie : dans le mariage, hors mariage ou adoptive. Les ascendants autres que les pères et mères peuvent être déchus à l'égard de leurs propres enfants lorsqu'ils ont été condamnés à une peine criminelle ou correctionnelle du chef des faits commis sur la personne ou à l'aide de la personne de leurs autres descendants.

La majorité imminente de l'enfant ne fait pas obstacle à la déchéance de l'autorité parentale, comme celle-ci touchent également des droits qui se perpétuent au-delà de la majorité.

Il est à noter que la déchéance de l'autorité parentale est mentionnée dans le casier judiciaire de la personne déchue (mais pas portée à la connaissance des particuliers ou repris sur les extraits du casier judiciaires), voir l'article 590, 7° du Code d'instruction criminelle.

Le tribunal de la jeunesse qui prononce une déchéance totale ou partielle, désigne en même temps la personne qui, sous son contrôle, exercera les droits de garde et d'éducation, le pouvoir de représenter le mineur, de consentir aux actes et d'administrer les biens du mineur. Préalablement à la désignation d'un protuteur, le père et la mère sont entendus. Si un seul parent a été déchu, le tribunal de la jeunesse désigne le parent non déchu si l'intérêt de l'enfant ne s'y oppose pas.

La déchéance de l'autorité parentale est prononcée pour une durée indéterminée. Elle peut être rapportée ou modifiée. Le tribunal de la jeunesse peut en tout temps, soit d'office, soit à la demande du ministère public, décider d'une réintégration totale ou partielle dans les droits parentaux. Les parents déchus peuvent demander également la réintégration, mais seulement après l'expiration d'un délai d'un an à compter du jour ou la décision ordonnant la mesure est devenue définitive.

La déchéance de l'autorité parentale est régie par les articles 32 à 35 de la loi du 8 avril 1965 relative à la protection de la jeunesse.

« Art. 32. Peut-être déchu de l'autorité parentale, en tout ou en partie, à l'égard de tous ses enfants, de l'un ou de plusieurs d'entre eux :
1° le père ou la mère qui est condamné à une peine criminelle ou correctionnelle du chef de tous faits commis sur la personne ou à l'aide d'un de ses enfants ou descendants;
2° le père ou la mère qui, par mauvais traitements, abus d'autorité, inconduite notoire ou négligence grave, met en péril la santé, la sécurité ou la moralité de son enfant.
Il en est de même pour le père ou la mère qui épouse une personne déchue de l'autorité parentale.
La déchéance est prononcée par le tribunal de la jeunesse sur réquisition du ministère public.
Art. 33. La déchéance totale porte sur tous les droits qui découlent de l'autorité parentale.
Toutefois, elle ne porte sur le droit de consentir à l'adoption de l'enfant que si le jugement le stipule expressément.
Elle comprend pour celui qui en est frappé, à l'égard de l'enfant qu'elle concerne et des descendants de celui-ci :
1° l'exclusion du droit de garde et d'éducation;
2° l'incapacité de les représenter, de consentir à leurs actes et d'administrer leurs biens;
3° l'exclusion du droit, de jouissance prévu à l'article 384 du Code civil;
4° l'exclusion du droit de réclamer des aliments;
5° l'exclusion du droit de recueillir tout ou partie de leur succession par application de l'article 746 du Code civil.
En outre, la déchéance totale entraîne l'incapacité général d'être tuteur, tuteur officieux, subrogé tuteur ou curateur.
La déchéance partielle porte sur les droits que le tribunal détermine.
Art. 34. En prononçant la déchéance totale ou partielle de l'autorité parentale, le tribunal de la jeunesse désigne la personne qui, sous son contrôle, exercera les droits mentionnés à l'article 33, 1° et 2°, dont les parents ou l'un d'entre eux sont déchus et remplira les obligations qui y sont corrélatives, ou confie le mineur au comité de protection de la jeunesse, lequel désigne une personne qui exercera ces droits après que sa désignation aura été homologuée par ce tribunal, sur réquisition du ministère public.
Le père et la mère sont préalablement entendus ou appelés.
Si un seul des parents a encouru la déchéance, le tribunal de la jeunesse désigne, pour le remplacer, le parent non déchu, lorsque l'intérêt du mineur ne s'y oppose pas.
Attention, suite à la répartition des compétences entre l'état fédéral et les entités fédérés, le secteur d'aide à la jeunesse est organisé au niveau des entités fédérées. L'article 34 existe donc en plusieurs formes suite à une autre structure et organisation de l'aide à la jeunesse :
Art. 34. (Communauté flamande)
En prononçant la déchéance totale ou partielle de l'autorité parentale, le tribunal de la jeunesse désigne la personne qui, sous son contrôle, exercera les droits mentionnés à l'article 33, 1° et 2°, dont les parents ou l'un d'entre eux sont déchus et remplira les obligations qui y sont corrélatives, ou confie le mineur au Service social de la Communauté flamande près du Tribunal de la jeunesse, lequel désigne une personne qui exercera ces droits après que sa désignation aura été homologuée par ce tribunal, sur réquisition du ministère public.
Le père et la mère sont préalablement entendus ou appelés.
Si un seul des parents a encouru la déchéance, le tribunal de la jeunesse désigne, pour le remplacer, le parent non déchu, lorsque l'intérêt du mineur ne s'y oppose pas.

Art. 34. (Communauté française)
En prononçant la déchéance totale ou partielle de l'autorité parentale, le tribunal de la jeunesse désigne la personne qui, sous son contrôle, exercera les droits mentionnés à l'article 33, 1° et 2°, dont les parents ou l'un d'entre eux sont déchus et remplira les obligations qui y sont corrélatives, ou confie le mineur au conseiller de l'aide à la jeunesse, lequel désigne une personne qui exercera ces droits après que sa désignation aura été homologuée par ce tribunal, sur réquisition du ministère public.
Le père et la mère sont préalablement entendus ou appelés.

Si un seul des parents a encouru la déchéance, le tribunal de la jeunesse désigne, pour le remplacer, le parent non déchu, lorsque l'intérêt du mineur ne s'y oppose pas.
Art. 34. (communauté Germanophone)
En prononçant la déchéance totale ou partielle de l'autorité parentale, le tribunal de la jeunesse désigne la personne qui, sous son contrôle, exercera les droits mentionnés à l'article 33, 1° et 2°, dont les parents ou l'un d'entre eux sont déchus et remplira les obligations qui y sont corrélatives, ou confie le mineur au service de l'aide judiciaire à la jeunesse, lequel désigne une personne qui exercera ces droits après que sa désignation aura été homologuée par ce tribunal, sur réquisition du ministère public.
Le père et la mère sont préalablement entendus ou appelés.
Si un seul des parents a encouru la déchéance, le tribunal de la jeunesse désigne, pour le remplacer, le parent non déchu, lorsque l'intérêt du mineur ne s'y oppose pas.
Art. 34. (Région de Bruxelles-Capitale)
En prononçant la déchéance totale ou partielle de l'autorité parentale, le tribunal de la jeunesse désigne la personne qui, sous son contrôle, exercera les droits mentionnés à l'article 33, 1° et 2°, dont les parents ou l'un d'entre eux sont déchus et remplira les obligations qui y sont corrélatives, ou confie le mineur aux institutions concernées, lequel désigne une personne qui exercera ces droits après que sa désignation aura été homologuée par ce tribunal, sur réquisition du ministère public.
Le père et la mère sont préalablement entendus ou appelés.
Si un seul des parents a encouru la déchéance, le tribunal de la jeunesse désigne, pour le remplacer, le parent non déchu, lorsque l'intérêt du mineur ne s'y oppose pas.
Art. 35. Sans préjudice des règles fixées par le Code civil en matière de consentement au mariage, à l'adoption et à l'adoption plénière, la personne désignée par application de l'article 34 exerce les droits dont elle est investie en se conformant, le cas échéant, aux dispositions des articles 373 et 374 du Code civil. Elle veille à ce que les revenus du mineur soient employés à l'entretien et à l'éducation de celui-ci.
Dans tous les cas, la gestion des biens du mineur est régie par les dispositions du Code civil relatives au fonctionnement de la tutelle et aux comptes de la tutelle.
Le parent non déchu n'a le droit de jouissance légale des biens du mineur que s'il est investi des pouvoirs prévus à l'article 34. »
La tutelle aux prestations familiales et autres allocations sociales

Il convient également de référer à l'article 29 de la loi du 8 avril 1965 qui concerne la tutelle aux prestations familiales et qui est également une mesure de protection des mineurs qui peut être plutôt considéré comme 'une mesure d'assistance dirigée' de nature pédagogique, notamment montrer à l'allocataire comment il convient d'utiliser les allocations dans l'intérêt de l'enfant.

Le tribunal désigne un tuteur qui a comme tache de percevoir à la place de l'allocataire, le montant des allocations et de les affecter aux besoins exclusifs du mineur.

L'article 391bis, alinéa 5, du Code pénal incrimine '*toute personne qui aura volontairement entravé la tutelle sur les prestations familiales ou autres allocations sociales, en négligeant de fournir les documents nécessaires aux organismes chargés de la liquidation de ces allocations, en faisant des déclarations fausses ou incomplètes, ou en modifiant l'affectation qui leur a été donnée par lapersonne ou l'autorité désignée conformément à l'article 29 de la loi du 8 avril 1965 relative à la protection de la jeunesse , à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage cause par ce fait.* '

La mesure prend fin par l'extinction du droit à l'allocation, par la perte de la qualité d'allocataire de la personne mise sous tutelle, à la majorité du mineur ou lorsque la mesure est levée par le tribunal de la jeunesse.

