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## **LANZAROTE COMMITTEE / COMITE DE LANZAROTE**

### **Compilation of Replies to Question 12 (Jurisdiction rules)**

of the Thematic Questionnaire on the protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)

### **Compilation des réponses à la Question 12 (Règles de compétence)**

du Questionnaire Thématique sur la protection des enfants contre l'exploitation et les abus sexuels facilités par les technologies de l'information et de la communication (TIC)

**Question 12. Jurisdiction rules**

Please indicate which jurisdiction rules apply under which conditions to the offences described above (questions 9-11) when the victim is not present in the Party when the offence is committed or when the offender is not present in the Party when the offence is committed.

**Question 12. Règles de compétence**

Veillez indiquer quelles règles de compétence s'appliquent, et dans quelles conditions, aux infractions décrites ci-dessus (questions 9 à 11) lorsque la victime ne se trouve pas dans l'Etat Partie au moment où l'infraction est commise ou lorsque le délinquant ne se trouve pas dans l'Etat Partie au moment où l'infraction est commise.

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## COMPILATION of replies / des réponses<sup>1</sup>

### States to be assessed / Etats devant faire l'objet du suivi

#### **ALBANIA / ALBANIE**

##### **State replies / Réponses de l'Etat**

Based on the current legislation, the Albanian law enforcement and justice would not have jurisdiction to follow up such cases, unless the victim or the perpetrator are in Albania or the storage is made in the country or the image was generated in the country.

##### **Comments sent by / Commentaires envoyés par ECPAT, CRCA, ALO 116 and / et ANYN**

Based on the current legislation, the Albanian law enforcement and justice would not have jurisdiction to follow up such cases, unless the victim or the perpetrator are in Albania or the storage is made in the country or the image was generated in the country.

#### **ANDORRA / ANDORRE**

##### **State replies / Réponses de l'Etat**

L'article 8 du Code pénal andorran régit l'application du droit pénal dans l'espace.

###### ARTICLE 8 CP

1.- Le droit pénal andorran s'applique aux infractions tentées ou consommées sur le territoire de la Principauté d'Andorre ainsi qu'aux infractions connexes ou indivisibles qui ont été tentées ou commises en dehors du territoire andorran.

2. - La loi pénale andorrane s'applique aux infractions tentées ou consommées à bord des navires, des plateformes fixes et des aéronefs andorrans et de l'espace aérien andorran. Il s'applique également lorsqu'un aéronef atterrit sur le territoire andorran.

3.- La loi pénale andorrane s'applique à toute infraction pénale tentée ou consommée en dehors du territoire de la Principauté d'Andorre par une personne de nationalité andorrane.

4.- Dans les cas des points 2 et 3 ci-dessus, une infraction pénale ne peut être poursuivie que si les conditions suivantes sont remplies:

a) Que l'infraction a le caractère d'un crime dans l'État où elle a été commise et qu'il n'y ait pas de prescription du délit.

c) Qu'il y ait plainte du Procureur général

[...]

b) Aux termes des Conventions et des infractions visées à la lettre d) ci-dessous, le droit pénal andorran s'applique également aux infractions pénales tentées ou consommées en dehors du territoire de la

<sup>1</sup> 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](http://www.coe.int/lanzarote)

Principauté d'Andorre par un étranger qui est un résident légal, ou lorsque la victime est une personne étrangère qui est un résident légal, ou par une personne étrangère qui réside ou non si un fonctionnaire ou une autorité andorrane est impliqué dans l'infraction.

c) Dans les cas établis dans des Conventions et en relation avec les infractions citées dans la lettre d) ci-dessous, les prescriptions du paragraphe 4 (a) et (c) du présent article ne s'appliquent pas lorsque le responsable de l'infraction est un ressortissant andorran, un étranger résident légal dans la Principauté d'Andorre, un étranger qui n'est pas un résident, mais qui est en Andorre et ne peut être extradé en raison de sa nationalité, ou un étranger qui réside ou n'est pas résident si l'infraction met en cause un fonctionnaire ou une autorité andorrane.

d) Les Conventions et infractions visées aux points b) et c) ci-dessus sont les suivantes :

Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels, faite à Lanzarote, le 25 octobre 2007.

[...]

8.- La loi pénale andorrane s'applique aux crimes tentés ou consommés en dehors du territoire de la Principauté d'Andorre qui impliquent, conformément à la loi andorrane, une peine dont la limite maximale est supérieure à six ans de prison et ceux pouvant être qualifiés de génocide, de torture, de terrorisme, de trafic de drogue, de trafic d'armes, de contrefaçon de monnaie, de blanchiment d'argent et de titres, de piratage, de saisie illégale d'aéronefs, d'esclavage, de trafic de mineurs, d'infractions sexuelles contre mineurs et les autres crimes pour lesquels un traité international en vigueur en Andorre prévoit cette disposition, à condition que la personne responsable n'ait pas été acquittée, pardonnée ou condamnée pour l'infraction ou qui, dans ce dernier cas, n'a pas purgé sa peine. Au cas où il aurait purgé sa peine partiellement, il faudrait en tenir compte afin de réduire proportionnellement celle qui lui correspondrait.

## **AUSTRIA / AUTRICHE**

### **State replies / Réponses de l'Etat**

According to Section 62 of the CC, the provisions of the Austrian Criminal Code are applicable to all offences which have been committed in Austria. They also apply to offences committed on board of an Austrian ship or aircraft, no matter where it is located (Section 63). According to Art. 67 para 2 CC an offence has been committed in every location in which the person engaged or ought to have engaged in the prescribed conduct or in the location in which a result element of the offence, in whole or in part, occurred or in the belief of the person should have occurred.

According to Section 64 par. 1 subpar. 4a of CC the provisions of Austrian law, regardless of the provisions of the law in the territory in which the offence has been committed, also apply to criminal offences which have been committed abroad, if they constitute, inter alia, a severe coercion under Section 106 par. 1 subpar. 3, rape (Sec 201), sexual coercion (Sec 202), sexual abuse of a defenceless or psychologically impaired person (Sec 205), severe sexual abuse of minors (Sec 206), sexual abuse of minors (Sec 207), pornographic representations involving persons under age under Section 207a par. 1 and 2, sexual abuse of juveniles (Sec 207b), abuse of a position of authority (Sec 212), promotion of prostitution and pornographic performances involving persons under age (Sec 215a), transnational prostitution trade (Sec 217), **and**

1. either the perpetrator or the victim is an Austrian national or has his/her habitual residence in Austria,  
**or**

2. the offence impairs other Austrian interests **or**

3. the perpetrator was an alien at the time the offence was committed, is staying in Austria and cannot be extradited.

As far as Austrian jurisdiction is not already established on ground of the aforementioned provisions, the general provisions of Section 65 of the CC may also apply (in case of offences committed abroad). Under this provision, Austrian nationals as well as foreign nationals caught in Austria who cannot be extradited on other ground than the character of their offence, are subject to Austrian jurisdiction also for offences committed abroad, provided that the principle of double criminality applies.

## **BELGIUM / BELGIQUE**

### **State replies / Réponses de l'Etat**

Si l'infraction est localisée en Belgique (en application de la théorie de l'ubiquité selon laquelle l'infraction est réputée commise sur le territoire du Royaume dès lors qu'un de ses éléments constitutifs ou aggravants a eu lieu matériellement sur ce territoire), l'article 3 du Code pénal est applicable.

Art. 3. « L'infraction commise sur le territoire du royaume, par des Belges ou par des étrangers, est punie conformément aux dispositions des lois belges. »

Si l'infraction est localisée à l'étranger, les articles 7, 10, 5°, 10ter, 11, 12 et 12bis du titre préliminaire au code de procédure pénale sont applicables.

Art. 7. « § 1. Tout Belge ou toute personne ayant sa résidence principale sur le territoire du Royaume qui, hors du territoire du Royaume, se sera rendu coupable d'un fait qualifié crime ou délit par la loi belge pourra être poursuivi en Belgique si le fait est puni par la législation du pays où il a été commis.

§ 2. Si l'infraction a été commise contre un étranger, la poursuite ne pourra avoir lieu que sur réquisition, du ministère public et devra, en outre, être précédée d'une plainte de l'étranger offensé ou de sa famille ou d'un avis officiel donné à l'autorité belge par l'autorité du pays où l'infraction a été commise.

(...) .»

Art. 10. « Hormis dans les cas visés aux articles 6 et 7, § 1<sup>er</sup>, pourra être poursuivi en Belgique l'étranger qui aura commis hors du territoire du Royaume :

(...)

5° Un crime contre un ressortissant belge, si le fait est punissable en vertu de la législation du pays où il a été commis d'une peine dont le maximum dépasse cinq ans de privation de liberté.

(...) »

Art. 10ter. (*compétence universelle*) « Pourra être poursuivie en Belgique toute personne qui aura commis hors du territoire du Royaume :

1° une des infractions prévues aux articles 379, 380, 381, 383bis, §§ 1<sup>er</sup> et 3, 433quinquies à 433octies du Code pénal];

2° une des infractions prévues aux articles 371/1 à 377, 377quater et 409, du même Code si le fait a été commis sur la personne d'un mineur ;

(...) . »

Nb : Comme les infractions prévues à l'article 383bis, §2, (possession d'images pédopornographiques) ne sont pas visées à l'article 10ter, les poursuites de ces infractions doivent être faites sur base des articles 7, 10, 5°, ou, le cas échéant, 12bis.

Art. 11. « L'étranger coauteur ou complice d'un crime commis hors du territoire du royaume, par un Belge, pourra être poursuivi en Belgique, conjointement avec le Belge inculqué, ou après la condamnation de celui-ci. »

Art. 12 (*condition de recevabilité des poursuites*). « La poursuite des infractions dont il s'agit dans le présent chapitre n'aura lieu que si l'inculpé est trouvé en Belgique, sauf dans les cas visés par :

(...)

5° l'article 12bis.

Toutefois, lorsque l'infraction a été commise en temps de guerre, la poursuite pourra avoir lieu, si l'inculpé est Belge, dans tous les cas, même s'il n'est pas trouvé en Belgique, et, si l'inculpé est étranger, en plus des cas prévus à l'alinéa 1, s'il est trouvé en pays ennemi ou si son extradition peut être obtenue. »

Art. 12bis (*application à titre subsidiaire*). « Hormis les cas visés aux articles 6 à 11, les juridictions belges sont également compétentes pour connaître des infractions commises hors du territoire du Royaume et visées par une règle de droit international conventionnelle ou coutumière ou une règle de droit dérivé de l'Union européenne liant la Belgique, lorsque cette règle lui impose, de quelque manière que ce soit, de soumettre l'affaire à ses autorités compétentes pour l'exercice des poursuites.

Les poursuites, en ce compris l'instruction, ne peuvent être engagées qu'à la requête du procureur fédéral qui apprécie les plaintes éventuelles.

