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## **LANZAROTE CONVENTION**

## **CONVENTION DE LANZAROTE**

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

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

### **Compilation of Replies to Question 12 of the Thematic Questionnaire**

### **Compilation des réponses à la Question 12 du Questionnaire Thématique**

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

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

[www.coe.int/lanzarote](http://www.coe.int/lanzarote)

## Introduction

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

This document is aimed at responding to this request by compiling replies to question 12 of the thematic questionnaire. If when replying to this question, States referred to another of their answers in both the General Overview and Thematic questionnaires, their replies will where possible, also be included in this compilation.

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

Le présent document vise à répondre à cette demande en compilant les réponses reçues à la question 12 du questionnaire thématique. Si, en répondant à cette question, les Etats se réfèrent à des réponses données à d'autres questions du Questionnaires Général et Thématique, leurs réponses seront, dans la mesure du possible, également incluses dans cette compilation.

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<sup>1</sup> The 7<sup>th</sup> meeting report is online at:

[http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2013\)12Report7thMeeting\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/children/T-ES(2013)12Report7thMeeting_en.pdf).

<sup>2</sup> Le rapport de la 7<sup>e</sup> réunion est en ligne ici :

[http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2013\)12Report7thMeeting\\_fr.pdf](http://www.coe.int/t/dghl/standardsetting/children/T-ES(2013)12Report7thMeeting_fr.pdf)

### **Question 12 of the TQ: Aggravating circumstances**

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

### **Question 12 du QT : Circonstances aggravantes**

Le droit interne prévoit-il que le fait qu'une infraction d'abus sexuels établie conformément à la Convention a été commise par un membre de la famille, une personne qui cohabite avec l'enfant ou ayant abusé de son autorité ou toute autre personne faisant partie du cercle de confiance de l'enfant soit considéré comme une circonstance aggravante pour la détermination de la peine, pour autant qu'il ne soit pas déjà un élément constitutif de l'infraction ? Dans l'affirmative, le droit interne prévoit-il des peines différentes selon que la relation de l'auteur des faits avec l'enfant s'inscrit dans le contexte familial ou dans le cadre d'une activité professionnelle ou bénévole (personnels soignants dans les établissements, enseignants, médecins, etc.) ? (article 28, alinéas c et d, Rapport explicatif, par. 198 à 199).

## Relevant extracts from the Lanzarote Convention and its Explanatory report

### Lanzarote Convention, Article 28 – Aggravating circumstances

1. Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention:

(...)

- c. the offence was committed against a particularly vulnerable victim;
- d. the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;

(...)

### Explanatory report

(...)

198. The third aggravating circumstance is where the offence was committed against a particularly vulnerable victim. Examples of vulnerability include where the child is physically or mentally disabled or socially handicapped; children without parental care, such as street children or unaccompanied immigrant minors; children of a very young age; children in a state of intoxication due to the influence of drugs or alcohol.

199. The fourth aggravating circumstance concerns where the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority. This would cover various situations where the offence has been committed by a parent or other member of the child's family, including the extended family, or any person *in loco parentis*, such as a child-minder or other care provider. A person cohabiting with the child refers to partners of the child's parent or other persons living within the same household as the child. A person having authority refers to anyone who is in a position of superiority over the child, including, for instance, a teacher, employer, an older sibling or other older child.

(...)

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

### Convention de Lanzarote, Article 28 – Circonstances aggravantes

1. Chaque Partie prend les mesures législatives ou autres nécessaires pour que les circonstances suivantes, pour autant qu'elles ne constituent pas déjà des éléments constitutifs de l'infraction, puissent, conformément aux dispositions pertinentes de droit interne, être prises en considération en tant que circonstances aggravantes dans la détermination des peines relatives aux infractions établies conformément à la présente Convention:

(...)

- c. l'infraction a été commise à l'encontre d'une victime particulièrement vulnérable;
- d. l'infraction a été commise par un membre de la famille, une personne qui cohabite avec l'enfant ou une personne ayant abusé de son autorité;

(...)

### Rapport explicatif

(...)

198. La troisième circonstance aggravante est prévue dans les cas où l'infraction a été commise à l'encontre d'une victime particulièrement vulnérable comme, par exemple, un enfant physiquement, mentalement ou socialement handicapé, un enfant privé de protection parentale – enfant de la rue ou mineur migrant non accompagné –, un enfant très jeune ou sous l'influence de drogues ou de l'alcool.

199. La quatrième circonstance aggravante est prévue dans les cas où l'infraction a été commise par un membre de la famille, une personne qui cohabite avec l'enfant ou une personne ayant abusé de son autorité. Elle se rapporte donc à des situations de types divers où l'infraction a été commise par un parent ou un autre membre de la famille de l'enfant, y compris des membres de la famille élargie, ou toute personne *in loco parentis*, garde d'enfant ou autre dispensateur de soins. Par personne cohabitant avec l'enfant, on entend le ou les partenaire(s) du parent de l'enfant ou toute autre personne vivant dans la même famille. Est considérée comme une personne exerçant une autorité quiconque se trouve en position de supériorité par rapport à l'enfant comme, par exemple, un enseignant, un employeur, un frère, une sœur ou encore un autre enfant plus âgé.