L'article 29 de la loi du 8 avril 1965 est rédigé comme suit :
« Art. 29. Lorsque des enfants donnant droit aux prestations familiales ou autres allocations sociales sont élevés dans des conditions d'alimentation, de logement et d'hygiène manifestement et habituellement défectueuses et lorsque le montant des allocations n'est pas employé dans l'intérêt des enfants, le tribunal de la jeunesse peut, sur réquisition du ministère public, désigner une personne chargée de percevoir le montant de ces allocations et de l'affecter aux besoins exclusifs des enfants et aux dépenses du foyer qui les concernent.
Le Comité de protection de la jeunesse peut être désigné à ces fins.
Lorsque la décision est passée en force de chose jugée, le greffier du tribunal de la jeunesse la signifie en copie, par lettre recommandée à la poste, à l'organisme chargé de la liquidation des allocations, qui ne peut dès lors se libérer valablement que par versement à la personne ou au comité de protection de la jeunesse désigné à cette fin. »
Attention, suite à la répartition des compétences entre l'état fédéral et les entités fédérés, le secteur d'aide à la jeunesse est organisé au niveau des entités fédérées. L'article 34 existe donc en plusieurs formes suite à une autre structure et organisation de l'aide à la jeunesse :
« Art. 29. (Communauté flamande)
Lorsque des enfants donnant droit aux prestations familiales ou autres allocations sociales sont élevés dans des conditions d'alimentation, de logement et d'hygiène manifestement et habituellement défectueuses et lorsque le montant des allocations n'est pas employé dans l'intérêt des enfants, le tribunal de la jeunesse peut, sur réquisition du ministère public, désigner une personne chargée de percevoir le montant de ces allocations et de l'affecter aux besoins exclusifs des enfants et aux dépenses du foyer qui les concernent.
Le Service social de la Communauté flamande près du Tribunal de la jeunesse peut être désigné à ces fins.
Lorsque la décision est passée en force de chose jugée, le greffier du tribunal de la jeunesse la signifie en copie, par lettre recommandée à la poste, à l'organisme chargé de la liquidation des allocations, qui ne peut dès lors se libérer valablement que par versement à la personne ou au Service social de la Communauté flamande près du Tribunal de la jeunesse désigné à cette fin.
Art. 29. (Communauté française)
Lorsque des enfants donnant droit aux prestations familiales ou autres allocations sociales sont élevés dans des conditions d'alimentation, de logement et d'hygiène manifestement et

habituellement défectueuses et lorsque le montant des allocations n'est pas employé dans l'intérêt des enfants, le tribunal de la jeunesse peut, sur réquisition du ministère public, désigner une personne chargée de percevoir le montant de ces allocations et de l'affecter aux besoins exclusifs des enfants et aux dépenses du foyer qui les concernent. (Alinéa 2 abrogé)
Lorsque la décision est passée en force de chose jugée, le greffier du tribunal de la jeunesse la signifie en copie, par lettre recommandée à la poste, à l'organisme chargé de la liquidation des allocations, qui ne peut dès lors se libérer valablement que par versement à la personne désignée à cette fin.
Art. 29. (Communauté germanophone)
Lorsque des enfants donnant droit aux prestations familiales ou autres allocations sociales sont élevés dans des conditions d'alimentation, de logement et d'hygiène manifestement et habituellement défectueuses et lorsque le montant des allocations n'est pas employé dans l'intérêt des enfants, le tribunal de la jeunesse peut, sur réquisition du ministère public, désigner une personne chargée de percevoir le montant de ces allocations et de l'affecter aux besoins exclusifs des enfants et aux dépenses du foyer qui les concernent.
Le service de l'aide judiciaire à la jeunesse peut être désigné à ces fins.
Lorsque la décision est passée en force de chose jugée, le greffier du tribunal de la jeunesse la signifie en copie, par lettre recommandée à la poste, à l'organisme chargé de la liquidation des allocations, qui ne peut dès lors se libérer valablement que par versement à la personne ou au service de l'aide judiciaire à la jeunesse désigné à cette fin.
Art. 29. (Région de Bruxelles-Capitale)
Lorsque des enfants donnant droit aux prestations familiales ou autres allocations sociales sont élevés dans des conditions d'alimentation, de logement et d'hygiène manifestement et habituellement défectueuses et lorsque le montant des allocations n'est pas employé dans l'intérêt des enfants, le tribunal de la jeunesse peut, sur réquisition du ministère public, désigner une personne chargée de percevoir le montant de ces allocations et de l'affecter aux besoins exclusifs des enfants et aux dépenses du foyer qui les concernent.
(alinéa 2 abrogé)
Lorsque la décision est passée en force de chose jugée, le greffier du tribunal de la jeunesse la signifie en copie, par lettre recommandée à la poste, à l'organisme chargé de la liquidation des allocations, qui ne peut dès lors se libérer valablement que par versement à la personne désignée à cette fin.
Retirer le mineur de son milieu familial

<u>Au niveau flamand</u>
Voir les articles 47 et 48 du Décret du 12 juillet 2013relatif à l'aide intégrale à la jeunesse
« Art. 47. Le juge de la jeunesse prend connaissance de situations inquiétante sur requête du ministère public afin d'imposer des mesures judiciaires aux mineurs concernés et, éventuellement, à leurs parents et, le cas échéant, à leurs responsables de l'éducation :
1° si le ministère public démontre que les conditions suivantes sont remplies de manière cumulative :
a) il n'est pas possible d'accorder des services volontaires d'aide à la jeunesse ;
b) tout a été mis en oeuvre pour réaliser des services volontaires d'aide à la jeunesse en ce sens où il a été fait appel au centre de soutien ou au centre de confiance pour enfants maltraités et que ce centre a déféré le mineur vers le ministère public en application de l'article 39 ou 42, § 3 ;

2° si le ministère public démontre que les conditions suivantes sont remplies de manière cumulative :

a) une mesure judiciaire s'impose d'urgence ;
b) il existe suffisamment d'indications que le mineur doit être protégé immédiatement contre une forme de violence physique ou mentale, des lésions ou abus, une négligence physique ou mentale ou un traitement négligent, des faits de maltraitance ou d'exploitation, y compris les abus sexuels ;
c) l'octroi de services volontaires d'aide à la jeunesse n'est pas possible immédiatement car les autorisations nécessaires n'ont pas réellement été obtenues.
Art. 48. § 1er. Le tribunal de la jeunesse et le juge de la jeunesse peuvent, après une requête telle que visée à l'article 47, 1°, prendre les mesures suivantes :
1° fournir une directive pédagogique aux parents du mineurs ou, le cas échéant, à ses responsables de l'éducation ;
2° mettre le mineur sous surveillance du service social pendant maximum une année ;
3° ordonner un accompagnement de contexte pendant maximum une année ;
4° imposer un projet éducatif au mineur pendant maximum six mois ou confier le mineur à un projet, éventuellement conjointement avec ses parents ou, le cas échéant, ses responsables de l'éducation ;
5° faire visiter une structure ambulante par le mineur pendant maximum une année ;
6° faire vivre de manière autonome, pendant maximum un an, le mineur qui a atteint l'âge de dix-sept ans et dispose de revenus suffisants ;
7° faire vivre, dans une chambre et sous surveillance permanente, pendant maximum un an, le mineur qui a atteint l'âge de dix-sept ans ;
8° mettre le mineur sous l'accompagnement d'un centre d'accueil et d'orientation pendant maximum trente jours ;
9° mettre le mineur sous l'accompagnement d'un centre d'observation pendant maximum soixante jours ;
10° confier le mineur à un candidat accueillant ou à un accueillant tel que visé à l'article 14, § 1er ou § 3, du décret du 29 juin 2012 portant organisation du placement familial pendant maximum trois ans, en application ou non de l'article 5 du décret susmentionné ;
11° à titre exceptionnel et pour maximum un an, confier le mineur à un établissement ouvert approprié ;
12° à titre exceptionnel et pour maximum trois mois, confier le mineur qui a atteint l'âge de quatorze ans, à un établissement fermé approprié, s'il est démontré que le mineur s'est soustrait aux mesures visées aux points 10° et 11, à deux reprises ou plus, et que cette mesure s'impose pour conserver l'intégrité de la personne du mineur ;
13° confier le mineur, pour maximum un an, à un établissement psychiatrique si cela s'avère nécessaire après une expertise psychiatrique.
L'application des mesures, visées à l'alinéa premier, 5° à 13° inclus, doit permettre un fonctionnement axé sur le contexte, entre autres en réduisant la distance entre le lieu d'exécution de la mesure et le domicile du mineur, à moins qu'il ne soit démontré que l'intérêt du mineur requiert exclusivement qu'il en soit autrement.
Le juge de la jeunesse motive la raison pour laquelle le mineur ne peut pas, en application du § 1er, 11°, être confié à un candidat accueillant ou à un accueillant tel que visé au § 1er, 10°.

Le tribunal de la jeunesse et le juge de la jeunesse motivent la raison pour laquelle plusieurs mineurs issus d'une même famille ne peuvent pas, en application du § 1er, 10°, être confiés au même candidat accueillant ou accueillant.

Un projet éducatif, tel que visé à l'alinéa premier, 4°, doit satisfaire de manière cumulative aux conditions suivantes :
1° il s'adresse à un groupe-cible spécifique ou est axé sur une situation problématique particulière ;
2° il est organisé par un offreur d'aide à la jeunesse ou par une organisation qui a conclu à cet effet une convention avec le Gouvernement flamand ;
3° il est axé sur le renforcement des propres soins ou sur le renforcement des soins dans son propre milieu.
Si le tribunal de la jeunesse décide d'une combinaison de différentes de ces mesures, visées à l'alinéa premier, cette décision vaut pour maximum six mois et il faut, le cas échéant, prévoir la coordination des mesures.
§ 2. En cas de combinaison de mesures, telle que visée au paragraphe 1er, une seule mesure peut être d'application au même moment.
Par dérogation à l'alinéa premier, le Gouvernement flamand peut fixer les mesures pouvant être appliqués simultanément. »

<u>Au niveau de la Fédération Wallonie-Bruxelles</u>
Voir l'article 9 du Décret du 4 mars 1991 relatif à l'aide à la jeunesse :
« Article 9. - Les mesures et les décisions prises par le conseiller ou par le directeur de l'aide à la jeunesse tendent par priorité à favoriser l'épanouissement du jeune dans son milieu familial de vie. Toutefois, si l'intérêt du jeune exige qu'il faille l'en retirer, l'aide apportée au jeune doit, en tout cas, lui assurer les conditions de vie et de développement appropriées à ses besoins et à son âge. Le conseiller, le directeur et le tribunal de la jeunesse veillent, sauf si cela n'est pas possible ou si l'intérêt du jeune s'y oppose, à ce que le jeune ne soit pas séparé de ses frères et sœurs. »

L'ordonnance bruxelloise prévoit dans ses articles 8 et 9 que, soit après avoir constaté que la santé ou la sécurité d'un jeune est actuellement et gravement compromise et que l'aide volontaire a été refusée ou a échoué , soit dans les situations de danger nécessitant un placement en urgence, le Tribunal de la jeunesse pourra prendre une mesure de placement telle que prévue à l'article 10 :
- placer le jeune dans un centre d'accueil en cas d'urgence ;
- placer le jeune dans un centre d'observation et/ou d'orientation ;
- placer le jeune dans une famille ou chez une personne digne de confiance;
- décider, dans des situations exceptionnelles, que le jeune sera hébergé temporairement dans un établissement ouvert approprié en vue de son traitement, de son éducation, de son instruction ou de sa formation professionnelle.

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Question 9a of the TQ / du QT

When it comes to the types of assistance, “Medica” from Zenica provides short-term and long-term accommodation in the Safe House and other services to the victims of sexual exploitation and children who are victims of sexual abuse. As part of their stay in the Safe House, in addition to safe accommodation, food, basic clothing items and footwear and toiletries etc. on the basis of their individual needs and the developed individual plan, clients also receive continued individual and group psychological assistance and support, counselling and therapy suited to the clients’ age, medical assistance, educational work, economic strengthening, occupational therapy, mediation in dealing with institutions, work with family and other services in accordance with the needs of each individual client. Individual plan of work for each client is developed in cooperation with the client and other professionals and on the basis of individual needs.