Saisi d'une plainte en application des alinéas précédents, le procureur fédéral requiert le juge d'instruction d'instruire cette plainte sauf si :

1° la plainte est manifestement non fondée; ou

2° les faits relevés dans la plainte ne correspondent pas à une qualification des infractions visées au livre II, titre Ibis, du Code pénal ou à toute autre infraction internationale incriminée par un traité liant la Belgique; ou

3° une action publique recevable ne peut résulter de cette plainte; ou

4° des circonstances concrètes de l'affaire, il ressort que, dans l'intérêt d'une bonne administration de la justice et dans le respect des obligations internationales de la Belgique, cette affaire devrait être portée soit devant les juridictions internationales, soit devant la juridiction du lieu où les faits ont été commis, soit devant la juridiction de l'Etat dont l'auteur est ressortissant ou celle du lieu où il peut être trouvé, et pour autant que cette juridiction présente les qualités d'indépendance, d'impartialité et d'équité, tel que cela peut notamment ressortir des engagements internationaux relevant liant la Belgique et cet Etat.

Si le procureur fédéral est d'avis qu'une ou plusieurs des conditions énoncées à l'alinéa 3, 1°, 2° et 3° sont remplies, il prend devant la chambre des mises en accusation de la cour d'appel de Bruxelles des réquisitions tendant à faire déclarer, selon les cas, qu'il n'y a pas lieu à poursuivre ou que l'action publique n'est pas recevable. Le procureur fédéral est seul entendu.



Lorsque la chambre des mises en accusation constate qu'aucune des conditions énoncées à l'alinéa 3, 1°, 2° et 3° n'est remplie, elle désigne le juge d'instruction territorialement compétent et indique les faits sur lesquels portera l'instruction. Il est ensuite procédé conformément au droit commun.

Le procureur fédéral a le droit de former un pourvoi en cassation contre les arrêts rendus en application des alinéas 4 et 5. Dans tous les cas, ce pourvoi sera formé dans les quinze jours à compter du prononcé de l'arrêt.

Dans le cas prévu à l'alinéa 3, 3°, le procureur fédéral notifie au Ministre de la Justice l'arrêt de la chambre des mises en accusation lorsque cet arrêt n'est plus susceptible de recours. Lorsque les faits ont été commis après le 30 juin 2002 et qu'ils relèvent de la compétence matérielle de la Cour pénale internationale, le Ministre de la Justice informe la Cour pénale internationale des faits.

Dans le cas prévu à l'alinéa 3, 4°, le procureur fédéral classe l'affaire sans suite et notifie sa décision au Ministre de la Justice. Cette décision de classement sans suite n'est susceptible d'aucun recours. Lorsque les faits ont été commis après le 30 juin 2002 et qu'ils relèvent de la compétence matérielle de la Cour pénale internationale, le Ministre de la Justice informe la Cour pénale internationale des faits. »

## **BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE**

### **State replies / Réponses de l'Etat**

Information is not available.

## **BULGARIA / BULGARIE**

### **State replies / Réponses de l'Etat**

#### **Ministry of Justice:**

The following provisions apply:

„Criminal Code:  
GENERAL PART

Chapter One „Objective and scope of application of the Criminal Code“

Section II „Scope of application of the Criminal Code“

#### Article 3

(1) The Criminal Code shall apply to all crimes committed on the territory of the Republic of Bulgaria.

(2) The issue of liability of foreign citizens who enjoy immunity with respect to the penal jurisdiction of the Republic of Bulgaria shall be decided in compliance with the norms of international law adopted thereby.

#### Article 4

(1) The Criminal Code shall apply to the Bulgarian citizens also for crimes committed by them abroad.

(2) (Amended, SG No. 75/2006) No citizen of the Republic of Bulgaria can be transferred to another state or an international court of justice for the purposes of prosecution, unless this has been provided for in an international agreement, which has been ratified, published and entered into force in respect to the Republic of Bulgaria.

#### Article 5

The Criminal Code shall also apply to foreign citizens who have committed crimes of general nature abroad, whereby the interests of the Republic of Bulgaria or of Bulgarian citizens have been affected.

#### Article 6

(1) The Criminal Code shall also apply to foreign citizens who have committed abroad crimes against peace and humanity, whereby the interests of another state or foreign citizens have been affected.

(2) The Criminal Code shall also apply to other crimes committed by foreign citizens abroad, where this is stipulated in an international agreement, to which the Republic of Bulgaria is a party.

#### Article 7

In the cases of Articles 4 and 5 the pre-trial detention and the punishment served abroad shall be deducted. Where the two punishments are different in kind, the punishment served abroad shall be taken into consideration in determining the punishment by the court.

#### Article 8

(Previous Article 8, SG No. 33/2011, effective 27.05.2011)

(1) Any sentence of a foreign court for a crime to which the Bulgarian Criminal Code is applicable shall be taken into consideration in the cases specified in an international agreement to which the Republic of Bulgaria is a party.

(2) (New, SG No. 33/2011, effective 27.05.2011) Any binding conviction decreed in another EU Member State for an act which constitutes a crime according the Bulgarian Criminal Code shall be taken into consideration in every criminal proceedings against the same person conducted in the Republic of Bulgaria.“

„Criminal Procedure Code:

#### Article 4 „Ratione loci“

(1) Criminal proceedings instituted by the authorities of another state or a sentence in force issued by a court in another state, said proceedings or sentence not being recognised in pursuance of this Code, shall be no obstacle to the institution of criminal proceedings by the authorities in the Republic of Bulgaria in respect of the same criminal offence against the same individual.

(2) (Amended, SG No. 15/2010) A sentence in force issued by a court in another state, which has not been recognised in pursuance of the Bulgarian legislation, shall not be subject to enforcement by the authorities of the Republic of Bulgaria.

(3) The provisions of Paragraphs 1 and 2 shall not apply if otherwise provided for by an international treaty to which the Republic of Bulgaria is a party where said treaty has been ratified, publicised and has entered in force.“

## **CROATIA / CROATIE**

### **State replies / Réponses de l'Etat**

The provision of Article 14 of the Criminal Code prescribes that criminal legislation of the Republic of Croatia shall be applied to its national or a person who has his permanent residence in its territory who outside the territory of the Republic of Croatia commits a criminal offence if the act is a criminal offence at the locality of its commission. Furthermore, the provision of paragraph 3 of the same Article prescribes that criminal legislation of the Republic of Croatia shall apply to criminal offences under

Article 163 of the Criminal Code and Article 166 of the Criminal Code even if the act is not a criminal offence at the locality of its commission.

The provision of Article 15 of the Criminal Code prescribes that the criminal legislation of the Republic of Croatia shall apply to an alien who, outside the territory of the Republic of Croatia, perpetrates a criminal offence against a Croatian national or a person with a permanent residence in the Republic of Croatia, if the act is also a criminal offence at the locality of its commission.

The provision of Article 16 of the Criminal Code prescribes that the criminal legislation of the Republic of Croatia shall apply to anyone who outside of its territory commits any of the criminal offences which the Republic of Croatia is required to punish under an international treaty even though committed abroad.

The provision of Article 17 of the Criminal Code prescribes that the criminal legislation of the Republic of Croatia shall apply to an alien who outside its territory commits a criminal offence for which under the Croatian law a punishment of five years of imprisonment or a more severe penalty may be imposed, if the act is a criminal offence at the locality of its commission and if the extradition of the perpetrator is permitted under the law or an international treaty but has not been made.

The provision of Article 18 para 7 of the Criminal Code prescribes that in the case referred to in Articles 14, 15, 16 and 17 of the Criminal Code criminal proceedings shall be instituted only if the perpetrator is present on the territory of the Republic of Croatia.

## **CYPRUS / CHYPRE**

### **State replies / Réponses de l'Etat**

According to the jurisdiction rules the Police have the investigation and prosecution power for both events.

## **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

### **State replies / Réponses de l'Etat**

If the victim is not present in the Party when the offence is committed, the principle of territoriality (Section 4 of the Criminal Code) or principle of registration (Section 5 of the Criminal Code). In case that the offender is not present in the Party, the principle of personality (Section 6 of the Criminal Code) shall apply. According to the principle of protection stipulated in Section 7(2) of the Criminal Code the law of the Czech Republic will also apply to assessment of criminality of an act committed abroad against a Czech national or a person without a nationality, who has been granted permanent residence in the territory of the Czech Republic, if the act is criminal in the place of its commission, or if the place of its commission is not subject to any criminal jurisdiction.

#### **Section 4 Principle of Territoriality**

(1) The criminality of an act committed in the territory of the Czech Republic shall be assessed pursuant to the law of the Czech Republic.

(2) A criminal offence shall be considered as committed in the territory of the Czech Republic  
a) if an offender committed the act here, either entirely or in part, even though the violation or endangering of an interest protected by the criminal law occurred or was supposed to occur, either entirely or in part abroad, or

b) if an offender violated or endangered an interest protected by criminal law or if such a consequence was supposed to occur, even partially, within the territory, even though the act was committed abroad.

(3) Participation is committed in the territory of the Czech Republic,

a) if the act of the offender has been committed within its territory; which is determined analogically according to Sub-section (2), or

b) if the accomplice of the act committed abroad partially acted within its territory.

(4) If the accomplice acted in the territory of the Czech Republic, the law of the Czech Republic shall apply to the participation, regardless of whether the act of the offender is criminal abroad.

### **Section 5 Principle of Registration**

The criminality of an act committed outside of the territory of the Czech Republic, on a board of a ship or another vessel, aircraft or other means of air transport, which is registered in the Czech Republic, shall also be assessed in accordance to the law of the Czech Republic. The place of commission of such an act shall be assessed according to Section 4 (2) and (3).

### **Section 6 Principle of Personality**

The law of the Czech Republic shall also apply to assessment of criminality of an act committed abroad by a citizen of the Czech Republic or a person with no nationality, who has been granted a permanent residence in its territory.

### **Section 7 Principle of Protection and Principle of Universality**

(1) The law of the Czech Republic shall apply to assessment of criminality of Torture and other cruel and inhumane treatment (Section 149), Forgery and alteration of money (Section 233), Uttering forged and altered money (Section 235), Manufacture and possession of forgery equipment (Section 236), Unauthorised production of money (Section 237), Subversion of the Republic (Section 310), Terrorist attack (Section 311), Terror (Section 312), Sabotage (Section 314), Espionage (Section 316), Violence against public authority (Section 323), Violence against a public official (Section 325), Forgery and alteration of public documents (Section 348), Participation in organised criminal group pursuant to Section 361 (2) and (3), Genocide (Section 400), Attack against humanity (Section 401), Apartheid and discrimination against groups of people (Section 402), Preparation of offensive war (Section 406), Use of prohibited means and methods of combat (Section 411), War cruelty (Section 412), Persecution of population (Section 413), Pillage in the area of military operations (Section 414), Abuse of internationally and state recognised symbols (Section 415), Abuse of flag and armistice (Section 416) and Harming a parliamentarian (Section 417), even when such a criminal offence was committed abroad by a foreign national or a person with no nationality, who has not been granted permanent residence in the territory of the Czech Republic.