(...)

**COMPILATION  
of replies / des réponses<sup>3</sup>**

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

**ALBANIA / ALBANIE**

**Question 12 of the TQ / du QT**

The internal law considers as aggravating circumstances, committing offenses under the "Sexual Offenses" Section VI, when they are committed against children, or when are performed by benefiting from family relations, friendship or authority, respectively: Article 50 "Aggravating Circumstances"

The following circumstances aggravate the punishment:

- c) When the criminal act is committed savagely and ruthlessly;
- e) When the act is committed against children, pregnant women, or other people who, for different reasons, cannot protect themselves;
- g) When the act is committed by taking advantage of family, friendship, or hospitable relations;
- gj) When the act is committed in collaboration;
- h) Committing the penal act more than once;

**AUSTRIA/AUTRICHE**

**Question 12 of the TQ / du QT**

The fact that the sexual act was committed by a family member or a person having abused his/her authority is a constituent element of the offence of Section 212 [of the Criminal Code] (CC).

If the victim is under 14 years of age and has therefore not reached the age of sexual consent, the perpetrator fulfils, due to simultaneous commission of two or more offences during an illegal act, the elements constituting the offence of severe sexual abuse of minors (Section 206) or sexual abuse of minors (Section 207) and abuse of a position of authority (Section 212).

The fact that the perpetrator committed two criminal offences is an aggravating circumstance that is explicitly mentioned in Section 33 subpar. 1 of the CC.

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<sup>3</sup> The replies are reproduced here in the language they were received / Les réponses sont reproduites ici dans la langue où elles ont été reçues.

Besides, Section 33 of the CC contains a non-exhaustive list of aggravating circumstances. Therefore the judge can take all the circumstances mentioned in Article 28 of the Convention into account when determining the sanction in a specific case. Section 33 of the CC therefore provides flexibility with regard to new developments and new international instruments (the law does not have to be changed each time). This mechanism provides for a quasi-self-execution of international legal instruments.

As far as the level of penalties is concerned, Section 212 of the CC does not differentiate whether the relationship of the perpetrator to the child is within the context of family relations (Section 212 par. 1 subpar. 1) or of a professional or voluntary activity (Section 212 par. 1 subpar. 2 and par. 2).

## **BELGIUM / BELGIQUE**

### **Question 12 of the TQ / du QT**

Oui, voir les articles 372 et 377 du Code pénal :

*« Art. 372. Tout attentat à la pudeur commis sans violences ni menaces sur la personne ou à l'aide de la personne d'un enfant de l'un ou de l'autre sexe, âgé de moins de seize ans accomplis, sera puni de la réclusion de cinq ans à dix ans. Sera puni de la réclusion de dix à quinze ans l'attentat à la pudeur commis, sans violences ni menaces, par tout ascendant ou adoptant sur la personne ou à l'aide de la personne d'un mineur, même âgé de seize ans accomplis, mais non émancipé par le mariage. La même peine sera appliquée si le coupable est soit le frère ou la sœur de la victime mineure ou toute personne qui occupe une position similaire au sein de la famille, soit toute personne cohabitant habituellement ou occasionnellement avec elle et qui a autorité sur elle.»*

*« Art. 377. Les peines seront fixées comme prévu aux alinéas 2 à 6 :*

*- si le coupable est l'ascendant ou l'adoptant de la victime, un descendant en ligne directe de la victime ou un descendant en ligne directe d'un frère ou d'une sœur de la victime ;*

*- si le coupable est soit le frère ou la sœur de la victime mineure ou toute personne qui occupe une position similaire au sein de la famille, soit toute personne cohabitant habituellement ou occasionnellement avec elle et qui a autorité sur elle ;*

*- si le coupable est de ceux qui ont autorité sur la victime; s'il a abusé de l'autorité ou des facilités que lui confèrent ses fonctions; s'il est médecin, chirurgien, accoucheur ou officier de santé et que l'enfant ou toute autre personne vulnérable visée à l'article 376, alinéa 3, fut confié à ses soins ;*

*- si dans le cas des articles 373, 375 et 376, le coupable, quel qu'il soit, a été aidé dans l'exécution du crime ou du délit, par une ou plusieurs personnes ;*

*Dans les cas prévus par le § 1 de l'article 372 et par le § 2 de l'article 373, la peine sera celle de la réclusion de dix ans à quinze ans.*

*Dans le cas prévu par le paragraphe 1 de l'article 373, le minimum de l'emprisonnement sera doublé.*

*Dans les cas prévus par l'alinéa 3 de l'article 373, par l'alinéa 4 de l'article 375 et par l'alinéa 3 de l'article 376, la peine de la réclusion sera de douze ans au moins ;*

*Dans le cas prévu par le paragraphe 1 de l'article 375, la peine de la réclusion sera de sept ans au moins.*

*Dans les cas prévus par les alinéas 5 et 6 de l'article 375 et par l'alinéa 2 de l'article 376, la peine de la réclusion sera de dix-sept ans au moins.*

*(...) »*

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

### **Question 12 of the TQ / du QT**

Yes, in addition to the criminal offence of Sexual Intercourse by Abuse of Office, which, in its aggravated form also comprises the abuse of office by persons in a child's circle of trust, a court will, pursuant to the rules on meting out a sentence, particularly take into account other aggravating circumstances when deciding on the sanction to be imposed on perpetrators of sexual violence in the circle of trust.