Duration of female clients in the Safe House also depends on individual needs of every victim/child. During the children’s stay in the Safe House, the whole treatment is tailored to suit their age and individual needs and to various kinds of help. During individual work with children, treatment is given depending on the children’s age, the gravity of the traumatic experience and the degree of the consequences developed after the violence experienced, and various counselling, therapeutic and educational approaches are aimed at the child’s recovery and reintegration. “Medica” Zenica also has services intended for children only, such as the Children’s Day Care Centre “Medica” Zenica, where children staying in the Safe House spend their free time. It helps them in developing life habits, skills, and through various educational, supportive and creative workshops, children learn about non-violent communication, violence and protection from violence and various forms of exploitation, child rights and duties and other topics suited to their interests and in accordance with the assessment of the expert team on the need to cover certain topics.

Children who attend regular schools receive support in learning, mastering the lessons and carrying out other school assignments, whereas children who do not attend regular schools are taught to read and write and in cooperation with other institutions, the Centre facilitates inclusion of children in the educational process. The whole treatment is provided with active participation of the clients, and tailored to suit individual needs, age, development period, physical and intellectual capacity etc.

During the stay of children clients in the Safe House, “Medica” Zenica, in cooperation with other institutions involved in caring for the clients, works with the parents and other family members, if there are no obstacles to it, such as that the parents and/or other family members participated in the child exploitation/abuse. Also, when it comes to clients who are of age, “Medica” Zenica also works with the family on developing mutual understanding and support between the family and the client, on reducing the stigma and rejection by the family, but also on fixing the symptoms that family members developed when learning about what the child had been through.

BULGARIA / BULGARIE

Question 9a of the TQ / du QT

The regulations are provided in the CPA, Criminal-Procedure Code and the Law on Protection against Domestic Violence.

Art 25 of CPA “Grounds for placement out of the family” stipulates among others that a child could be placed out of his/her family if he/she is a victim of violence in the family and there is a serious threat of harm of his/her physical, mental, moral, intellectual or social development.
The placement of a child outside of the family is a protective measure of last resort after exhausting all options for protection within the family except in cases of urgent removal.
Article 37 of the Child Protection Act provides legal possibility to provide police protection to a child by the specialized bodies of the Ministry of Interior, and article 38 specifies the prerequisites for taking any emergency measures. The cases of sexual offences against a child are encompassed in article 38, item 1 - when a child is a subject of crime or there is imminent danger for his/her life or health, as well as when a child is in danger of getting involved in crime.

Article 39 of the Child Protection Act enlists three types of measures for police protection:
• placement in special premises with avoiding contact with persons who may cause harm on him/her if communicated;
• placement in specialized institutions or social services – residential care, and if necessary, provision of guard;
• returning of a child to his/her parents or those who are entrusted with parental functions for him/her.

These measures are taken in accordance with the identified risks for the child and the source of a threat. Police protection endures 48 hours and when it is in force the police immediately inform: the child's parents, guardians, trustees or those who care for the child, the "Social Assistance" Directorate in whose area the protection measure was undertaken, the "Social Assistance" Directorate in which area the child lives; prosecutor; the Regional Directorate of the Ministry of Interior at the current address of the child.
The Implementing Regulation on the Child Protection Act provides one more opportunity for a separation of a child from his/her circle of trust (family environment where parents and those who care for the child involved in sexual abuse). In these cases, the "Social Assistance" Directorate may take measures for emergency placement outside of the family when there is a danger for life and health of the child. The placement is carried out immediately after receiving the signal by an order of the Director of the "Social Assistance” Directorate (SAD). In cases of emergency placement outside of the family, the inspection of the situation begins immediately and shall be finalized within 10 days of the date of the order issuance. In the case of a signal for sexual abuse of a child, SAD immediately informs the Ministry of Interior and the prosecutor due to their competence in carrying out investigations.
After the completion of the initial inspection regardless of the measure for child protection - police protection or emergency placement outside of the family, the permanent measure for child protection is undertaken and it is approved by the court.

In the context of criminal proceedings can also be applied a protection under the Criminal Procedure Code (CPC) - art. 67 "Prohibition to approach the victim." (see the appendix for more information).

PROTECTION AGAINST DOMESTIC VIOLENCE ACT

Chapter One
GENERAL PROVISIONS

Art. 1.

(1) This law governs the rights of individuals having suffered from domestic violence, the protection measures, and the procedure applicable to the imposition of such measures.
(2) Liability under this Act shall not preclude the civil, the administrative-criminal and the criminal liability of the respondent.

Art. 2.

Domestic violence is any act of physical, sexual, mental, emotional or economic violence, and any attempted such violence, as well as the forcible restriction of individual life, individual freedoms and rights, carried out against individuals who have or have had family or kinship ties or cohabit or dwell in the same home.

Art. 3.

Protection under this Act may be sought by any individual having suffered from domestic violence applied by:
1. a spouse or former spouse;
2. a person with whom that individual cohabits or has co-habited;
3. a person with whom that individual has a child;
4. an ascendant;
5. a descendant;
6. a person with whom are relatives in the collateral line to the fourth degree, inclusive;
7. a person with whom is or was affinity to the third degree;
8. a guardian, a custodian or a foster parent;
9. ascendant or descendant of the person who is in a de facto marital cohabitation;
10. a person whom the parent is or has been a de facto marital cohabitation.

Art. 4.

(1) In the event of domestic violence the victim has the right to refer to the court to seek protection.
(2) In cases where data exists showing a direct and imminent threat to the life or health of the victim, the latter may file an application with the police authorities for the imposition of emergency measures in accordance with the Ministry of Interior Act.
(3) At the request of the victim, any medical doctor must issue a document to establish in writing any injuries or traces of violence found by that doctor.

Art. 5.

(1) The protection measures against domestic are:
1. placing the respondent under an obligation to refrain from applying domestic violence;
2. removing the respondent from the common dwelling-house for a period specified by the court;

3. prohibiting the respondent from getting in the vicinity of the victim, the home, the place of work, and the places where the victim has his or her social contacts or recreation, on such terms and conditions and for such a period as is specified by the court;
4. temporarily relocating the residence of the child with the parent who is the victim or with the parent who has not carried out the violent act at stake, on such terms and conditions and for such a period as is specified by the court, provided that this is not inconsistent with the best interests of the child;
5. placing the respondent under an obligation to attend specialised programmes;
6. advising the victims to attend recovery programmes.

(2) The measures under para 1, points 2, 3, and 4 shall be imposed for a period from three months to eighteen months.

1st indent:

The main principles for child protection are listed in Article 3 of the Child Protection Act. Among them is explicitly enshrined the principle of "best interests of the child". Legal definition of the term is defined in Item 5 of the Supplementary Provisions of the Child Protection Act, and according to it “the best interest of a child” is the discretion of:

- wishes and feelings of the child;
- physical, mental and emotional needs of the child;
- age, sex, background and other characteristics of the child;
- danger or harm caused to the child or is likely to be caused to him;
- ability of parents to care for the child;
- consequences that will occur as a result of the changed circumstances;
- other circumstances relating to the child

The steps stipulated in the regulations for implementing the measure “placement outside the home” safeguards the compliance with this principle. The first step is maintaining a comprehensive social inspection, which is the basis for the risk assessment for the child and his/her needs, and subsequently preparation of an action plan for the case; the action plan is reviewed at every six months. Legal safeguard of the principle is the established judicial review of the decisions of the bodies for child protection for the undertaken measure. Another safeguard for the best interest of the child is the prosecutor’s involvement in the judicial proceedings for placement of a child outside the family

2nd indent:

Article 23 of the Child Protection Act indicates that protection measures in family environment can be taken by referral to appropriate services in the community. Measures for protection through the use of social services are undertaken by the SAD at the request of parents, guardians, trustees, people who care for the child, or the child and at the discretion of SAD and are carried out by providers of social services for children or the SAD

CROATIA / CROATIE

Question 9a of the TQ / du QT

See the answers to questions 15b and 21e of the General Overview Questionnaire.

Also, within the regular health-care system the child's parents (the so-called non-abusing parent) also take parts in the treatment, most frequently in the following two ways:
1. through counselling with a professional, which focuses on the behaviour of the child and the behaviour towards the child at certain stages of the treatment;
2. through conversation and counselling that are intended for them so that they can express their feelings in relation to the sexual abuse of the child. The professional may assess that the parent is not coping well with the events and may suggest that the parent(s) undergo additional treatment with the therapist.

The involvement of parents in the treatment of a child also depends on the child's age: the younger the child, the greater the emphasis on working with the parent and strengthening his/her role as the primary assistance provider.

Under the Sexual Violence Protocol, extrainstitutional assistance and support involves wider measures of assistance and support to victims of sexual violence. In addition to counselling and/or psychotherapy (individual or group), these measures include working with family members, preparations for court proceedings and monitoring of the victim during the proceedings, as well as efforts to further improve the treatment of victims.

The Family Act[4] lays down measures for the protection of the rights and well-being of the child. They include removing the child from the family, i.e., depriving the parents of their right to live with the child and raise him/her. In such a case, some other person, institution, or legal person providing social welfare services is entrusted with the care and upbringing of the child. The length of time for which this measure is ordered must not exceed one year and since the measure taken is an urgent one, and the child's removal from his/her family, where he/she is at risk, is immediate, we may say that the removal is done in the child's best interests. Since the procedures in question involve the participation of social welfare centres, these centres are the first stop at which the victims' families may receive assistance in the form of advice as well as other types of assistance.

Question 15b of the General Questionnaire:
Paragraph 3 of Article 14 of the Convention requires from member states to intervene in terms of removing the victim from his/her environment where it is suspected that the parents or persons taking care of the child are involved in his/her sexual exploitation. The criminal law of the Republic of Croatia divides the said intervention into several stages. The CPA provides for the possibility of ordering the precautionary measure of removal from home. The said precautionary measure may be imposed on the defendant whose right to his/her home is thus also restricted in cases where the said criminal offence was committed against a child. The said measure represents a court-ordered removal from home for a

[4] Official Gazette 116/03, 17/04, 136/04, 107/07, 57/11 and 61/11.

period of time for which this precautionary measure has been ordered. Furthermore, the CA also provides for the possibility of ordering a special safety measure – removal from the shared household – against the convicted perpetrator of a criminal offence (which means upon the handing down of the sentence) of violence against a person he/she shares the household with if the risk that, were it not for the ordered measure, the criminal offence be recommitted is high. The implementation by a police officer of this safety measure against the person against whom it was ordered follows immediately upon the judgment becoming final, with time served in prison not being counted towards the length of time for which the measure has been imposed.