(2) The law of the Czech Republic shall also apply to assessment of criminality of an act committed abroad against a Czech national or a person without a nationality, who has been granted permanent residence in the territory of the Czech Republic, if the act is criminal in the place of its commission, or if the place of its commission is not subject to any criminal jurisdiction.

## **Section 8 Subsidiary Principle of Universality**

(1) The law of the Czech Republic shall also apply to assessment of criminality of an act committed abroad by a foreign national or a person with no nationality who has not been granted permanent residence in the territory of the Czech Republic, also if

- a) the act is criminal also under the law effective in the territory of its commission,
- b) the offender was apprehended in the territory of the Czech Republic, extradition and transfer proceeding was held and was not extradited or transferred to another state or to another authority entitled to criminal prosecution and to serving a sentence and
- c) the foreign state or another entitled entity, which requested extradition or transfer of an offender for criminal prosecution or serving a sentence, requested criminal prosecution of an offender in the Czech Republic.

(2) The law of the Czech Republic shall apply to assessment of criminality of an act committed abroad by a foreign national or a person without a nationality to who has not been granted permanent residence in the territory of the Czech Republic, also when the act was committed in favour of a legal entity with a registered office or branch in the territory of the Czech Republic.

(3) However, the offender cannot be imposed a more severe sentence than the sentence prescribed by the law of the state, in the territory of which was the criminal offence committed.

## **Section 9 Jurisdiction Stipulated by International Treaty**

(1) Criminality of an act shall be assessed according to the law of the Czech Republic also if an international treaty incorporated into the system of law (hereinafter referred to as “international treaty”) stipulates it.

(2) The provisions of Section 4 to 8 shall not apply if it is not admissible according to an international treaty.

## **DENMARK / DANEMARK**

### **State replies / Réponses de l’Etat**

Acts falling within Danish criminal jurisdiction include, in particular, the following:

(1) Acts committed within the Danish state, including on a Danish vessel.

(2) Acts committed within the territory of another state by a person who was a Danish national or resident at the time of the charge, or had a similar permanent stay in Denmark, provided

(i) the act is also a criminal offence under the legislation of the country in which the act was committed (dual criminality); or

(ii) the offender had the aforesaid attachment to Denmark when committing the act and such act

(a) comprises sexual abuse of children, human trafficking or female genital mutilation;  
or

(b) is aimed at someone having the aforesaid attachment to Denmark when the act was committed.

(3) Acts committed outside the Danish state when the victim was a Danish national or resident at the time, or had a similar permanent stay in Denmark, provided the act is also a criminal offence under the legislation of the country in which the act was committed (dual criminality), are punishable under Danish law with imprisonment for a term of at least 6 years and concerns one of the following crimes:

- a) murder,
- b) aggravated violence, detention, or robbery,
- c) a general dangerous crime,
- d) a sexual offense or incest, or
- e) female circumcision

(4) Acts committed outside the Danish state, irrespective of the home country of the offender, where the act falls within an international instrument obliging Denmark to have criminal jurisdiction.

## **ESTONIA / ESTONIE**

### **State replies / Réponses de l'Etat**

The INTERPOL/EUROPOI information exchange channels are used for the exchange of information.

Information that relates to criminal proceedings is being exchanged in the framework of MLA (mutual legal assistance) and the Ministry of Justice of Estonia is the central authority in this context.

MLA 2000 convention allows requests for legal assistance to be forwarded directly to the executing authority. In the case of bilateral or multilateral agreements, the appointment of the central authority depends on the countries involved.

#### **Penal Code:**

#### **§ 6. Territorial applicability of penal law**

(1) The penal law of Estonia applies to acts committed within the territory of Estonia.

(2) The penal law of Estonia applies to acts committed on board of or against ships or aircraft registered in Estonia, regardless of the location of the ship or aircraft at the time of commission of the offence or the penal law of the country where the offence is committed.

#### **§ 7. Applicability of penal law by reason of person concerned**

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(1) The penal law of Estonia applies to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and is punishable at the place of commission of the act, or if no penal power is applicable at the place of commission of the act and if:

1) the act is committed against a citizen of Estonia or a legal person registered in Estonia; or

2) the offender is a citizen of Estonia at the time of commission of the act or becomes a citizen of Estonia after the commission of the act, or if the offender is an alien who has been detained in Estonia and is not extradited.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(2) The penal law of Estonia applies:

1) to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and the offender is a member of the Defence Forces performing his or her duties;

2) to grant, acceptance or arranging receipt of gratuities or bribes or influence peddling committed outside the territory of Estonia if such act was committed by an Estonian citizen, Estonian official or a legal person registered in Estonia, or an alien who has been detained in Estonia and who is not extradited, or such person participated therein.

[RT I, 05.07.2013, 2 - entry into force 15.07.2013]

### **§ 8. Applicability of penal law to acts against internationally protected legal rights**

Regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to any acts committed outside the territory of Estonia if punishability of the act arises from an international obligations binding on Estonia.

[RT I, 05.07.2013, 2 - entry into force 15.07.2013]

## **FINLAND / FINLANDE**

### **State replies / Réponses de l'Etat**

The questions relating to jurisdiction are governed by Chapter 1 of the Criminal Code on the scope of application of the criminal law of Finland and section 1, section 5, section 6, section 10 and section 11 thereof.

## **FRANCE**

### **State replies / Réponses de l'Etat**

Les règles générales de compétence sont définies par les articles 113-2, 113-6 et 113-8 du code pénal :

L'article 113-2 du code pénal dispose : « *La loi pénale française est applicable aux infractions commises sur le territoire de la République.*

*L'infraction est réputée commise sur le territoire de la République dès lors qu'un de ses faits constitutifs a eu lieu sur ce territoire. »*

L'article 113-6 du code pénal dispose : « *La loi pénale française est applicable à tout crime commis par un Français hors du territoire de la République.*

*Elle est applicable aux délits commis par des Français hors du territoire de la République si les faits sont punis par la législation du pays où ils ont été commis.*

*Elle est applicable aux infractions aux dispositions du règlement (CE) n° 561/2006 du Parlement européen et du Conseil du 15 mars 2006 relatif à l'harmonisation de certaines dispositions de la législation sociale dans le domaine des transports par route, commises dans un autre Etat membre de l'Union européenne et constatées en France, sous réserve des dispositions de l'article 692 du code de procédure pénale ou de la justification d'une sanction administrative qui a été exécutée ou ne peut plus être mise à exécution.*

*Il est fait application du présent article lors même que le prévenu aurait acquis la nationalité française postérieurement au fait qui lui est imputé. »*

L'article 113-8 du code pénal dispose : « *Dans les cas prévus aux articles 113-6 et 113-7, la poursuite des délits ne peut être exercée qu'à la requête du ministère public. Elle doit être précédée d'une plainte de la victime ou de ses ayants droit ou d'une dénonciation officielle par l'autorité du pays où le fait a été commis. »*

Il existe des règles particulières pour les navires (article 113-3 du code pénal<sup>2</sup>) et les aéronefs (article 113-11 du code pénal<sup>3</sup>) étendant la compétence de la loi française aux navires battant un pavillon français et aux aéronefs dans certaines conditions.

En dehors des règles générales, il existe de nombreuses exceptions prévoyant que les conditions restrictives prévues par les articles 113-6 et 113-8 du code pénal ne s'appliquent pas :

Ainsi pour les agressions sexuelles, l'article 222-22, troisième alinéa du code pénal dispose : « *Lorsque les agressions sexuelles sont commises à l'étranger contre un mineur par un Français ou par une personne résidant habituellement sur le territoire français, la loi française est applicable par dérogation au deuxième alinéa de l'article 113-6 et les dispositions de la seconde phrase de l'article 113-8 ne sont pas applicables. »*

Pour la corruption de mineurs (notamment pour la diffusion d'images ou de vidéos de mineurs à caractère sexuel) ou les atteintes sexuelles, l'article 227-27-1 du code pénal dispose : « *Dans le cas où les infractions prévues par les articles 227-22, 227-23 ou 227-25 à 227-27 sont commises à l'étranger par un Français ou par une personne résidant habituellement sur le territoire français, la loi française est applicable par dérogation au deuxième alinéa de l'article 113-6 et les dispositions de la seconde phrase de l'article 113-8 ne sont pas applicables. »*

En conséquence, les faits mentionnés au présent questionnaire sont incriminés par la législation française lorsqu'ils sont commis à l'étranger par un français ou par une personne résidant habituellement en France ou lorsqu'ils sont commis à l'étranger à l'encontre d'une victime française.

La loi pénale française est applicable aux infractions commises sur son territoire (article 113-2 du code pénal), à bord d'un navire battant pavillon français (article 113-3 du code pénal), à bord d'un aéronef immatriculé selon les lois française (article 113-11 du code pénal); ou à l'étranger par un de ses ressortissants; ou par une personne ayant sa résidence habituelle en France (articles 113-6, 222-22, 227-27-1 du code pénal). En conséquence, la législation française est parfaitement conforme aux obligations résultant de l'article 25 de la convention de Lanzarote.

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<sup>2</sup> Article 113-3 du code pénal : « *La loi pénale française est applicable aux infractions commises à bord des navires battant un pavillon français, ou à l'encontre de tels navires ou des personnes se trouvant à bord, en quelque lieu qu'ils se trouvent. Elle est seule applicable aux infractions commises à bord des navires de la marine nationale, ou à l'encontre de tels navires ou des personnes se trouvant à bord, en quelque lieu qu'ils se trouvent ».*

<sup>3</sup> Article 113-11 du code pénal : « *Sous réserve des dispositions de l'article 113-9, la loi pénale française est applicable aux crimes et délits commis à bord ou à l'encontre des aéronefs non immatriculés en France ou des personnes se trouvant à bord :*

*1° Lorsque l'auteur ou la victime est de nationalité française ;*

*2° Lorsque l'appareil atterrit en France après le crime ou le délit ;*

*3° Lorsque l'aéronef a été donné en location sans équipage à une personne qui a le siège principal de son exploitation ou, à défaut, sa résidence permanente sur le territoire de la République.*

*Dans le cas prévu au 1°, la nationalité de l'auteur ou de la victime de l'infraction est appréciée conformément aux articles 113-6, dernier alinéa, et 113-7 ».*



## **Comments sent by / Commentaires envoyés par Stop Aux Violences Sexuelles**

En matière d'infractions sexuelles, les citoyens français sont responsables des actes commis hors territoire

### **GEORGIA / GEORGIE**

#### **State replies / Réponses de l'Etat**

According to Article 4 of CCG if a person regardless of his/her nationality has committed a crime in the territory of Georgia, he/she shall be criminally liable under the Criminal Code of Georgia. Furthermore, a person, who has committed a crime on or against a ship authorised to fly under the national flag or national insignia of Georgia, shall be criminally liable under the CCG, unless otherwise provided for by the treaties to which Georgia is a party.

In addition, Georgian Jurisdiction also applies to those Georgian nationals and persons having a status of stateless person in Georgia, who have committed abroad such an act that is criminalized in Georgia and that is considered to be a crime under the legislation of the state where it was committed. If such an act committed abroad, is not considered as a crime under the legislation of the state where it was committed but it is a crime under Georgian legislation, a Georgian national or a person having a status of stateless person in Georgia shall be liable only in case such an act constitutes a serious or particularly serious crime directed against the interests of Georgia or if criminal liability for this crime is prescribed by the treaties to which Georgia is a party.

Foreigners and stateless persons who commit crimes abroad shall be criminally liable under the Criminal Code of Georgia if an act constitutes a serious or particularly serious crime against the interests of Georgia or if criminal liability for this crime is prescribed by the treaties to which Georgia is a party.

### **GERMANY / ALLEMAGNE**

#### **State replies / Réponses de l'Etat**

In the case of offences in which solely the victim is present in Germany, but not the perpetrator, or conversely, in which only the perpetrator is present in Germany, but not the victim, it is likely that German criminal law fundamentally will apply pursuant to section 3 of the Criminal Code (StGB). According to this stipulation of the law, German criminal law applies to acts committed on German territory. Pursuant to section 9 (1) of the Criminal Code (StGB), the place of the offence (*Tatort*) is both the place at which an action was taken (*Handlungsort*) and the place at which the objectives intended by the deed were achieved (*Erfolgsort*). The place at which the action was taken is considered to be wherever the perpetrator pursues, during the stage in which the deed is being committed, activities directed at realising the constituent elements of the offence. The place at which the objectives intended by the deed were achieved is the place at which the result occurs, or should have occurred according to the intention of the offender, such result being part of the constituent elements of the offence. In a scenario in which the perpetrator is in Germany and the victim is outside of Germany, at the very least the activities directed at realising the constituent elements of the offence will have been pursued in Germany. In the scenario in which the perpetrator is outside of Germany and the victim is in Germany, the result that is part of the constituent elements of the offence as a rule will have occurred in Germany, respectively were intended to occur in Germany according to the intention of the offender.

Should, as an exception, domestic criminal law not be applicable pursuant to section 3 of the Criminal Code (StGB), the following shall apply:

German criminal law shall apply, pursuant to section 7 (2) no 1 of the Criminal Code (StGB), to offences committed abroad by a perpetrator who is a German citizen. According to this stipulation, German criminal law shall apply to offences committed abroad by a perpetrator who is a German citizen subject to the pre-requisite that the act is a criminal offence at the locality of its commission or subject to the pre-requisite that the locality is not subject to any criminal law jurisdiction. German criminal law shall apply, pursuant to section 7 (1) of the Criminal Code (StGB), to offences committed abroad against a victim who is a German citizen. According to this stipulation, German criminal law shall apply to offences committed abroad against a victim who is a German citizen subject to the pre-requisite that the act is a criminal offence at the locality of its commission or that the locality is not subject to any criminal law jurisdiction.

Independently of the laws governing at the place of the offence, German criminal law shall apply to offences committed abroad by a perpetrator who is a German citizen in the case of the offences having been committed that are listed in section 5 no 8 of the Criminal Code (StGB) (among others, sexual assault by use of force or threats pursuant to section 177 of the Criminal Code (StGB)) and for all perpetrators of offences listed in section 6 no 6 of the Criminal Code (StGB) (principle of universal jurisdiction) (in particular dissemination of child pornography and juvenile pornography pursuant to sections 184b, 184c of the Criminal Code (StGB)).

## **GREECE / GRECE**

### **State replies / Réponses de l'Etat**

In any case, formal legal process is initiated and the offence is investigated.

## **HUNGARY / HONGRIE**

### **State replies / Réponses de l'Etat**

When the victim is not present in Hungary at the time of the commission: The location of the victim does not matter, if other grounds for territorial scope of the CC can be established.

When the perpetrator is not present in Hungary at the time of the commission: the Hungarian criminal law shall apply to:

- any act committed by a Hungarian national abroad, which considered to be a criminal offence in accordance with Hungarian law;

- to any act committed by a non-Hungarian national abroad, if:

- it is a criminal offence under Hungarian law and it is punishable as well in accordance with the law of the country where it was committed,
- it is a criminal offence against the State, excluding espionage against allied armed forces and espionage against the institutions of the European Union, regardless of the fact whether it is punishable in accordance with the law of the country where it was committed or not,
- it is a criminal offence under Chapter XIII or XIV or any other criminal offence which is to be prosecuted under an international treaty proclaimed by an act of Parliament;

- to any act committed by a non-Hungarian national abroad against a Hungarian national, a legal person and other legal entity without legal personality established under Hungarian law, which is punishable under Hungarian law.

Other grounds according to section 3 of the CC when the Hungarian criminal law shall apply:

- if the criminal offence is committed in the territory of Hungary;
- if the criminal offence is committed on board of a Hungarian watercraft or a Hungarian aircraft situated outside the territory of Hungary,

## **ICELAND / ISLANDE**

### **State replies / Réponses de l'Etat**

According to Article 6 of the Penal Code penalties shall be imposed in accordance with the Icelandic Penal Code for conduct specified in the Lanzarote Convention, even if they have been committed outside the Icelandic State and irrespective of who the offender is.

## **ITALY / ITALIE**

### **State replies / Réponses de l'Etat**

Art. 604 of the Criminal Code provides for the cases in which one of the offenses concerning child pornography (but also child prostitution, enslavements, sex tourism, trafficking, sexual violence, sexual acts with minors, grooming, etc.) is committed abroad, stating that the sanctions provided for by the Italian Criminal Code and the related jurisdiction also apply when the offense is committed abroad by an Italian citizen, or against an Italian citizen, or by a foreigner together with an Italian citizen; in the latter case the foreigner is punishable when it comes to a crime punishable with imprisonment of no less than a maximum of five years and when the Minister for Justice requested it.

## **LATVIA / LETTONIE**

### **State replies / Réponses de l'Etat**

When the victim is not present in Latvia when the offence is committed in Latvia or when the offender is not present when the offence is committed in the Latvia, according to Part 1 of Section 2 of the Criminal Law, the liability of a person who has committed a criminal offence in the territory of Latvia shall be determined in accordance with the Latvian Criminal Law.

Whereas, if the crime was committed outside Latvia's territory, according to Part 1 of Section 4 of the Criminal Law, Latvian citizens, non-citizens, and foreigners who have a permanent residence permit in the Republic of Latvia, shall be held liable, in accordance with Latvian Criminal Law, in the territory of Latvia for an offence committed in the territory of another state or outside the territory of any state irrespective of whether it has been recognised as criminal and punishable in the territory of commitment. Part 3 of Section 4 of above mentioned law stipulates, that foreigners who do not have permanent residence permits in the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with the Latvian Criminal law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.

## **LIECHTENSTEIN**

### **State replies / Réponses de l'Etat**

According to § 64(1)(4a) StGB, in regard to offences under §§ 203(2) (sexual harassment of under-age persons), 205 (aggravated sexual abuse of under-age persons), 206 (sexual abuse of under-age persons), 207 (endangerment of the morals of under-age persons or adolescents), 208 (sexual abuse of minors), 209 (initiation of sexual contacts with under-age persons), 209a (immoral influence on under-age persons), 214 (arrangement of sexual contacts with minors in return for a valuable consideration), 215a (promotion of prostitution and pornographic performances of minors), and 219 (pornographic depictions of minors) of the Criminal Code, extraterritorial jurisdiction is exercised irrespective of the criminal laws of the place where the act is committed if the perpetrator or the victim is a Liechtenstein citizen or if the perpetrator's or victim's place of residence or habitual abode is in Liechtenstein.

For acts other than those referred to in § 63 and § 64 StGB that have been committed abroad, the Liechtenstein criminal laws shall apply, provided that the acts also carry a penalty under the laws of the place where they are committed, if the perpetrator was a Liechtenstein citizen at the time of the act or acquired Liechtenstein citizenship at a later point in time and still holds it at the time the criminal proceedings are initiated (§ 65(1)(1) StGB), or if the perpetrator was a foreign national at the time of the act, is caught in Liechtenstein, and cannot be extradited abroad for reasons other than the type or nature of the act (§ 65(1)(2) StGB).

## **LITHUANIA / LITUANIE**

### **State replies / Réponses de l'Etat**

The criminal offences, described above, are subject to the general jurisdiction rules, established in the Criminal Code, i.e. the territorial and citizenship principles are applied in the investigation of such criminal cases (respectively, Article 4 and 5 of the Criminal Code). According to Article 4 of the Criminal Code, the persons who have committed criminal acts within the territory of the state of Lithuania, shall be held liable under this Code. Article 5 of the Criminal Code establishes that citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for the crimes committed criminal acts related to sexual exploitation of children, pornography and prostitution abroad (including Articles 153, Paragraph 1 of Article 162, Paragraphs 2, 3 of Article 309), irrespective of whether such acts are subject to punishment under the Criminal Code of the State of the place where the offense was committed, shall be held liable under Criminal Code of Republic of Lithuania.

## **LUXEMBOURG**

### **State replies / Réponses de l'Etat**

#### Victime

Les règles de compétence qui s'appliquent lorsque la victime ne se trouve pas dans l'État Partie au moment où l'infraction est commise sont celles prévues aux articles 4-2 et 26-3 du Code de procédure pénale luxembourgeois.

#### **Article 4-2 Code de procédure pénale**

« (L. 8 mars 2017) Toute personne résidant au Grand-Duché de Luxembourg qui est victime d'une infraction pénale commise dans un autre Etat membre de l'Union Européenne peut déposer plainte auprès des autorités compétentes du Grand-Duché de Luxembourg, lorsqu'elle n'est pas en mesure de le faire dans l'Etat membre de l'Union Européenne où l'infraction pénale a été commise ou, en cas de commission d'un fait prévu à l'article 48-17 du Code de procédure pénale, lorsqu'elle ne souhaite pas le faire.

*Le Procureur d'Etat compétent transmet dans ce cas la plainte sans délai à l'autorité compétente de l'Etat membre où l'infraction a été commise, si elle n'est pas compétente elle-même pour tenter des poursuites ou si elle décide de ne pas exercer des poursuites. »*

#### **Article 26-3, (1) Code de procédure pénale**

« (L. 13 mars 2009) Lorsqu'une personne résidente au Luxembourg et victime d'une infraction commise dans un autre Etat membre de l'Union européenne porte plainte auprès des autorités luxembourgeoises, le procureur d'Etat transmet, dans la mesure où la compétence n'est pas exercée à cet égard, la plainte sans délai à l'autorité compétente de l'Etat sur le territoire duquel l'infraction a été commise. »

#### Délinquant

Les règles de compétence qui s'appliquent lorsque le délinquant ne se trouve pas dans l'État Partie au moment où l'infraction est commise sont celles prévues aux articles 5-1 et 7-4 du Code de procédure pénale luxembourgeois.