Moreover, a measure that is especially important is the measure provided for in Article 108 of the Family Act aimed at protecting the rights and well-being of the child. Under the said Article, the social welfare centre is required, immediately upon having been informed, to look into the matter, take measures to protect the child's rights, and institute non-contentious civil proceedings in which the court will deprive the parent(s) abusing or grossly violating parental responsibility of their right to parental care. This duty of the court also exists in cases (among others) where it has been established that the parent is sexually exploiting the child or inducing him/her to socially unacceptable behaviour. Furthermore, under Article 116 of the Family Act the court may in non-contentious judicial proceedings prohibit a parent, grand-mother or grand-father, sister or brother, or half-sister or half-brother who does not live with the child to approach the child without authorisation in certain places or within a certain distance. This decision must be taken immediately or no later than 60 days from the day the request is submitted.

Question 21e of the General Questionnaire:

During criminal proceedings both the victim and the immediate family members are protected through the ordering of the measure of investigative imprisonment against the defendant or the ordering of a precautionary measure where conditions for investigative imprisonment have been met but where it is estimated that the purpose will just as well be achieved by applying precautionary measures. One of the possible reasons for ordering investigative imprisonment against the defendant is "... obstructing criminal proceedings by influencing witnesses ...". Precautionary measures that may be ordered in a concrete case for the purpose of protecting the victim in accordance with the Convention include, for instance: prohibition to approach a certain person, prohibition to establish or maintain contact with a certain person, prohibition to stalk or harass the victim or another person, and removal from the home. The assessment of the need to prolong a precautionary measure is made every three months. Thus statutory regulations serve to ensure in the above described manner the safety of both the victim, his/her family and the other witnesses in the proceedings.

Moreover, the child victim is questioned in the manner provided by statute[123], whereby the revictimisation of the child victim is prevented. The revictimisation is also prevented by providing for victim data confidentiality and the exclusion of the public. The excluding of the public from the trial also indirectly serves to protect against further victimisation other persons appearing as witnesses.

The Protection against Domestic Violence Act[5] lays down protective measures aimed at preventing domestic violence, ensuring the necessary protection of the health and safety of the person exposed to violence, and eliminating the circumstances that favour or promote the commission of a new offence, all of which serves to avert the dangers which persons exposed to violence and other family members face.

The Act lays down the following protective measures: mandatory psychosocial treatment, prohibition to approach the victim of domestic violence, prohibition to harass or stalk the person exposed to violence, removal from the apartment, house or some other residential premise, mandatory treatment for addiction, and seizure of the item used or intended to be used in the commission of the offence.

DENMARK / DANEMARK

Question 9a of the TQ / du QT

See answers to questions 15(a) and 15(b) of the GOQ.

Question 15a of the General Questionnaire:
In September 2012, the Health and Medicines Authority published a report on the topic of sexual exploitation and abuse of children. The report presented a series of recommendations with regard to the establishment of Child Advocacy Centres (*børnehuse*), which are facilities for children who have been exposed to sexual offences where experts can provide help and assistance. The initiative was based on a joint agreement between the Ministry of Social Affairs, Children and Integration, the Ministry of Health and the Ministry of Justice to strengthen the cooperation between the national and regional institutions in relation to affairs concerning abuse of children.

Five Child Advocacy Centres have been established as a part of the initiative to enhance the joint effort to protect and support children who have been victims of assaults. The Child Advocacy Centres serve the local authorities to provide a safe, professional and coordinated effort with regard to treatment and investigation of potential exploitation and abuse.
Furthermore, a national knowledge centre, “Centre for Victims of Sexual Assaults”, which is placed partially in the Capital Region of Denmark and partially in the Region of Central Denmark, exists. The Centre has the responsibility to carry out research and develop standards, procedures and guidelines in relation to treatment of victims of sexual exploitation and abuse. To this end the Centre trains health care personnel and other professionals who work with people who have been sexually assaulted. Additionally, the Centre provides emergency assistance for people who have been subjected to rape or attempted rape, regardless of whether the victim wishes to report the assault to the police. The Centre offers examination and treatment 24 hours a day. The Centre is divided into three teams, among which there are special teams for children of 0-14 years of age and for adolescents of 15-18 years of age. The Centre also carries out research to enhance the national knowledge level of sexual violence and abuse.

[5] Official Gazette 137/09, 14/10 and 60/10.

Furthermore, there are eight centres in Denmark which provide specialised treatment, including psychological care, to victims of sexual violence and abuse. All centres offer emergency treatment, counseling, and care to people who have been exposed to sexual violence and abuse. From 2013, the Government has increased the level of financial support towards the eight Centres (additionally DKK 4.4m annually) in order to improve treatment and care.

Question 15b of the General Questionnaire:
In case of a well-founded suspicion of an offence with a maximum penalty of at least 18 months' imprisonment, the suspect may be taken into custody if this is necessary to prevent flight, further offences or interference with the investigation. The police may hold the suspect for an initial period not exceeding 24 hours. Before the expiration of this time, the suspect must be either released or brought before the court. If the conditions are fulfilled, the court may order a period of custody not exceeding 4 weeks. The order may be extended for a maximum period of 4 weeks at a time (if the conditions continue to be fulfilled). The suspect may not be taken into custody, and a period of custody may not be extended, if this would be a disproportionate measure in the circumstances.

In case of a well-founded suspicion of a violent or sexual offence with a maximum penalty of at least 18 months' imprisonment committed against a member of the suspect's household, the suspect may be ordered to leave his/her home if this is necessary to prevent further offences. Such order is issued by the police for a specified period, which may not exceed 4 weeks. The order may be extended for a maximum period of 4 weeks at a time (if the conditions continue to be fulfilled). The suspect may request that the police bring the matter before the court. The police must bring the matter before the court within 24 hours of receipt of the request. The order remains in force until the court has decided on the matter. An order to leave one's home may not be issued, and such order may not be extended, if this would be a disproportionate measure in the circumstances.
Pursuant to the Act on Social Services children can be placed outside the home if their parents or persons caring for the child are involved in sexual exploitation or sexual abuse.

FINLAND / FINLANDE

Question 9a of the TQ / du QT

See General Questionnaire, question 15 b).

Question 15b of the General Questionnaire:
Act on Restraining Orders (898/1998) allows for the alleged perpetrator to be removed from the family home. An inside-the-family restraining order may be imposed, if the person against whom the restraining order is applied for, judged by the threats he or she has made, his or her previous offences or other behaviour is likely to commit an offence against the life, health or liberty of the person who feels threatened, and the imposition of a restraining order is not unreasonable with regard to the severity of the impending offence, the circumstances of the persons living in the same household and other facts presented in the case (Section 2, paragraph 2). A person on whom an inside-the family restraining order has

been imposed must leave the residence where he or she and the person protected permanently live together, and he or she may not return there (Section 3, paragraph 2).
According to the Child Welfare Act children must be taken into care and substitute care must be provided for them by the municipal body responsible for social services if for example their health or development is seriously endangered by lack of care or other circumstances in which they are being brought up (Section 40). This naturally may include cases where the child has been sexually abused in their family environment.

FRANCE

Did not reply yet. / N'a pas encore répondu.

GREECE / GRÈCE

Question 9a of the TQ / du QT

Under Law 3500/2006 there is the possibility of removing the perpetrator for as long as it is needed from the family's house; of setting restraint orders such as not approaching the house, the school, the houses of close relatives, the child's school or residential care setting (art. 15 and 18). Though in practice the victim is sometimes the one being removed in virtue of the perpetrator ownership of the place of residence and other mostly economic constraints, it is noteworthy that this measure is closer to the child's best interests; however a possible removal of the child might be considered by him/her as "punishment" for having disclosed his/her abuse. Moreover, removing the child from its residence inflicts additional implications such as changing school, neighbourhood etc which can be experienced as secondary victimization by the child. Accordingly, whenever there are no constraints of economic nature such as the ones described above, the perpetrator is indeed removed from the family' place of residence.

Although it is provided that victims of domestic violence are accorded psychological and material support (Ibid., art. 21) there is no additional provision for people close to them. However, there is a provision in Law 3727/2008 (ratification of the Lanzarote Convention) for persons close to the victim to be accorded psychological support (Chapter A, art. 2 par.2).

ICELAND / ISLANDE

Question 9a of the TQ / du QT

1st indent:

See answers to question 15b) and 15c) of the GOQ below.

It should be noted that the removal of the perpetrator is generally the preferred course of action if the safety of the child is ensured and the child victim is supported by other family members, esp. the non-offending parent.

Question 15b of the General Questionnaire:

In Art. 37 of the Act on Child Protection it can be ruled that the alleged perpetrator be removed from the home if his presence is considered to present a risk to the child with regard to ill treatment, including sexual abuse. This also applies to injunctions on visitations, restraining orders or any other contact in whatever form with the child.

Art 24. – 29 of the Act on Child Protection specify the measures and procedures on interventions when a child is at risk, including the possibility of removing the child victim from his or her family environment in situations where the child is considered at risk of sexual abuse by a family member. The local child protection service can take emergency decisions on the placement of the child out site the home but needs to present the case for a District Court within 2 months of such ruling if longer duration of the placement is considered necessary. The court judge decides the duration of placement, which can either be up to a year or permanently in cases when it is regarded to be in the best interest of the child that parental rights are removed.

2nd indent:

See answers to question 15c). It should be added that the local child protection services have extensive legal obligations to support parents. Hence in situations where emergency psychological care is needed the parents would be provided appropriate support free of charge.

Question 15c of the General Questionnaire:

The conditions and duration of removal of the child from his or her home environment are solely based on an assessment of the safety and the best interest of the child. The *Barnahus* provides the medical and psychological support to the child victims in such situation. The local child protection and social services is responsible for supporting the non-offending parent and significant other for other appropriate support and services, including temporary housing, financial assistance, social counselling and psychological help.

ITALY / ITALIE

Question 9a of the TQ / du QT

Question 15 of the General Questionnaire:

As regards counselling services for the detection, diagnosis, evaluation and treatment of cases, this typology of services includes a variety of concrete initiatives: the creation of specialist teams of experts in maltreatment in the local services; the opening of specialist centres; the setting up of coordination groups for the diagnosis of situations of suspected sexual abuse. Depending on the cases, counselling may be given to the local social workers in charge of the case, or the case may be evaluated directly by the specialists, who may also deal with the minor and his/her family.

The facilities are managed either by the public services or by specialized third sector organizations.

A critical element is the clinical aspect of the long-term intervention, i.e. the psychological and therapeutic treatment of the ill-treated or abused child and of the ill-treating, abusing families and individuals. Indeed, the quality of services is not up to requirements because of the lack of specialized personnel: this is mainly due to the fact that most of the economic and professional resources are invested for the detection and evaluation of cases of abuse and not for their treatment.