#### **Article 5-1 Code de procédure pénale**

« (L. 16 juillet 2011) Tout Luxembourgeois, toute personne qui a sa résidence habituelle au Grand-Duché de Luxembourg, de même que l'étranger trouvé au Grand-Duché de Luxembourg, qui aura commis à l'étranger une des infractions prévues aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-16, 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis, 245 à 252, 310, 310-1, et 368 à 384 du Code pénal, pourra être poursuivi et jugé au Grand-Duché, bien que le fait ne soit pas puni par la législation du pays où il a été commis et que l'autorité luxembourgeoise n'ait pas reçu soit une plainte de la partie offensée, soit une dénonciation de l'autorité du pays où l'infraction a été commise. (L. 26 décembre 2012) »

#### **Article 7-4 Code de procédure pénale**

« (L. 18 juillet 2014) Lorsqu'une personne qui se sera rendue coupable à l'étranger d'une des infractions prévues par les articles 112-1, 135-1 à 135-6, 135-9, 135-11 à 135-16, 136bis à 136quinquies, 260-1 à 260-4, 379, 382-1, 382-2, 384, 385-2 et 509-1 à 509-7 du Code Pénal, n'est pas extradée, l'affaire sera soumise aux autorités compétentes aux fins de poursuites en application des règles prévues. »

## **MALTA / MALTE**

### **State replies / Réponses de l'Etat**

If the perpetrator is not a Maltese Citizen, is not a Maltese resident, and the offence takes place outside Maltese territorial jurisdiction, even though the victim is Maltese or happens to be in Malta, the perpetrator cannot be tried before the Maltese Courts. This principle is enshrined in Article 208 A1 of the Maltese Criminal Code, i.e.

- Any citizen or permanent resident of Malta whether in Malta or outside Malta, as well as any person in Malta, who makes or produces permits to be made or produced any indecent material or produces, distributes, disseminates, imports, exports, offers, sells, supplies, transmits, makes available, procures for oneself or for another, or shows such indecent material shall, on conviction, be liable to imprisonment for a term from twelve months to five years.

A contrariu sensu,

- this means that if the offence is committed in Malta by any person, even though the victim happens to be elsewhere, the Maltese Courts can exercise jurisdiction.

## **REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA**

### **State replies / Réponses de l'Etat**

The Republic of Moldova applies the territoriality principle in accordance with the provisions of the **art. 12 Criminal Code** of the Republic of Moldova.

Thus, the place of committing the offense is considered the place where the harmful action (inaction) was committed, regardless of the time of the occurrence of consequences.

In the same way, the place of committing the transnational offense is considered as such if:

a) the offense has been committed on the territory of the Republic of Moldova and on the territory of at least another State;

b) the offense was committed on the territory of the Republic of Moldova, but a substantial part of its organization and control took place in another state, and vice versa;

c) the offense was committed on the territory of the Republic of Moldova, with the involvement of an organized criminal group or a criminal organization (association) carrying out criminal activity in more than one state, and vice versa;

d) the offense was committed on the territory of the Republic of Moldova, but has serious consequences in another state, and vice versa.

Material competence to examine the cases lies with law enforcement bodies, such as the Ministry of Internal Affairs, through its competent bodies and the General Prosecutor's Office, with the involvement, as appropriate, of competent authorities and services.

## **MONACO**

### **State replies / Réponses de l'Etat**

La compétence du juge monégasque, tant *ratione personae* que *ratione loci* est étendue.

La Principauté de Monaco a établi une compétence juridictionnelle extraterritoriale pour les traitements cruels et la torture, les mutilations, le trafic d'organes, le viol et tout autre forme de violence sexuelle.

La territorialité de la loi pénale est le principe qu'affirme l'article 21 du Code de procédure pénale dans les termes suivants : «*Les tribunaux de la Principauté connaissent suivant les règles ci-après, de toutes les infractions commises sur le territoire et de celles qui sont commises à l'étranger dans les cas*

déterminés à la section II du titre précédent. »(...) « Est réputé avoir été commis sur le territoire de la Principauté tout crime ou délit dont un acte caractérisant un des éléments constitutifs de l'infraction y aura été accompli. ». Ainsi, les tribunaux de la Principauté connaissent de toutes les infractions commises sur le territoire, quelle que soit la nationalité de l'auteur ou du complice de l'acte.

Par ailleurs, en application du principe de la personnalité des lois pénales, la loi monégasque sanctionne les faits délictueux et criminels commis hors de la Principauté de Monaco aux fins d'assurer la répression ou la protection des ressortissants monégasques coupables ou victimes. En effet, aux termes de l'article 5 du Code de procédure pénale

**« Article 5 :** *Tout Monégasque qui, hors du territoire de la Principauté, se sera rendu coupable d'un fait qualifié crime par la loi monégasque, pourra être poursuivi et jugé dans la Principauté. »*

L'article 6 du Code de procédure pénale dispose en outre :

**« Article 6 :** *Tout Monégasque qui, hors du territoire de la Principauté, se sera rendu coupable d'un fait qualifié délit par la loi monégasque, pourra être poursuivi et jugé à Monaco, si le fait est puni par la législation du pays où il a été commis.*

*En ce cas, la poursuite ne sera intentée qu'à la requête du Ministère public, et seulement sur la plainte de la partie lésée ou sur une dénonciation officielle faite à l'autorité monégasque par l'autorité du pays où le délit a été commis. »*

**L'Article 7** du Code de procédure pénale précise que : *« Pourra être poursuivi et jugé dans la Principauté (...) 2°) L'étranger coauteur ou complice de tout crime commis hors du territoire de la Principauté par un Monégasque, lorsque celui-ci sera poursuivi ou aura été condamné dans la Principauté à raison dudit crime. »*

La compétence pénale des juridictions monégasques a été progressivement élargie à l'effet de pouvoir connaître des infractions commises hors des frontières de la Principauté. Ainsi, l'article 8 du Code de procédure précise-t-il :

**« Article 8 :** *« Pourra être poursuivi et jugé dans la Principauté :*

*1°) Quiconque se sera, sur le territoire de la Principauté, rendu complice d'un crime ou d'un délit commis à l'étranger si le cas de complicité est prévu à la fois par la loi étrangère et par la loi monégasque, à la condition que le fait principal ait été constaté par une décision définitive de la juridiction étrangère.*

*2°) Quiconque, hors du territoire de la Principauté, se sera rendu coupable de faits qualifiés crime ou délit constituant des tortures au sens de l'article premier de la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adoptée à New York le 10 décembre 1984, s'il est trouvé dans la Principauté;*

*3°) Quiconque aura, en qualité d'auteur, de coauteur ou de complice, hors du territoire de la Principauté, commis sur des mineurs l'un des faits prévus et réprimés par les articles 249-1, 249-2, 261, 262, 263, 265, alinéa 1er, 1°, 2° et 4°, 269, alinéa 1<sup>er</sup>, 1° et alinéa 2, 269-1, 273, 294-3, 294-4, 294-5, 294-6, 294-7, 294-8 et 335, alinéa 1er, du Code pénal, s'il est trouvé dans la Principauté. »*

Ce dernier alinéa prévoit des règles de compétence territoriale dérogatoires en matière d'abus sexuels, de prostitution... commis en dehors de la Principauté de Monaco par un étranger à l'encontre de mineurs étrangers si l'auteur est présent à Monaco.

L'article-9 du Code de procédure pénale dispose ce qui suit :

« **Article 9** : *Pourra être poursuivi et jugé dans la Principauté, l'étranger qui se sera rendu coupable hors du territoire :*

*1°) D'un crime ou d'un délit commis au préjudice d'un Monégasque.*

*2°) D'un crime ou d'un délit commis même au détriment d'un autre étranger, s'il est trouvé dans la Principauté en possession d'objets acquis au moyen de l'infraction.*

*Dans les deux cas, la poursuite n'aura lieu que dans les conditions prévues par l'article 6. »*

La localisation dans la Principauté d'actes se rattachant étroitement à un crime ou à un délit, commis en territoire étranger, dont ils sont indivisibles, fonde la compétence de la juridiction pénale monégasque qui prend en considération un élément infractionnel (art. 21, alinéa 2 du Code de procédure pénale), la possession d'un objet de provenance criminelle ou délictuelle (art. 9, 2°), ou un fait de complicité (art. 8, 1°).

## **MONTENEGRO**

### **State replies / Réponses de l'Etat**

The territorial principle is the basic principle of the applicability of criminal legislation of Montenegro (Article 134 of the CCMNE). Since each state is interested in ensuring, first of all, on the implementation of its own right in its territory, it is understandable that the territorial principle is the basic principle most often applied in practice. Other principles (real, personal and universal) apply only in cases where the territorial principle cannot be applied, or when the offense is committed abroad.

According to the territorial principle, the criminal legislation of Montenegro applies to all criminal offenses committed in the territory of Montenegro, irrespective of the citizenship of the perpetrator. Criminal legislation of Montenegro applies to anyone who commits a criminal offense in the territory of Montenegro. The term territory of Montenegro means land, territorial sea, and water areas within its borders, as well as air space above them (Article 142(1) of the CCMNE).

The territorial principle has been extended by the flag principle and the principle of airplane registration. This means that domestic criminal legislation applies to anyone who commits a criminal offense on board of a domestic ship, regardless of where the ship was located at the time of commission of a criminal offense (Article 134(2) CCMNE), as well as for anyone who commits a criminal offence on a domestic civil aircraft or on a domestic military aircraft regardless of where the aircraft was located at the time of commission of a criminal offence (Article 134(3) of the CCMNE).

The Criminal Legislation of Montenegro, in terms of the application of the territorial principle, is the CCMNE, as well as all criminal law provisions contained in the secondary criminal legislation.

Criminal law provides for the possibility of transferring the criminal prosecution of a foreigner who has committed a criminal offense in the territory of Montenegro, under the condition of reciprocity, to a foreign country (Article 138(2) CCMNE). Regarding the possibility of giving the prosecution to a foreign state resident in a foreign country and having committed the offense in the territory of Montenegro, the condition with regard to the committed criminal offense is that a criminal offense has been committed for which is stipulated the imprisonment for a term of up to ten years, or a criminal offence of endangering public transport.



Where the criminal offence is committed in the territory of Montenegro, and the criminal proceedings were instituted or completed in a foreign country, prosecution in Montenegro shall be instituted only upon approval of the Supreme Public Prosecutor of Montenegro (Article 138(1) CCMNE).

## **NETHERLANDS / PAYS-BAS**

### **State replies / Réponses de l'Etat**

The Dutch criminal law has a broad jurisdiction regarding sexual offences against minors. It meets the requirements of article 25.

## **NORTH MACEDONIA / MACEDOINE DU NORD**

### **State replies / Réponses de l'Etat**

Regarding criminal jurisdiction, the Criminal Code of the Republic of Macedonia has accepted the territoriality principle (Article 116), real (protective) principle (Article 117), the active (Article 118) and passive (Article 119) personality principle and the universality principle (Article 119 paragraph 2). Article 116 regulates the territoriality principle:

Criminal jurisdiction applies to anyone committing a criminal act on the territory of the Republic of Macedonia. Criminal jurisdiction applies to anyone committing a criminal act on a national vessel, regardless of the location of the vessel at the time of committing the crime. Criminal jurisdiction applies to anyone committing a criminal act in a national civil aircraft while it is operating or in a national civil aircraft regardless of the location of the aircraft at the time of committing the crime.