Other services which provide protection also to minors are the anti-violence centres for women victims of psychological, economic, physical and sexual maltreatment. In particular, these centres also take measures to protect children who have witnessed violence and report also all forms of maltreatment and abuse suffered by the children of ill-treated women. The anti-violence centres were originally set up by voluntary women's organizations which developed professional skills and gradually got the recognition and support of the local authorities. *The work done by the anti-violence centres has made it possible to highlight the serious issue of children witnessing domestic violence*. The monitoring of this particular form of abuse has recently become a new research field and practices based on the coordination between centres for the protection of minors and anti-violence centres have been experimented to deal with it. This new kind of collaborative approach tries to overcome the old perception of a conflict between the protection of the child and the protection of the mother, who is still often perceived more as an incapable rather than as a traumatized individual (who suffered physical, psychological and often sexual abuse by her partner). The family shelters have experimented some specific psychological and educational measures to help children who witnessed violence and to provide support to parents. Moreover, new forms of treatment have been launched, such as the psycho-educational groups for children who witnessed violence and the psycho-social groups for abused mothers whose children have witnessed violence or have suffered maltreatment or sexual abuse.

The so-called **"**neutral places" are another instrument to evaluate and deal with situations of risk or of actual violence against children. The "neutral places" were originally created to favour the adult-child relationship in the cases of contrast and separation. Today, they are being used also as a way to monitor how the situation evolves in the cases in which a child has been removed from the family because of intra-family violence. In these cases, the adult-child relationship is observed and evaluated in order to decide whether the child can be reunited with his/her parents or with the non-abusing adult, as well as in the judicial proceedings to investigate allegations of abuse. The main functions of the "neutral places" are:

- observation and evaluation of the relationship, as well as of parenting skills, in the diagnostic phase;
- support and assistance to the adult-child relationship;
- monitoring and protection of the minor;
- "protected" meeting between children and adults.

The “neutral places” have only recently been created in Italy and their organization is still being experimented and discussed.
The crucial problem is to define who should be guaranteed the “right to visit” in a protected meeting. This aspect is particularly relevant in the cases in which the Juvenile Court orders that meetings between adults and children should resume while criminal investigations and experts’ examinations are still under way. Indeed, in such a situation, the child may be threatened or blackmailed, thus adding to his/her confusion and sense of guilt following the abuse or his/her removal from the family nucleus. In the field of maltreatment and sexual abuse, the use of the “neutral place” is often requested by the judicial authorities or by the local social and health care services.

As regards assistance to the victim during the criminal proceeding, this is ensured by Youth Social Services that carry out one-to-one interviews, interviews with family members, action and coordination with local social services, local health care services, shelters and anti-abuse centers.

Assistance is adapted to the victim’s age thanks to assessments made by multi-discipline teams. Moreover, pursuant to Art.4, para. 1, of Law no. 172/12, psychological and emotional support to the child victim is ensured in any stage and instance of the proceeding, also by groups, foundations, associations and organisations highly skilled in the field of assistance and support to victims of offences contrary to the said article. These organisations shall be enrolled in a specific list of persons entitled to that purpose and who may intervene, subject to the child’s agreement, and be admitted by the prosecuting authority.

Due account of the child's views, needs and concerns is realised pursuant to Law 27 May 1991, no. 176 “Ratification and Enforcement of the Convention on the Rights of the Child, made in New York on 20 November 1989”.

Furthermore, action is taken by regions, local authorities and the third sector in order to provide the necessary support for victims, their close relatives and for any person responsible for their care. This has been established by Italian Internal law, specifically with the article 609 decies of the Penal Code.

Art. 604 of the criminal code as amended by Art.10 of Law no. 269/98 provide measures 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.

Law no. 149/2001 «Amendments to Law no. 184 of 4 May 1983, on «Regulation of the adoption and foster care of minors», as well as to title VIII of volume one of the Civil Code» which applied the right for each minor to live and grow in the family, as is recognized by CRC.

As to amendments to the Civil Code implemented by Law no. 149/2001, the regulation above envisaged a significant form of protection of the minor from harmful behaviours of the parent, establishing that the Juvenile Court, when adopting a decision of disqualification

of the parental authority (art. 330 of the Italian Civil Code) or another appropriate decision (art. 333 of the Italian Civil Code), in the event there is “serious harm to the child”, can let not only the minor leave the family home, as was the original provision of the regulation, but also the violent parent or partner in cohabitation. In articles 330-333 of the Italian Civil Code the separation from the family home is a decision that is strictly ancillary to that regarding the disqualification or limitation of parental authority and, therefore, it always requires the taking of a main decision which affects it. Jurisprudence, however, appears to establish that art. 330 of the Italian Civil Code can be applied not only to abuse or maltreatment directly committed on the minor, but also to indirect ones, perpetrated against close relatives dear to him, such as seeing repeated physical aggressions to the mother by the father. In July 2007 Law no. 149/2001 came into force, relating to the obligation to appoint a defending attorney for parents and minors in adoptability proceedings and in proceedings for the limitation and loss of parental authority.

As to amendments made by Law no. 149/2001 to Law no. 184/1983, they add to the innovations made by Law no. 476/1998, Ratification of the Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Convention, 1993), through which the legislator had already introduced significant new elements and innovations with respect to adoptions.

Moreover, law no. 154/2001 “Measures for the protection against domestic violence”, introduced in Italian law new and more effective instruments to protect the victims of intra-family violence and, first and foremost, the minor. Law no. 154/2001 envisages two kinds of symmetric measures in the civil and criminal fields: the order for protection against family abuse (articles 342-bis, 342-ter of the Italian Civil Code) and the precautionary measure of the separation from the family home (art. 282-bis of the Code of Criminal Procedure), that attempts to fill the gaps of traditional forms of protection. The main objective is to provide fast and timely protection, aimed at interrupting the “cycle of violence” with respect to the very facts, i.e. aimed at stopping the harmful behaviour. Another objective of these measures is to avoid second traumas; by offering instruments of protection they tend to prevent the victims from being subject to the additional trauma of leaving their homes.

In the field of the civil code, the measure of separation envisaged by art. 342 bis, gives the opportunity to protect minors from harmful behaviours held both by the parents and by other partners in cohabitation. In the event the harmful behaviour is that of one parent, the rule keeps however the door open towards reconstructing the recovering family relationships: these measures do not envisage a final break of the relationship with one’s parents or spouse, unlike the situation of adoption or divorce.

A necessary requirement for the decision to be issued is the existence of serious threat to physical or moral integrity or to the freedom of the person who is victim of the abuse as per art. 342-bis of the Italian Civil Code. Protection measures as per art. 342 bis of the Italian Civil Code can be applied only upon request from one party and not ex officio by the judge: in spite of this, there is no doubt that judges give a reason for the adoption of the decision of separation not only on the basis of the direct aggression to the adult, but also by referring to the indirect violence on children in seeing the aggressions, since minors must always be considered as harmed by events of aggression against one of the parents or of the people

living under the same roof. Apart from the order to stop the harmful behaviour and to leave the family house, the content of the civil and criminal decision may include the order not to come near to places where the victim usually goes (workplace, domicile of the original family, of other relatives or of other people) or near places of education of the children of the couple, unless the removed relative is obliged to go to the same places because of his work. The judge can also order that an allowance is periodically paid when the people living under the same roof remain without appropriate means because of the decision of separation. The civil protective measure can include the ancillary decision regarding the action of local social services or of a family mediation centre, as well as of the association whose statutory purpose is the support and hospitality of women and minors or other subjects who are victims of abuse and have been maltreated.

In criminal terms, the protection of the minor according to law no. 154/2001 gives the opportunity to remove from the family home a family person who is violent against a minor if the judge, upon request from the public prosecutor, adopts the relevant precautionary measure, as is envisaged by art. 282-bis of the Code of Civil Procedure. The reasons for the application of the criminal decision are present in serious evidence of guilt as per art. 273 of the Code of Criminal Procedure (so called fumus commissi delicti), in the existence of at least one of the precautionary needs indicated in art. 274 Code of Criminal Procedure (so called pericula libertatis) and in the existence of specific limitations of the sanction as per art. 280 clause 1 Code of Criminal Procedure (a violent relative can be separated only in the presence of crimes committed or attempted punished with a life sentence or imprisonment of generally more than three years) i.e. in the presence of some compulsory hypothesis of crime, such as infringement of the obligations of family support (art. 570 Criminal Code), abuse of means of punishment (art. 571 Criminal Code), child prostitution and child pornography (art. 600-bis clause 2 and 600-ter clause 4 Criminal Code), possession of pornographic material (art. 600-quater Criminal Code), sexual abuse (art. 609-bis clause 3 Criminal Code), sexual acts with a minor (art. 609-quater clause 3 Criminal Code), corruption of a minor (art. 609-quinquies Criminal Code), gang rape (art. 609-bis clause 3, as is mentioned by art. 609-octies Criminal Code).
Critical issues. In criminal terms, also a minor who is victim of witnessed violence could enjoy direct protection, as is the case of aggressions immediately made against him/her. However, it should be pointed out that the adoption of the precautionary measure of the removal from the family home appears linked to overcoming two issues: that of framing the witnessed violence into one of the crimes envisaged by the Criminal Code (such as for example private violence as per art. 610 Criminal Code or family maltreatment or maltreatment against children as per art. 572 Criminal Code) and that of the problems in terms of evidence that public prosecution will necessarily face when substantiating episodes of witnessed violence.

Relevant texts:

Article 282-bis of the Code of Criminal Procedure
Removal from the family home.

1. By an order for removal from the family home the judge requires the defendant to leave the family home immediately, or not to return there, and not to enter it without the permission of the judge in charge of the case. The permission, if any, may establish particular modalities of access.
2. Moreover, should needs to protect the life of the victim or his/her close relatives exist, the judge may require the defendant not to come close to specified places usually attended by the victim, in particular his/her workplace, the place of residence of the family of origin or of close relatives, unless the contact is necessary for work-related reasons. In this case the judge shall stipulate the modalities and may impose restrictions.
3. At the request of the public prosecutor, the judge may also impose periodic maintenance payments in favour of the cohabitants who, due to the precautionary measure applied, find themselves without adequate financial means. The judge shall set the amount of the payment, taking account of the circumstances and the income of the debtor and shall determine the modalities and terms of payment. In addition, the judge may order, where required, that the payment be made directly to the beneficiary by the debtor's employer, by deducting the amount from the debtor's pay. The maintenance payment order shall constitute an enforcement order.
4. The measures provided for by paras. 2 and 3 may also be taken after the order under para. 1 has been issued, provided that it has not been revoked or, in any case, is no longer effective. The said measures, even if they have been taken subsequently, are no longer effective if the order under para. 1 is revoked or is no longer effective. Moreover, the order under para. 3, where it is in favour of the spouse or of the children, becomes no longer enforceable when an order as specified by Article 708 of the Code of Civil Procedure or another order by a civil judge concerning the financial and property relationship between the spouses or the children's maintenance has been issued.
5. The order under para. 3 can be varied if the situation of the maintenance debtor or that of the beneficiary changes, and it shall be revoked when cohabitation is resumed.
6. Where proceedings have been instituted for one of the offences provided for by Articles 570, 571, 582, only with regard to the cases which may be prosecuted *ex officio* or, in any case, have been perpetrated in aggravating circumstances, and by Articles 600, 600-bis, 600-ter, 600-quater, 600-septies 1, 600-septies 2, 601, 602, 609-bis, 609-ter, 609-quater, 609-quinquies and 609-octies and 612, para. 2, of the Criminal Code, and the offence has been committed against close relatives or the cohabitant, the measure may also be imposed beyond the limits of punishment laid down by Article 280, even with the surveillance measures prescribed by Article 275-bis.