**The real protective principle** is contained in Article 117 regulating the applicability of criminal jurisdiction on certain criminal acts committed abroad. It stipulates that: "Criminal jurisdiction is applicable to anyone who has committed a criminal act abroad, as referred to in Article 268 of this Law, if counterfeiting refers to national money, and as referred to in Articles 305 to 326, 357 to 359-a and 403 to 422 of this Law". The amendments to the Criminal Code of April 2011 expanded the applicability of the national criminal jurisdiction so that it would include the following acts: acts against the state, corruption and other acts of abuse of official authority, as well as the acts of international crimes in line with the obligations of the Republic of Macedonia contained in international conventions and recommendations for establishing a jurisdiction for prosecution of these acts regardless of the law of the state where they were committed. Along these lines, this provision indicates that for these crimes committed abroad, the Macedonian criminal jurisdiction shall be applicable whether the crime had been regulated in the legislation of the country where it was committed and whether the perpetrator had stood trial abroad. This means that the double criminality principle and non bis in idem principle are not applicable.

Articles 118 and 119 contain the **active and passive personality principle**:

Thus, Article 118 regulates the applicability of criminal jurisdiction to a citizen of the Republic of Macedonia committing a crime abroad.

Namely, this provision contains the principle of active (national) personality stipulating that: "Criminal jurisdiction applies to all citizens of the Republic of Macedonia, even when they have committed a criminal act abroad, with the exclusion of criminal acts referred to in Article 117, if found within the territory of the Republic of Macedonia or if they are extradited".

Article 119 regulates the applicability of criminal jurisdiction to a foreigner committing a criminal act abroad:

Paragraph 1 contains the **passive personality principle** stipulating that Macedonian criminal jurisdiction applies to all foreigners committing a criminal act against the state from abroad or committing a criminal act against a citizen of the Republic of Macedonia from abroad, with the exclusion of the criminal acts referred to in Article 117, if found on the territory of the Republic of Macedonia or if they are extradited.

Paragraph 2 of this Article contains **the universality principle**: “Criminal jurisdiction is applicable to foreigners who have committed a criminal act against a foreign state or against a foreigner from abroad, that may be punished with imprisonment of five years or with a more severe sentence, once those foreigners have been found on the territory of the Republic of Macedonia and have not been extradited to the foreign state. Unless otherwise provided for by this Criminal Code, the court in such a case does not have the power to impose a more severe sentence than the one prescribed by law of the country where the crime was committed”.

Article 120 regulates the scope of **applicability of the double criminality principle and non bis in idem principle**.

Regarding the territoriality principle, prohibition of non bis in idem is a relative one: upon the approval of the public prosecutor of the Republic of Macedonia, prosecution in the Republic of Macedonia may be initiated in those cases when a criminal procedure has been initiated or completed against the perpetrator abroad (Article 119 paragraph 1).

Paragraph 2 of Article 119 consistently stipulates the **prohibition of double jeopardy**:

“In cases referred to in Articles 118 and 119, prosecution will not be initiated provided that:

- 1) the perpetrator has fully served the sentence abroad,
- 2) an adequate security measure has been taken against the perpetrator abroad, one that consist of deprivation of liberty,
- 3) the perpetrator has been acquitted with an effective verdict or the statute of limitations has expired or the sentence has been pardoned, and
- 4) for a criminal act regulated with a foreign law that is prosecuted upon the request of the damaged party and no such request has been filed”.

The principle of **double criminality** is a relative principle with the active and passive personality principle and the universality principle and is regulated in paragraph 3 of this Article: “In cases referred to in Articles 118 and 119 prosecution will be initiated only when a criminal act is tried under the law of the country where the act was committed. When, in cases referred to between Article 118 and 119 paragraph 1, this act is not criminalised under the law of the country where the act was committed, prosecution may be initiated only with a consent of the public prosecutor of the Republic of Macedonia”.

In cases referred to in Article 119 paragraph 2, prosecution may be initiated only with the consent of the public prosecutor of the Republic of Macedonia regardless of the law of the country where the crime was committed, if the act was considered as a criminal act at the time of committing under the general legal principles recognised by the international community. (Article 119 paragraph 4)

Paragraph 5 regulates legal representative jurisdiction: “In cases of Article 116, prosecution of a foreigner may, under the reciprocity principle, be given to a foreign state”.

## **NORWAY / NORVEGE**

### **State replies / Réponses de l'Etat**

The Norwegian criminal legislation applies to all acts committed on Norwegian territory, on installations on the Norwegian continental shelf for exploration or exploitation or storage of submarine natural resources and on pipelines and other fixed transport facilities connected to such installations, including ones located elsewhere than on the Norwegian continental shelf, in the area of jurisdiction established pursuant to the Act of 17 December 1976 No. 91 relating to the Economic Zone of Norway, in the case of acts that harm interests that Norwegian jurisdiction is intended to protect, and on Norwegian vessels, including aircraft, and drilling platforms or similar movable installations.

Section 311 in particular also applies to acts committed abroad by a Norwegian national, by a person domiciled in Norway, or on behalf of an enterprise registered in Norway, by a person who after the time of the act has become a Norwegian national or has become domiciled in Norway, by a person who is, or who subsequent to the act has become, a national of or domiciled in another Nordic country and who is present in Norway, or on behalf of a foreign enterprise that after the time of the act has transferred its entire operation to an enterprise registered in Norway. The criminal legislation also applies to acts that Norway has a right or an obligation to prosecute pursuant to agreements with foreign states or otherwise pursuant to international law.

## **POLAND / POLOGNE**

### **State replies / Réponses de l'Etat**

Rules on jurisdiction in criminal matters are set out in article 5 and articles 109-113 of the PC. Those provisions apply to offences defined in the PC itself, as well as to any other criminal offences defined in Polish law.

According to art. 5 of the PC, Polish criminal jurisdiction, applies to each and every offender (regardless his/her nationality, namely to the Polish nationals, EU nationals and third - country nationals) who commits a prohibited act in Poland, or on a Polish vessel or aircraft, unless Poland is party to an international agreement stating otherwise.

According to art. 111 of the PC jurisdiction over offences committed outside Polish territory is subject to the condition of dual criminality. However, that limitation does not apply to offences:

- specified in art. 112 of the PC (an offence against: the internal or external security of the Poland; Polish offices or public officials, Poland's material economic interests, and an offence of false testimony made before a Polish office, or an offence from which a material benefit was gained, even if indirectly, in the Poland);
- foreseen in the international agreements to which Poland is a party.

Therefore, since Poland is the party to the Lanzarote Convention the requirement of dual criminality does not apply to offences defined therein.

Poland has however declared that it will not apply in whole Article 25, paragraph 1.e of the Convention – stipulating the jurisdiction based on the habitual residence of the perpetrator. This reservation was made pursuant to and within the scope of Article 25, paragraph 3, of the Convention.

## **PORTUGAL**

### **State replies / Réponses de l'Etat**

The Portuguese Criminal Code is in line with Article 25 of The Lanzarote Convention.

If the facts were committed in Portugal or on a Portuguese ship or aircraft, the Portuguese law is applicable and national courts have jurisdiction (Article 4, Criminal Code).

If the facts were committed outside Portuguese territory (including Portuguese ships and aircrafts), the Portuguese law is applicable and national courts have jurisdiction if the facts were committed by a Portuguese national against another Portuguese national who resides in Portugal and is found in Portugal (Article 5/1/b, Criminal Code).

If the facts were committed outside Portuguese territory (including Portuguese ships and aircrafts), the Portuguese law is applicable and national courts have jurisdiction if the offender is found in Portugal and cannot be extradited or handed over in the execution of a European arrest warrant (Article 5/1/c, Criminal Code).

The Portuguese law is applicable and national courts have jurisdiction when the acts are perpetrated against a Portuguese citizen and the offender is found in Portugal, the facts are punishable in the country where they were committed, the crime admits extradition but this cannot be conceded or there is a decision not to execute a European arrest warrant (Article 5/1/e, Criminal Code).

The Portuguese law is also applicable and national courts have jurisdiction, when the facts are committed outside national territory, if the Portuguese State is obliged to judge the case by an international treatise or convention (Article 5/2, Criminal Code).

The country where the victim is or where the illicit was committed is always given notice, so procedures can be conciliated.

## **ROMANIA / ROUMANIE**

### **State replies / Réponses de l'Etat**

As a general rule<sup>4</sup>, Romanian criminal law applies to offenses committed outside Romanian territory by

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<sup>4</sup> Romanian Criminal code (Law 286/2009):

#### **SECTION 2 Applicability of criminal law in space**

##### **ART. 8 Territoriality of criminal law**

(1) Romanian criminal law applies to offenses committed on the territory of Romania.

(2) The territory of Romania is defined as the expanse of land, the territorial sea waters and inland waters, complete with the soil, sub-soil and airspace located inside the national borders.

(3) An offense committed on the territory of Romania is defined as any offense committed on the territory defined at par. (2) or on a ship sailing under Romanian pavilion or on an aircraft registered in Romania.

(4) The offense is also considered as having been committed on the territory of Romania when on that territory or on a ship sailing under Romanian pavilion or on an aircraft registered in Romania an action was committed with a view to perform, instigate or aid in the offense, or the results of the offense have been manifest, even if only in part.

##### **ART. 9 Legal standing under criminal law**

(1) Romanian criminal law applies to offenses committed outside Romanian territory by a Romanian citizen or a Romanian legal entity if the sentencing stipulated by Romanian law is life imprisonment or a term of imprisonment longer than 10 years.

(2) In the other cases Romanian criminal law applies to offenses committed outside Romanian territory by a Romanian citizen or a Romanian legal entity if the act is also criminalized by the criminal law of the country where it was committed or if it was committed in a location that is not subject to any State's jurisdiction.

(3) A criminal investigation can start on receiving authorization from the Chief Prosecutor of the Prosecutor's Office attached to the Court of Appeals in whose jurisdiction the first Prosecutor's Office is located that received information about the violation, or, as the case may be, from the Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice.

a Romanian citizen or a Romanian legal entity if the sentencing stipulated by Romanian law is life imprisonment or a term of imprisonment longer than 10 years.

In the other cases Romanian criminal law applies to offenses committed outside Romanian territory by a Romanian citizen or a Romanian legal entity if the act is also criminalized by the criminal law of the country where it was committed or if it was committed in a location that is not subject to any State's jurisdiction.

Also, by criteria of the victim's citizenship, Romanian criminal law applies to offenses committed outside Romanian territory by a foreign citizen or a stateless person against the Romanian State, against a Romanian citizen or against a Romanian legal entity. A criminal investigation can start in these cases on receiving authorization from the Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice, and only if the violation is not the object of judicial procedures that are already on-going in the State on whose territory it was committed.

Romanian criminal law also applies to other violations than those mentioned above, committed outside Romanian territory by a foreign citizen or a stateless person who is located voluntarily on Romanian territory, in the following cases:

- an offense was committed that the Romanian State has undertaken to repress on the basis of an international treaty, irrespective of whether it is stipulated by the criminal law of the State on whose territory it was committed;
- extradition or surrender of the offender has been requested and denied.

However, the general rules described below apply only unless otherwise required under an international treaty Romania is a party to (as the case of the Lanzarote Convention is).

## **RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

### **State replies / Réponses de l'Etat**

These rules are governed by art. 2 of the Criminal Procedural Code, art. 12 of the Criminal Code. If the victim or the guilty person is found outside the Russian Federation, the provisions of the national legislation and international treaties of the Russian Federation on the provision of legal assistance, the

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A prosecutor is entitled to issue such authorization within 30 days of receiving the application for authorization; such deadline can be extended, under the law, but for no more than a total of 180 days.

#### **ART. 10 Reality of criminal law**

(1) Romanian criminal law applies to offenses committed outside Romanian territory by a foreign citizen or a stateless person against the Romanian State, against a Romanian citizen or against a Romanian legal entity.

(2) A criminal investigation can start on receiving authorization from the Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice, and only if the violation is not the object of judicial procedures that are already ongoing in the State on whose territory it was committed.

#### **ART. 11 Universality of criminal law**

(1) Romanian criminal law also applies to other violations than those stipulated at Art. 10, committed outside Romanian territory by a foreign citizen or a stateless person who is located voluntarily on Romanian territory, in the following cases:

a) an offense was committed that the Romanian State has undertaken to repress on the basis of an international treaty, irrespective of whether it is stipulated by the criminal law of the State on whose territory it was committed;

b) extradition or surrender of the offender has been requested and denied.

(2) The stipulations of par. (1) lett. b) do not apply when, under the law of the state on whose territory the violation was committed, there is a cause to prevent the start of criminal action or the continuing of the criminal trial or the serving of the sentence or when the sentence has been served or when the sentence is considered as having been served.

(3) When the sentence has not been served or has only been served in part, the applicable procedure is that of the law on the recognition of foreign judgments.

#### **ART. 12 Criminal law and the international treaties**

The stipulations of Art. 8 – 11 shall apply unless otherwise required under an international treaty Romania is a party to.

extradition and transfer of criminal proceedings are applied for the purposes of criminal prosecution.

## **SAN MARINO / SAINT-MARIN**

### **State replies / Réponses de l'Etat**

Please see replies to question n.8, 9.2, 9.5, 9.8 and 9.11.

Q.8

In the Republic of San Marino this issue is regulated by Art. 177 ter of the Criminal Code, introduced by Law no. 61 of 30 April 2002 "Law on the repression of the sexual exploitation of children".

Under this article child pornography consists in the production of "performances, works or material" (therefore including through ICTs) "visually showing a child in sexually explicit conduct for purposes of sexual incitement."

The law punishes with third-degree imprisonment (i.e. from two to six years) and disqualification of the same degree (i.e. one to three years) anyone who produces and trades in child pornographic works.

Punishments are increased by one degree (fourth-degree imprisonment, i.e. from four to ten years and fourth-degree disqualification, i.e. from two to five years) if the act is committed to the detriment of a minor under 14, or under 18 if affected by physical or mental disability (aggravating circumstances).

Anyone who provides another person, at any title, with child pornographic material is punished with first-degree imprisonment (from three months to one year), or with second-degree arrest (from fifteen days to two months) and in any case with first-degree disqualification (from fifteen days to one year).

If the dissemination, disclosure or publication of such material takes place through the Internet and in any case through the ICTs (e.g. virtual pornography), the punishment envisaged by the law is third-degree imprisonment (from two to six years) and third-degree disqualification (from two to three years).

The same punishments apply if ICTs are used for the dissemination of information aimed at soliciting minors under 18.

The sentence for such offence entails (Art. 147 of the Criminal Code) confiscation, preceded in the pre-trial stage by seizure for the purpose of confiscation.

Law no. 61/2002 mentioned above has extended San Marino territorial jurisdiction to include offences committed abroad by or to the detriment of a San Marino citizen, without prejudice to Art. 7 of the Criminal Code.

In the light of the above, a positive answer can be given to questions 8.1.a. (the definition of "performances, works or materials" undoubtedly include images and/or video); 8.2.b. (the sentence beginning with "anyone" in Art. 177-ter of the Criminal Code does not distinguish between generated and self-generated material, clearly including both, and 8.1.c.) (the definition of "performances, works or materials" includes sound material or texts).

Positive answers can also be given to questions 8.2.a. and b. The word "anyone" in Art. 177 ter of the Criminal Code includes both the singular and the plural, as clearly established with regard to many articles of the Criminal Code using the same expression and which have been the subject of extensive case-law.

On the contrary, questions 8.3.a. and b. cannot be answered positively, since the scope of the above mentioned Art. 177 ter of the Criminal Code is necessarily broad, in order to cover the widest possible range of sanctioned behaviours on child pornography. The intention of San Marino legislator was not to specify individual behaviours, so as not to run the risk of neglecting some or not include criminal behaviours unforeseeable at that time (in consideration of the natural evolution of IT systems, progress in technology, new behaviours, conducts or attitudes, etc.).

Q.9.2

As highlighted in the answer to question 8.1, the only offences that are not prosecuted are those committed in a foreign territory by or to the detriment of a San Marino citizen when the following conditions are met:

- 1) the San Marino citizen or the foreigner was tried and acquitted abroad;
- 2) the individual, who has been sentenced abroad, has fully served the sentence imposed upon conviction, though the punishment was less severe than that envisaged by San Marino Criminal Code;
- 3) the individual, who has been sentenced abroad, has served a part of the sentence imposed upon conviction, if said part is equivalent to the entire punishment envisaged by San Marino Criminal Code.

Q.9.5

As indicated above, the only offences that are not prosecuted are those committed in a foreign territory by or to the detriment of a San Marino citizen when the following conditions are met:

- 1) the San Marino citizen or the foreigner was tried and acquitted abroad;
- 2) the individual, who has been sentenced abroad, has fully served the sentence imposed upon conviction, though the punishment was less severe than that envisaged by San Marino Criminal Code;
- 3) the individual, who has been sentenced abroad, has served a part of the sentence imposed upon conviction, if said part is equivalent to the entire punishment envisaged by San Marino Criminal Code.

Q.9.8

As indicated above, the only offences that are not prosecuted are those committed in a foreign territory by or to the detriment of a San Marino citizen when the following conditions are met:

- 1) the San Marino citizen or the foreigner was tried and acquitted abroad;
- 2) the individual, who has been sentenced abroad, has fully served the sentence imposed upon conviction, though the punishment was less severe than that envisaged by San Marino Criminal Code;
- 3) the individual, who has been sentenced abroad, has served a part of the sentence imposed upon conviction, if said part is equivalent to the entire punishment envisaged by San Marino Criminal Code.

Q.9.11

As indicated above, the only offences that are not prosecuted are those committed in a foreign territory by or to the detriment of a San Marino citizen when the following conditions are met:

- 1) the San Marino citizen or the foreigner was tried and acquitted abroad;
- 2) the individual, who has been sentenced abroad, has fully served the sentence imposed upon conviction, though the punishment was less severe than that envisaged by San Marino Criminal Code;
- 3) the individual, who has been sentenced abroad, has served a part of the sentence imposed upon conviction, if said part is equivalent to the entire punishment envisaged by San Marino Criminal Code.

## **SERBIA / SERBIE**

### **State replies / Réponses de l'Etat**

Ministry of Justice Answer:

Regarding jurisdiction rules, Serbian CC states that regarding applicability of Criminal Legislation of Serbia to Serbian Citizen Committing Criminal Offence Abroad **Article 8 (1)** Criminal legislation of Serbia shall also apply to a citizen of Serbia who commits a criminal offence abroad other than those specified in Article 7 hereof, if found on the territory of Serbia or extradited to the Republic of Serbia. (2) Under the conditions specified in paragraph 1 of this Article, criminal legislation of Serbia shall also apply to an offender who became a citizen of Serbia after the commission of the offence. Also CC states that regarding applicability of Criminal Legislation of Serbia to a Foreign Citizen Committing a Criminal Offence Abroad **Article 9 (1)** Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence against Serbia or its citizen outside the territory of Serbia other than those defined in

Article 7 hereof, if they are found on the territory of Serbia or returned to the Republic of Serbia. (2) Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence abroad against a foreign state or foreign citizen, when such offence is punishable by five years' imprisonment or a heavier penalty, pursuant to laws of the country of commission, if such person is found on the territory of Serbia and is not returned to the foreign state. Unless otherwise provided by this Code, the court may not impose in such cases a penalty heavier than set out by the law of the country where the criminal offence was committed.

Public Prosecutor Answers:

In accordance with Article 6 of the Criminal Code, criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on its territory.

Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on a domestic vessel, regardless of where the vessel is at the time of committing of the act.

Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence in a domestic aircraft while in flight or domestic military aircraft, regardless of where the aircraft is at the time of committing of criminal offence.

If criminal proceedings have been instituted or concluded in a foreign country in respect of cases specified in paragraphs 1 through 3 of this Article, criminal prosecution in Serbia shall be undertaken only with the permission of the Republic Public Prosecutor.

Criminal prosecution of foreign citizens in cases specified in paragraphs 1 through 3 of this Article may be transferred to a foreign state, under the terms of reciprocity. Criminal legislation of Serbia shall also apply to a citizen of Serbia who commits a criminal offence abroad, if found on the territory of Serbia or if extradited to Serbia.

Under Article 9 of the CC, criminal legislation of Serbia shall also apply to a citizen of Serbia who commits a criminal offence abroad other than those specified in Article 7 hereof, if found on the territory of Serbia or if extradited to Serbia.

Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence abroad against a foreign state or foreign citizen, when such offence is punishable by five years' imprisonment or a heavier penalty, pursuant to laws of the country of commission, if such person is found on the territory of Serbia and is not extradited to the foreign state. Unless otherwise provided by this Code, the court may not impose in such cases a penalty heavier than set out by the law of the country where the criminal offence was committed.

NGO Astra Answers:

According to our knowledge all jurisdiction rules stated in the Article 25 apply.

## **SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

### **State replies / Réponses de l'Etat**

In Slovakia, there are several types of jurisdiction applied: personal jurisdiction, territorial jurisdiction and jurisdiction under international agreements (Article 3-7 of the Criminal Code).

In case offender is not present in the territory of the contracting party to the Convention, it is possible to apply personal jurisdiction (according to Article 4 and 5 of the Criminal Code which determine the



criminal liability for an act committed outside of the territory of the Slovak Republic by a Slovak national or a foreign national with permanent residence permit and for a particularly serious offence if the act was committed outside of the territory of the Slovak Republic against a Slovak national, and if the act gives rise to criminal liability under the legislation effective in the place of its commission, or if the place of its commission does not fall under any criminal jurisdiction) or jurisdiction under international agreements (in line with Article 7 para. 1 of the Criminal Code), whereas Lanzarote Convention is type of an international convention ratified and promulgated in a manner defined by law and which is binding for the Slovak Republic.