Concerning, the National Authority for Children and Adolescents, it signed an agreement with the Department of Public Police that provides, among other measures, that implementation of in/formative sessions with the Police officials focused on the national and international legislation on child protection, with special attention to the new measures introduced as well as trainings on how to deal with offended children (victims and witnesses of violence and abuse).

Furthermore, the Authority is working, together with other stakeholders, on the issue of double victimization of the children and on the possibility of having them heard just once for the violence received or witnessed by the competent authorities.

LITHUANIA / LITUANIE

Question 9a of the TQ / du QT

Article 1321 of the Criminal Procedure Code of the Republic of Lithuania (hereinafter referred to as the CPC) stipulates a supervision measure – an obligation to live separately from the victim, i.e. the suspect may be obliged to live separately from the victim or there are reasonable grounds for considering that if the suspect lives together with the victim, he/she will attempt at unlawfully influencing the victim or commit new criminal acts against the victim or persons living together. When imposing an obligation to live separately from the victim, the suspect may also be obliged not to communicate or seek contact with the victim and persons living together and not to visit specified places visited by the victim or persons living together. A victim stays in the housing which was the permanent place of residence for the suspect and the victim.

Article 56(3) of the effective Republic of Lithuania Law on Fundamentals of Protection of the Rights of the Child establishes that when parents (father, mother) or another lawful representative of a child abuses the parental authority by committing acts of violence or otherwise causing danger to the child and therefore there is a real threat to the child's health or life, the state institution for the protection of the rights of the child or a state institution for the protection of the rights of the child together with the police shall immediately take the child away from the parents or any lawful representatives of the child and transfer him for guardianship (custody) in accordance with the procedure laid down by the Civil Code. In this case a police officer shall have the rights provided for in subparagraph 3 of paragraph 1 of Article 18 of the Republic of Lithuania Law on Police Activities. Having taken away the child, the state institution for the protection of the rights of the child shall immediately notify the child's parents or other representatives of the child about this fact. Taking the child away from his parents or other lawful representatives is also regulated by the Regulations of Temporary Child Guardianship (Custody). Paragraphs 7–7.6 of the above Regulations establish that the Child Rights Protection Division or a division together with the police (where necessary and seeking to ensure public order or security of participating persons) shall immediately, upon receiving information during their working hours about the abuse of the child by parents or other lawful representatives of the child or any other abuse of parental authority which may cause a real threat to the child's health or life or about a child left unsupervised by his parents or other family members thus causing danger to the child's health and safety, or about a found child, go to the child's home or any other place of stay; evaluate the environment and threat to the child's health, life and safety; where necessary, temporarily take the child away from his parents or any other place of stay; organise temporary accommodation of the child in accordance with the procedure prescribed by these Regulations; draw up a decision of the Child Rights Protection Division regarding taking the child away from his parents or any other place of stay as well as the

child's temporary accommodation act; urgently in writing inform the child's parents (if they are known) or other lawful representatives about the child's temporary taking and accommodation.

LUXEMBOURG

Question 9a of the TQ / du QT

1er alinéa

Oui, il y a possibilité de retirer l'enfant de son milieu familial lorsque les parents ou les personnes qui en ont la charge sont impliqués dans les faits d'abus sexuels dont il a été victime. Dans un tel cas, les modalités et la durée sont déterminées conformément à l'intérêt supérieur de l'enfant.

2ème alinéa :

Il n'y a pas de mesures législatives spécifiques prévues, mais il y a possibilité de contraindre les proches de l'enfant à se soumettre à un suivi thérapeutique via un jugement de maintien en milieu familial avec conditions (p.ex. suivi psychologique) ou bien incitation pour les proches d'entamer un suivi comme condition pour un éventuel retour de l'enfant dans son milieu familial (en cas de placement). En revanche, il n'existe pas de programme spécifique pour un suivi d'urgence.

MALTA/MALTE

Question 9a of the TQ / du QT

National law provides 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 through the issue of an interim care order in virtue of article 5 of the Children and Young Persons (Care Orders) Act of a care order in virtue of article 4 of the said Act. An interim care order is valid for twenty one days and may or may not be followed by a care order which is for an indefinite duration. The conditions and duration of the care order are determined by a Children and Young Persons Advisory Board who, upon the information provided by assigned social workers make recommendations to the competent Minister entrusted with the care of such minors, depending on the best interest of the child.

If criminal proceedings are pending the court may, if it so deems appropriate and with the consent of the alleged perpetrator, submit the accused to a treatment order in order for him or her to benefit from therapeutic assistance.

Child Protection Social Workers also recommend therapy for children who are victims of sexual abuse when the court deems so as appropriate following the child's testimony in court. This occurs after the child's testimony as there are no measures in place that allow a child access to psychological assistance prior to their testimony. A number of defence lawyers contest in court that giving therapy to a child before their testimony may result in

influencing the child and so prosecuting police have always requested that therapy is afforded after the child has given testimony. The child is nevertheless supported by school professionals and CPS social workers.

Psychologists are also utilised by Child Protection Services to assist in the investigation of cases of alleged sexual abuse in order to find the least harmful of ways of approaching such a delicate matter.

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Question 9a of the TQ / du QT

Under Law no. 45 of March 01, 2007 on prevention and combating domestic violence in cases of violence and / or abuse the following protective measures shall apply. The court shall, within 24 hours of receiving the request, issue an order of protection, which can assist the victim, applying to the aggressor the following measures:

a) an order to temporarily leave the joint dwelling or stay away from the victim's home without deciding on the ownership of the goods;
b) an order to stay away from the victim;
c) the obligation not to contact with the victim, children or other dependents to the victim;
d) prohibition of visiting the place of work and living of the victim;
e) an order, until the case is resolved, to contribute to the maintenance of children which he/she has in common with the victim;
f) an order to pay costs and damages caused by acts of violence, including medical expenses and the replacement or repair of destroyed or damaged property;
g) limiting unilateral disposal of common goods;
h) order to participate in a special program of treatment or counselling if such action is determined by the court to be necessary to reduce or eliminate violence;
i) establishment of a temporary visitation of children;
j) prohibition to keep and wear arms.

MONTENEGRO

Question 9a of the TQ / du QT

Child victims and their families are provided comprehensive protection and support through the multi-disciplinary approach.
In accordance with the Law on the Protection against Domestic Violence, the Strategy for Protection from Domestic Violence has been adopted in July 2011, while the Protocol on procedures in domestic violence cases was signed in November 2011. Signatories to the Protocol are: The Supreme Court, Ministry of Justice, Supreme Public Prosecutor’s Office, Ministry of Education, Ministry of Health, Ministry of Labour and Social Welfare, Police Administration and the Misdemeanour Council.

The objective of the Protocol is to establish and foster the establishment of multi-disciplinary cooperation with clearly defined procedures for each system. The protocol has been prepared in such a manner to respect the fundamental principles arising from all conventions and laws referred to in the Strategy for Protection from Domestic Violence, encompassing the comprehensive protection of the family from violence.

The Protocol regulates the joint work of all systems in the implementation of laws and conventions, and provides the obligation to take the necessary measures to ensure organisation, equipment and education of a sufficient number of specialised professionals dealing with domestic violence.

Actions taken by the social welfare centres when children are involved in domestic violence cases encompass the following:

In the case of knowledge / suspicion of the committed domestic violence in which the child is a victim (direct or indirect), the professional worker of the social welfare centre urgently / immediately reports the case to the police; urgently determines the plan of assistance and measures for the protection of child victim of domestic violence – while being guided by the principle of the best interests of the child in each specific case; appoints a guardian for the child if the parents are not able to perform this role, or if there is a conflict of interest between parents and child (special guardian); makes a decision on the removal of the child from the family only in exceptional cases, i.e. when it is impossible to find another safe place for the child victims of domestic violence; considers appropriate accommodation in a foster home if this is established as necessary and the only good solution for the child victim; continuously monitors the case and at least once a month visits the family in which the child victim of violence is staying; establishes and continuously maintains contact with experts in the health and educational institutions (preschool, primary and secondary schools) in the event that a child is a victim of domestic violence (either directly or indirectly); initiates civil proceedings before a competent court.

The social welfare centre also initiates and forms, together with representatives of state and non-governmental sectors, a professional team, tasked to: determine the plan of assistance and measures to protect the child victim of domestic violence and to coordinate the activities in the process of protection.

NETHERLANDS / PAYS BAS

Did not reply yet. / N’a pas encore répondu.

PORTUGAL

Question 9a of the TQ / du QT

Yes. The Portuguese legal system of protection of children and youngsters at risk (Law nr. 147/99, of 1st September), allows for the possibility of removing a child from his/her family environment when the carers are involved in acts of abuse or other type of ill treatment.

According to its Article 1, intervention with the goal to promote and protect the rights of the child or young person at risk so to ensure his/her well being and full development may take place in a number of situations, including in the case where the child is a victim of sexual abuse.

The best interest of the child (Article 4 of Law nr. 147/99) is the paramount principle guiding intervention next to the child, without prejudice to the consideration of other legitimate interests within the framework of plurality of interests at stake in the case.
In the case of sexual abuse in the circle of trust, removal of the child from the family environment is one of the possible measures of promotion and protection available to child care experts.

This removal may take place through various options: by placing the child with another family member (Article 35 (1) b)), confiding him/her to a suitable person (Article 35 (1) c)), support for the autonomy of life (Article 35 (1) d)), host into a family (Article 35 (1) e)), host into an institution (Article 35 (1) f)), trust the child to a selected person for adoption, or to an institution with a view to future adoption (Article 35 (1) g)).

In addition, removal may also take place according to the urgent procedure set forth in Articles 91 and 92 of the said Law nr. 147/99, which allows for the removal of the child in a maximum delay of 48 hours in the case where an actual or imminent danger to the life of the child exists and the holders of the parental powers or de facto guardians oppose to the removal. In these cases, the police authorities immediately report the fact to the Public Prosecutor and withdraw the child from the situation of danger, ensuring emergency protection in a temporary shelter or other suitable premises.
In addition, the Law on Domestic Violence (Law nr. 113/2009, of 17 September) has introduced the possibility of withdrawal of the perpetrator from the family house ensuring that this prohibition is enforced by means of electronic surveillance techniques, thus preserving the environment of the household, the daily routines of the victims and minimizing further victimisation.

The conditions and duration of the removal are always determined according to the best interests of the child and depend on the personal life project drawn for the situation at stake. Similarly, the choice of the particular removal measure that is to be applied relies on the interpretation of the best interests of the child. On the issue of urgent removal procedures please see the document prepared by the National Commission for the Protection of Children and Youngsters at Risk, available in:
http://www.cnpcjr.pt/preview_documentos.asp?r=1516&m=PDF

Psychological support to people who are close to the victim is provided by the Portuguese Association for Victim Support (APAV), a non-profit organization that has support from the State. APAV seeks to guarantee emotional and psychological support to victims of crime, their families and friends, providing them with free and confidential services.
The APAV provides support through its National Network of staff and their telephone helpline – 707 2000 77.

ROMANIA / ROUMANIE

Question 9a of the TQ / du QT

In order to protect the child who is abused or neglected or the child who, regardless of the reason, for his/her best interests, cannot be left in the care of his/her parents, Law no. 272/2004 provides for the measure of placement or the measure of emergency placement[6].

[6] **Chapter III - The special protection of the child who is temporarily or definitively deprived of the protection of his or her parents**
Section 1 - Joint provisions
Article 50
The special child protection is made up by the all measures, assistance and services aimed at the care and development of the child who is deprived, either temporarily or definitively, of the protection of his or her parents, or of the child who, in view of protecting his or her best interests, cannot be placed in the care of his or her parents.
Article 51
(1) The child receives the special protection stipulated by the present law, until reaching the full capacity to exercise his or her rights.
(2) Upon the request of the youngster, which is expressed following acquirement of full capacity to exercise his or her rights, if the youngster is continuing his or her studies in the regular, mass education system, the special protection is granted, according to the law, for the entire duration of his or her studies, but without exceeding the age of 26 years old.
(3) The youngster who has acquired full capacity to exercise his or her rights and has benefited from a special protection measure, but who is not continuing his or her studies and does not have the opportunity to return to the family, being confronted with the risk of social exclusion, receives special protection upon request for a period of maximum 2 years, for the purpose of facilitating his or her social integration. In case proof is made of the fact that the youngster has been offered a job and / or accommodation and that he or she has successively turned the offer down or has been deprived of them by his or her own fault, the provisions of the current paragraph are no longer applicable
Article 52
The special protection services are those listed under Article 108 - 110.
Article 53
(1) The special child protection measures are established and enforced based on the individualized protection plan.
(2) The plan stipulated under paragraph (1) is drafted and revised according to the methodological norms elaborated and approved by the National Authority for the Protection of the Rights of the Child.
(3) The special child protection measures for the child who has reached the age of 14 years old are established only with the child's consent. In case the child refuses to give his or her consent, the protection measures are established only by the court of law which, under strongly motivated circumstances, may overlook the child's refusal to express his or her consent for the proposed measure.
Article 54
(1) The general department for social security and child protection must draft the individualized protection plan immediately after receiving the request to enforce a special protection measure or immediately after the director of the general department for social security and child protection has decided on the emergency placement of the child.
(2) In the case of the child for whom a legal guardian has been appointed, the provisions of paragraph (1) are not applicable.
(3) Upon establishing the objectives of the individualized protection plan, special priority is given to the re-integration of the child in the family or, if this is not possible, the placement of the child in the extended family. The plan's objectives are established by obligatorily consulting the parents and the members of the extended family who have been identified.
(4) The individualized protection plan may stipulate the placement of the child in a residential type of service, only if no legal guardianship could be established or no placement with the extended family, with a maternal assistant or with another person or family could be achieved, in accordance with the present law.

Article 55
The special child protection measures are:
a) placement;
b) emergency placement;
c) specialized supervision.
Article 56
The beneficiaries of the special child protection measures established by the present law are:
a) the child whose parents are deceased, unknown, deprived of the exercise of parental rights or have been enforced the penalty of denial of parental rights, placed under interdiction, declared dead or missing by a court of law and for whom no legal guardianship could be established;
b) the child who, in view of protecting the his or her best interests, cannot be left in the care of the parents, for reasons for which the parents cannot be held accountable;
c) the abused or neglected child;
d) the foundling or the child who has been abandoned by the mother in a hospital ward;
e) the child who has committed an act stipulated by the criminal law and who is not criminally liable.
Article 57
The parents, as well as the child who has reached the age of 14 years old have the right to appeal in a court of law the special child protection measures established by the present law, and they have the right to receive free legal assistance, in accordance with the law.
Section 2 – Placement
Article 58
(1) The placement of the child represents a temporary special child protection measure, which, in accordance with the present law and by case, may be decided, as follows:
a) with a person or family;
b) with a maternal assistant;
c) in a residential service, stipulated under Article 110, paragraph (2) and licensed in accordance with the law.
(2) The person or family who is legally responsible for the placed child must have residence in Romania and must be evaluated by the general department for social security and child protection with regard to the moral warrantees and the material conditions that have to be fulfilled, in order to receive a child in placement.
Article 59
Throughout the entire duration of the placement measure, the domicile of the child is the same with that of the person, family, maternal assistant or the residential service who is legally responsible for the child.
Article 60
(1) The placement of the child who has not reached the age of 2 years old may only be decided with the extended or substitute family and it is forbidden to place him or her in a residential service.
(2) As an exception to the provisions stipulated under paragraph (1), the placement in a residential service of the child who has not reached the age of 2 years old may only occur in the case in which the child has severe disability and is dependent on specialized residential care services.
(3) The following issues will be targeted upon establishing the placement measure:
a) giving priority to the placement of the child in the extended or the substitute family;
b) placing the siblings together;
c) facilitating the parents' opportunity to exercise the right to visit the child and to maintain personal relations with the child.
Article 61
(1) The placement measure is decided by the child protection commission, if the consent of the parents has been granted, for the situations stipulated under article 56 b) and e).
(2) The placement measure is decided by the court of law, upon the request of the general department for social security and child protection:
a) for the child who is in the situation stipulated under article 56 a), as well as for the child who is in the situation stipulated under Article 56 c) and d), if it is necessary to replace the emergency placement measure decided by the general department for social security and child protection;
b) for the child who is in the situation stipulated under article 56 b) and e), when the consent of the parents or, if the case, of one of the parents has not been granted for enforcing this measure.
Article 62
(1) The parental rights and duties towards the child are maintained throughout the duration of the placement decided by the child protection commission.
(2) The parental rights and duties towards a child for whom a legal guardian could not be appointed and for whom the court of law has decided the placement measure are exercised and, respectively, fulfilled by the president of the county council, and by the Bucharest sector mayor, respectively.
(3) As an exception to the provisions stipulated under paragraph (2), the parents who have been deprived of their parental rights, as well as those who were enforced the penalty of interdiction of parental rights, still maintain the right to consent to the adoption of their child.

(4) The method of exercising the parental rights and fulfilling the parental duties regarding the person and the assets of the child who is in the situation stipulated under Article 56 c) and d) and Article 56 b) and e) is decided by the court of law.

Article 63

The child protection commission or, if the case, the court of law which has decided the placement of the child, will also determine the amount of the monthly contribution which the parents must make for the maintenance of the child, in accordance with the conditions stipulated by the Family Code. The amounts thus collected represent an income to the county budget and, respectively, to the budget of the Bucharest sector where the child is coming from.

Section 3 - Emergency placement

Article 64

(1) The emergency placement of the child is a temporary special child protection measure, which is undertaken in the situation of the abused or neglected child, as well as in the situation of the foundling or of the child abandoned in healthcare institutions.

(2) The provisions stipulated under Article 58 - 60 are properly enforced.

(3) Throughout the entire duration of the emergency placement, the exercise of parental rights is suspended de jure, until the court of law rules on maintaining or replacing this measure and on the exercise of parental rights. Throughout the suspension period, the parental rights and duties towards the child are exercised and fulfilled respectively, by the person, family, maternal assistant or by the head of the residential service which has received the child in emergency placement, and those regarding the assets of the child are exercised

and fulfilled, respectively, by the president of the county council or by the Bucharest sector mayor.

Article 65

(1) The emergency placement measure is decided by the director of the general department for social security and child protection from the administrative – territorial unit where the foundling or the child abandoned by the mother in a hospital ward or the abused or neglected child is located, in case there is no opposition from the representatives of the legal persons, or from the natural persons who take care of the respective child and ensure the child's protection.

(2) The emergency placement measure is decided by the court in accordance with the provisions stipulated under Article 94, paragraph (3).

Article 66

(1) In the case of the emergency placement measure decided by the general department for social security and child protection, the department has the duty to inform the court of law within 48 hours from the date when this measure was decided.

(2) The court of law will analyze the reasons based on which the general department for social security and child protection adopted the measure and will rule on either maintaining the emergency placement or replacing it with the placement measure, on the establishment of the legal guardianship, or on the re-integration of the child in his or her family. The court of law must also rule on the exercise of parental rights.

(3) If the emergency placement is decided by the court, the court will rule in accordance with Article 94, paragraph (4).

(…)

Article 94 - (1) The representatives of the legal persons, as well as the natural persons who are legally responsible or provide child protection must cooperate with the representatives of the general department for social security and child protection and offer them all necessary information for addressing the situations.

(2) In case when, following the verifications, the representatives of the general department for social security and child protection reach the conclusion that there are sound reasons to support the existence of an imminent dangerous situation for the child, as a result of child abuse and neglect, and they do not face any opposition from the persons referred to under paragraph (1), the director of the general department for social security and child protection will establish the emergency placement measure. The provisions stipulated under Articles 58 - 60, Article 64, paragraph (3) and Article 66 are properly enforced.

(3) In case the persons referred to under paragraph (1) refuse or prevent in any way the representatives of the general department for social security and child protection to conduct the verifications, and it is established that there are sound reasons to support the existence of an imminent dangerous situation for the child, as a result of child abuse and neglect, the general department for social security and child protection notifies the court of law, requesting the issuance of a presidential ordinance for the emergency placement of the child with a person, family, maternal assistant or in a residential service, which

is licensed in accordance with the law. The provisions stipulated under Articles 58 – 60 and Article 64, paragraph (3) are properly enforced.

(4) Within 48 hours from the date of executing the presidential ordinance through which the emergency placement measure was established, the general department for social security and child protection notifies the court of law, requesting it to issue a decree ruling on: the replacement of the emergency placement with a placement measure, the partial or complete termination of parental rights, as well as on the exercise of parental rights.

(…)

ARTICLE 108

(1) The day-care services are those services which provide the maintenance, re-establishment and development of the capacities of the child and of his or her parents, in order to overcome situations which may determine the child's separation from his or her family.