In general, the criminal liability for an act is ruled by the Criminal Code if the act is committed in the territory of the Slovak Republic. The criminal offence is considered as committed in the territory of the Slovak Republic also in case when the offender commits the act at least partially on its territory if breach or threat to the interest protected by Criminal Code should happen entirely or partially outside of its territory, or, in case when the offender commits the act outside of the Slovak Republic but breach or threat to the interest protected by Criminal Code was intended to take place on the territory of the Slovak Republic or there should be at least partial consequence of such breach or threat in the territory of the Slovak Republic.

Personal jurisdiction of the Criminal Code is established when the offender is citizen of the Slovak republic or foreigner with permanent residence permit in the Slovak republic, also in case the act is committed abroad. There is a jurisdiction of Criminal Code established also in case the act considered as felony is committed abroad, it is a subject of criminal liability in place of its commission or the place of its commission does not establish any other criminal jurisdiction and the aggrieved person is a citizen of the Slovak Republic (serious felony of manufacturing of child pornography according to Article 368 para. 3 and 4 of the Criminal Code). On the basis of above mentioned, it is conceivable to prosecute also foreigner as an offender who commits an offence that is subject to criminal liability also on the territory where it is committed, while the offender is detained on the territory of the Slovak Republic and is not extradited for criminal prosecution to foreign country (Article 6 of the Criminal Code).

In case there is a collision of jurisdiction of several contracting parties to the Convention, international cooperation to establish further process in criminal proceedings shall be applied.

## **SLOVENIA / SLOVENIE**

### **State replies / Réponses de l'Etat**

In general, the Criminal Code of the Republic of Slovenia shall apply to any person who commits a criminal offense in the territory of the Republic of Slovenia.

The Criminal Code of the Republic of Slovenia shall apply to any person who, in a foreign country, commits any criminal offence, which according to the international agreement has to be prosecuted in all signatory states, irrespective of the location where it was committed (see Art. 11 of the Criminal Code).

Furthermore, the Criminal Code of the Republic of Slovenia shall be applicable to any citizen of the Republic of Slovenia who commits any criminal offence abroad other than those specified in the above mentioned article 11.

Furthermore, the Criminal Code of the Republic of Slovenia shall also be applicable to any foreign citizen who has, in a foreign country, committed a criminal offence against a third country or any of its citizens if he has been apprehended in the territory of the Republic of Slovenia, but was not extradited to the foreign country. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country, in which the offence was committed (art. 13/2 of the

Criminal Code).

In cases under Articles 12 (Citizens of the Republic of Slovenia Who Committed a Criminal Offense Abroad) and 13 (Foreign Citizens Who Committed a Criminal Offense Abroad) the perpetrator shall be prosecuted only insofar as his conduct constitutes a criminal offence in the country where it was committed.

If, in the case under Article 12 (Citizens of the Republic of Slovenia Who Committed a Criminal Offense Abroad) the criminal offence committed against the citizen of Slovenia does not constitute a criminal offence under the law of the country where it was committed, the perpetrator of such an offence **may be prosecuted** only by permission of the Minister of Justice of the Republic of Slovenia.

If, in all other cases of sexual abuse of children except paragraph 4 of Article 14 of the Criminal Code<sup>5</sup>, the criminal offence is not punished in the country where it was committed, the perpetrator **may be prosecuted** only by permission of the Minister of Justice and with the proviso that, according to the general principles of law recognised by the international community, the offence in question constituted a criminal act at the time it was committed.

## **Comments sent by / Commentaires envoyés par Association Against Sexual Abuse**

In all cases acts under the Lanzarote Convention, which are committed to the detriment of children, are sanctioned whether they are committed in a State Party or outside of it, in case the disclosure of an act occurs (Article 13 of the Criminal Code: The validity of the Criminal Code of the Republic of Slovenia for aliens committing a criminal offense abroad).

## **SPAIN / ESPAGNE**

### **State replies / Réponses de l'Etat**

According to **Article 23 of Organic Act on the Judiciary**:

**1)** The Spanish jurisdiction shall be competent in criminal proceedings arising from criminal and minor offences perpetrated in the Spanish territory or in Spanish aircrafts or ships without prejudice to the provisions of international treaties to which Spain is a party.

**2)** The Spanish jurisdiction shall also deal with criminal offences committed outside the Spanish territory provided those criminally responsible are Spanish or foreigners having acquired the Spanish nationality after the perpetration of the act and the following requirements are met:

a) The act is an offence in the place where it was committed, except in cases where, by virtue of an international treaty or a normative act of an International Organization to which Spain belongs, that requirement is waived, without prejudice to the provisions of the following paragraphs.

b) The victim or Public Prosecutor' Office files a complaint before the Spanish Courts.

c) The offender has not been acquitted, pardoned or convicted abroad, or, in this last instance, that the sentence has not been served out. If the sentence has been served only in part, that

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<sup>5</sup> Art 14/ (4) If, in the case under Article 12 of this Criminal Code, the criminal offence committed against the Republic of Slovenia or the citizen thereof does not constitute a criminal offence under the law of the country where it was committed, the perpetrator of such an offence may be prosecuted only by permission of the Minister of Justice of the Republic of Slovenia.

shall be taken into account to reduce proportionally any penalty imposed.

4) Likewise, the Spanish jurisdiction shall be competent to take cognizance of acts committed by Spanish or foreign nationals outside the Spanish territory that may be considered, according to the Spanish Law, as falling under any of the following criminal definitions, where they meet the conditions mentioned;

k) Crimes against sexual freedom and sexual integrity committed over minors provided that:

1. Proceedings are directed against a Spanish citizen;
2. Proceedings are directed against a foreigner with habitual residence in Spain;
3. Proceedings are directed against a legal person, company, organization, group or any other kind of grouping or entity with head office or address in Spain; or
4. The offence was committed against a victim having Spanish nationality or
5. Habitually resident in Spain at the time of the facts.

## **SWEDEN / SUEDE**

### **State replies / Réponses de l'Etat**

Crimes committed in Sweden shall be adjudged in accordance with Swedish law and by a Swedish court. Crimes committed outside Sweden shall be adjudged according to Swedish law and by a Swedish court when the crime has been committed by a Swedish citizen or an alien domiciled in Sweden, by an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in Sweden or who is a Danish, Finnish, Icelandic or Norwegian citizen and is present in Sweden, or by any other alien, who is present in Sweden, and the crime under Swedish law can result in imprisonment for more than six months. This shall not apply if the act is not subject to criminal responsibility under the law of the place where it was committed (double criminality) or if it was committed within an area not belonging to any state and, under Swedish law, the punishment for the act cannot be more severe than a fine. In these cases, a sanction may not be imposed which is more severe than the severest punishment provided for the crime under the law in the place where it was committed (Ch. 2, Section 2 of the Penal Code).

The limitations mentioned above are not applicable in relation to the offences mentioned in article 18, 19, 20, 21 of the Convention or attempts to commit such offences, if the crime is committed against a person under the age of eighteen. There is an exemption made to the requirement of double criminality in relation to the provision on rape, gross rape, sexual coercion, gross sexual coercion, sexual exploitation of a person in a position of dependence, gross sexual exploitation of a person in a position of dependence, rape of a child, gross rape of a child, sexual exploitation of a child, sexual abuse of a child, gross sexual abuse of a child, gross exploitation of a child for sexual posing, exploitation of a child for sexual posing, purchase of a sexual act from a child, child pornography crime and gross child pornography crimes. This means that these offences, when committed against a person under the age of eighteen, can be adjudged in accordance with Swedish law in a Swedish court, independent of the law in the country where the crime is committed.

## **SWITZERLAND / SUISSE**

### **State replies / Réponses de l'Etat**

L'art. 5 CP (infractions commises à l'étranger sur des mineurs) permet de poursuivre en Suisse toute personne ayant commis à l'étranger une infraction d'ordre sexuel grave sur un mineur, sans tenir compte du droit en vigueur dans le pays concerné. Elle ne tient donc pas compte du principe de double incrimination, ni du fait que le pays où l'acte a été commis peut appliquer des peines plus clémentes. Le prévenu peut faire l'objet de poursuites quelle que soit sa nationalité.

## Art. 5 CP Infractions commises à l'étranger sur des mineurs

1 Le présent code est applicable à quiconque se trouve en Suisse et n'est pas extradé, et a commis à l'étranger l'un des actes suivants :

- a. traite d'êtres humains (art. 182), contrainte sexuelle (art. 189), viol (art. 190), acte d'ordre sexuel commis sur une personne incapable de discernement ou de résistance (art. 191) ou encouragement à la prostitution (art. 195), si la victime avait moins de 18 ans;
- a<sup>bis</sup>. actes d'ordre sexuel avec des personnes dépendantes (art. 188) et actes d'ordre sexuel avec des mineurs contre rémunération (art. 196);
- b. acte d'ordre sexuel avec un enfant (art. 187), si la victime avait moins de 14 ans;
- c. pornographie qualifiée (art. 197, al. 3 et 4), si les objets ou les représentations avaient comme contenu des actes d'ordre sexuel avec des mineurs.

La compétence juridictionnelle des tribunaux suisses lorsque l'infraction à l'étranger est commise **par l'un de ses ressortissants** (principe de la personnalité active) ou lorsque l'infraction à l'étranger est commise **à l'encontre de l'un de leurs ressortissants** (principe de la personnalité passive) découle de l'art. 7, al. 1 et 2, CP.

## TURKEY / TURQUIE

### State replies / Réponses de l'Etat

Jurisdiction of Turkish Courts are determined under Turkish Criminal Code. Pursuant to the article 8 of the code, Turkish criminal law shall be applied for crimes committed in Turkey. Where a criminal act is partially or fully, committed in Turkey, or the result of a criminal act occurs in Turkey, the offence shall be presumed to have been committed in Turkey.

Therefore, if the victim is present in Turkey but the perpetrator is not, it is accepted that as the result of the crime occurs in Turkey, Turkish courts have jurisdiction. As to the possibility where the offender is in Turkey but the victim is not, it is also under jurisdiction of Turkish courts because the act is committed in Turkey.

Please find below the text of article 8 of Turkish Criminal Code.

*"Territorial Jurisdiction*

*Article 8*

(1) *Turkish law shall apply to all criminal offences committed in Turkey. Where a criminal act is partially, or fully, committed in Turkey, or the result of a criminal act occurs in Turkey the offence shall be presumed to have been committed in Turkey.*

(2) *If the criminal offence is committed:*

- a) *within Turkish territory, airspace or in Turkish territorial waters;*
- b) *on the open sea or in the space extending directly above these waters and in, or by using, Turkish sea and air vessels;*
- c) *in, or by using, Turkish military sea or air vehicles;*
- d) *on or against a fixed platforms erected on the continental shelf or in the economic zone of Turkey,*

*then this offence is presumed to have been committed in Turkey.”*

Where more detailed information is needed, we refer to our answer to the general overview questionnaire for its question 19.

## **UKRAINE**

### **State replies / Réponses de l'Etat**

No reply to this question / Pas de réponse à cette question