This is a special temporary protection measure, consisting in distancing the child from the harming environment and entrusting him or her, as appropriate, to a person or family, to a maternal assistant or a residential service, licensed according to the law.

Penal measures:

In respect of the individuals who have committed a crime, once with the main sentence, the court may also apply the complementary punishment of prohibition on the exercise of certain rights for a period which can vary between 1 and 5 years, including parental rights. This additional penalty may be applied if the main penalty is imprisonment or a fine and the court considers that it is necessary. Additional punishment runs from the final decision of the fine sentence, the sentence ordering probation under supervision or after the service of the imprisonment term after the termination of supervision term while on parole[7]. -

(2) Access to these services is made based on the service plan or, if the case, on the individualized protection plan, in accordance with the present law.
ARTICLE 109
The family-type services are those services which, at the domicile of a natural person or a family, provide the upbringing and care of the child who has been separated, either temporarily or definitively, from his or her parents, as a result of enforcing the placement measure, in accordance with the present law.
ARTICLE 109^1
(1) Children may be placed in the care of families and persons who reached the age of 18 years old, have fill exercise capacity, have their residence in Romania and present the moral guarantees and the material means needed to raise and care for the child who is separated, temporary or definitively, from his or her parents.
(2) In order to decide the placement measure, the general directorate for social welfare and child protection shall take the necessary steps for the identification of the extended family members next to whom the child enjoyed his or her family life, in order to consult them and to involve them in the establishment/revision of the objectives of the protection personalized plan.
(3) The activity of the person certified as maternal assistant, according to the law, shall be carried on pursuant to a contract of a special nature, related to child protection, and signed with the directorate or a private accredited institution having the following characteristics:
a) The activity to raise, educate and care for the children in placement, which is carried on at the residential premises;
b) The work schedule is imposed by the children's needs;
c) The spare time planning is made according to the schedule of the family and the children in placement;
d) The legal vacation ensures the continuity of the activity, except for the cases in which, during this vacation period, the separation from the child in placement is authorized by the directorate.
(4) The individual work contract is signed on the date when the director is issuing the emergency placement order or when the commission for child protection/court issued the decision on the placement.
ARTICLE 110
(1) The residential services are those services which ensure the protection, upbringing and care of the child who has been separated, either temporarily or definitively, from his or her parents as a result of enforcing the placement measure, in accordance with the present law.
(2) Residential services category includes all services which provide accommodation for more than 24 hours.
(3) The maternal centers are also considered residential services.
(4) The residential services which belong to the public administration authorities are organized only within the structure of the general department for social security and child protection, as functional parts of these departments, with no legal status.
(5) The residential services are organized based on the family model and may have specialized characteristics, according to the needs of the placed children.

[7] The New Penal Code (Law no. 286/2010 on Penal Code)
ARTICLE 55
Complementary penalties
The complementary penalties are the following:
a) prohibition on the exercise of certain rights;
b) military degradation;
c) publishing the conviction decision.

Assistance for the children who are victims of violent acts is described in detail by the GD no. 49/2011, annex 1, chapter IV on case management in these situations. During this process, the child's needs and opinions will be taken into consideration, according to his or her age and maturity, and services shall be granted to the child, the parents/legal guardian and other individuals important for the child. The services and interventions shall have in view all the areas in which the child may have needs, namely medical, rehabilitation, social, protection or educational services, as well as others.

From the information received from the courts, it was noted that, in child sexual abuse cases, the victims were accommodated in assistance centers for victims or, in cases when the abuse was committed in family environment, the victim was retreated from the family and the measure of his/her placement was taken.

There were cases when the instance decided that the victim be included in a protection and conciliation program of the Probation Service.

SAN MARINO / SAINT-MARIN

Did not reply yet. / N'a pas encore répondu.

(...)

ARTICLE 66

Content of the complementary measure of prohibiting the exercise of certain rights

(1) The complementary measure of prohibiting the exercise of certain rights consists in prohibiting the exercise of one or more of the following rights for a period of one to 5 years:

a) the right to be elected in the public authorities or in any other public positions;

b) the right to fill in a position involving the exercise of state authority;

c) the right of an alien to stay on Romanian territory;

d) the right to elect;

e) parental rights;

f) the right to be a tutor or guardian;

g) the right to fill in a position, to practice a profession or to develop an activity which has the nature of the one by means of which the offender committed the crime;

h) the right to possess, carry and use any weapon;

i) the right to drive vehicles or certain types of vehicles established by court;

j) the right to leave the Romanian territory;

k) the right to fill any leading position within a legal entity of public law;

l) the right to be in certain places established by court;

m) the right to be in certain places or to go to certain sport or cultural events or other public meetings, as established by the court;

n) the right to communicate with the victim or with the victims' family members, with the persons with whom the crime was committed or with other persons established by court or to approach these persons;

o) the right to approach the home, work place, school or other places where the victim carries on his or her social activities, according to the terms set by the court of law.

(2) When the law provides for the interdiction of the right to fill in a public office, the court shall also prohibit the exercise of the rights provisioned in paragraph (1) a) and b).

(3) The prohibition on the exercise of the rights mentioned in paragraph 1, letter a) and b) shall be ordered jointly.

(4) The penalty provisioned in paragraph (1) c) shall not be ordered when there are well founded reasons to believe that the life of the expelled individual is in danger or that such individual shall be submitted to torture or other inhuman or degrading treatments in the state of expulsion.

(5) When ordering the prohibition of one of the right provisioned in paragraph (1) n) and o), the court shall individualize concretely the content of this penalty, taking into account the circumstances of the case.

SERBIA / SERBIE

Question 9a of the TQ / du QT

Ministry of Labour, Employment and Social Policy:

Under the Family Code of the Republic of Serbia, protection measure from domestic violence is envisaged on the basis of which the court shall issue an injunction ordering the offender (perpetrator of violence) to be evicted from the family apartment, or house, regardless of the ownership title over the immovable property, or real estate lease. Pronouncement of this measure is purposeful if the individual – member of family – has committed violence (sexual abuse), while it is believed that other members of the family may protect the child, i.e. may provide assistance and support to the child to overcome the consequences. Under the Family Code of the Republic of Serbia: a child, legal representative – other parent, public prosecutor or centre for social work – guardianship authority, may press charges seeking protection from violence/domestic violence/abuse. Also, a child, other parent and centre for social work – guardianship authority, in order to protect the right of the child, may press charges seeking the violator to become deprived of parental responsibility. In both cases, the court proceedings are deemed highly urgent. If several members of family (by acting or omission) are involved in child abuse, centre for social work is bound to immediately (within 24 hours), separates the child from the family and place it under temporary guardianship protection.

A team/individual tasked with assessment is bound to urgently assess the risk to which the child is exposed (in particular if the abuse has been committed within the family), and to decide whether it is necessary to immediately undertake all urgent measures of intervention to protect the child. The measures for which centre for social work is responsible to undertake include: placement of a child to a kinship or foster family, placement in a residential care facility and placement under immediate guardianship of the centre for social work – guardianship authority. All the measures under the family law are undertaken taking into account the best interest of the child. Measures of protection from domestic violence may be extended as long as there are reasons on account of which the measure has been ordered in the first place.

SPAIN / ESPAGNE

Question 9a of the TQ / du QT

Article 192 of the Spanish Criminal Code reads as follows:

“The ascendants, tutors, carers, minders, teachers or any other person in charge *de facto* or *de jure* of the minor or incapacitated person, who acted as principals or accomplices of commit the felonies included in this Title, shall be punished with the relevant punishment, in its upper half.

This rule shall not be applied when the circumstance it contains is specifically included in the definition of the crime concerned.

The Judge or Court of Law may also hand down a reasoned punishment of special barring from the exercise of parental rights, guardianship, care, safekeeping, public employment and office or practice of the profession or trade, for the term of six months to six years, or permanent deprivation of parental rights".

''THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA'' / ''L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE''

Did not reply yet. / N'a pas encore répondu.

TURKEY / TURQUIE

Question 9a of the TQ / du QT

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.

UKRAINE

Question 9a of the TQ / du QT

Response to this question is contained in elaborations for question 15 “Assistance to victims” of the general overview questionnaire.

Question 15a of the General Questionnaire:
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.

Question 15b of the General Questionnaire:
Yes, in accordance to current law.
In accordance with provisions of Paragraph five, Article 194 of the CPCU while imposing a measure of restraint not involving custody the investigating judge / court could impose on the suspect / accused the obligation to appear upon each request before court or any other specified public authority and also perform one or more of the obligations the necessity imposing which has been proven by the public prosecutor, namely:
1) appear before the specified official with certain periodicity;
2) not to leave the locality where he or she is registered, resides or stays, without permission of the investigator, public prosecutor or court;
3) inform the investigator, public prosecutor or court on the change of place of residence and/or employment;
4) abstain from communicating with any individual specified by investigating judge, court or communicate with such individual on conditions imposed by investigating judge, court;

5) do not visit places specified by investigating judge or court;
6) undergo treatment for drug or alcohol addiction;
7) make efforts to find a job or to enter an educational institution;
8) surrender his or her internal ID, foreign travel passport(s) or other documents authorizing departure from and arrival to Ukraine;
9) carry an electronic tracking device.

At the same time, in accordance with Item 2, Paragraph one, Article 56 of the CPCU, throughout the entire criminal proceedings, a victim shall have the right to know the substance of suspicion and charges, be informed on imposition, change or revocation of measures taken in respect of the suspect / accused to make criminal proceedings possible and pre-trial investigation terminated.

Question 15c of the General Questionnaire:
All activities are in line with the legislation and are undertaken in the best interest of the child.

Question 15d of the General Questionnaire:
In accordance with Paragraph one, Article 7 of the CCU, Citizens of Ukraine and stateless persons permanently residing in Ukraine, who have committed offenses outside Ukraine, shall be criminally liable under this Code, unless otherwise provided by the international treaties of Ukraine, the consent to the binding effect of which has been granted by the Verkhovna Rada of Ukraine.

Foreign nationals or stateless persons not residing permanently in Ukraine, who have committed criminal offenses outside Ukraine, shall be criminally liable in Ukraine under this Code in such cases as provided for by the international treaties, or if they have committed any of the special grave offenses against rights and freedoms of Ukrainian citizens or Ukraine as prescribed by this Code (Article 8 of the CCU).

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III – Other stakeholders / Autres parties prenantes

UNICEF (ICELAND / ISLANDE)

Question 9a of the TQ

Articles 26-31 of the Child Protection Act deal with custody removal and all measures that can be taken without the consent of parents; they also deal with placement of children out of their homes. There is no mention of a possibility to remove the perpetrator, only the child.[8]

[8] English version of the Child Protection Act:
http://eng.velferdarraduneyti.is/media/acrobat-enskar_sidur/Child-Protection-Act-as-amended-2013.pdf