Criminal Codes define the General Rules on Meting out a Sentence, pursuant to which a court will mete out a sentence to a perpetrator of a criminal sentence within the limits prescribed by the law, taking into account the purpose of punishment and all the mitigating and aggravating circumstances.

As for the aggravating circumstances pursuant to Article 28 of the Convention, most of the listed circumstances represent elements of the criminal offence, and a court will, pursuant to the rules on meting out a sentence, particularly take into account the following: degree of guilt, the motive, the degree of endangering or the degree of victim's injuries, circumstances under which the offence was committed, treatment of victim by the perpetrator, perpetrator's previous conduct, his/her personal circumstances and behaviour after the fact, and other circumstances pertaining to the perpetrator's person. When meting out a sentence to the perpetrator for a repeated criminal offence, a court will particularly take into account whether the previous offence is of the same kind or a new offence, whether both were committed on the basis of the same motive, and how long the period between the previous conviction or a served sentence or a pardon was.

## **BULGARIA / BULGARIE**

### **Question 12 of the TQ / du QT**

Legislative approach in regulation of sexual offenses against children is applied in some of the provisions as aggravating circumstance leading to increase of penalty. Such is the committed offense by a person in the children's circle of trust. In other cases the perpetration of such crimes from people from the circle of trust is part of the constituent elements of the offenses.



I. Provisions as aggravating circumstance leading to increase of penalty:

Art. 149, par(2) PC If the fornication is committed by using force or threat, using the helpless status of the aggrieved or by bringing him to such a state the punishment is aggravated.

Art 152, par 2, l 2. If the raped woman is a descending kinswoman - punishment is aggravated.

II. Perpetration of such crimes of people from the circle of trust is part of the constituent elements of the offenses:

The penalty here is not aggravated due to the offense against minor is constituent part of the provision.

Art. 150. PC : Who commits an act with the purpose of arousing or satisfying a sexual desire without copulation regarding a person who has accomplished 14 years of age, by using force or 13 threat, availing himself of his helpless status or by bringing him to such a status (fornication with a minor).

Art. 151 (PC) states that a person who has sexual intercourse with a person who has not completed the age of 14 years, insofar as the act does not constitute a crime under Article 152, shall be punished by deprivation of liberty. When the criminal act mentioned above is done with a minor individual and through the use of the state of dependency or surveillance, the penalty that the law provides is imprisonment.

154. PC Copulation between ascendants and descendants, between brothers and sisters and between adopter and adoptee shall be punished by imprisonment of up to three years

Art. 157. PC Who carries out sexual intercourse or an act of sexual satisfaction with a person of the same sex by using force or threat or using a state of dependence or supervision, as well as with a person unable to defend himself, shall be punished by imprisonment of two to eight years.

III. In other provisions of sex crimes against children in which the perpetrator is not a part of children's circle of trust or the main constituting the crime is not regulated in aggravated the underlying crime, it can be taken into consideration when determining the sentence as a fact determining the degree of social danger of the offense and the offender, the motives for the offense in light of all mitigating and aggravating circumstances. The legal basis for this is the provision in Article 54 of the Penal Code.

"Art. 54":

(1) The court determines the sentence within the limits prescribed by law for the offense, guided by the provisions of the General Part of this Code, taking into account:

- the dangerousness of the offense and the offender;
- motives of the act and other mitigating and aggravating circumstances.

(2) Mitigating circumstances leads to the imposition of a lighter penalty, and aggravating - a more severe punishment."

## CROATIA / CROATIE

### Question 12 of the TQ / du QT

Article 166 paragraphs 1 and 2 of the Criminal Act<sup>4</sup> explicitly provide for more severe punishment (aggravated form of the basic criminal offence) if the criminal offence against the child is committed by a person close to the child or by a person living within the same household as the child. According to paragraph 1, more severe punishment is provided for the criminal offences of sexual abuse of a child under the age of fifteen years (Article 158 paragraph 1 of the CA), child pandering (Article 162 paragraphs 1 and 2), exploitation of children for pornography (Article 163 paragraphs 1 and 2) and exploitation of children for pornographic performances (Article 164 paragraph 1). Namely, if any of the said criminal offences was committed by a person close to the child, the prescribed penalty ranges from three to fifteen years' imprisonment, with the severity of the sentence in each individual case depending on the application of the basic parameters provided for in Article 47 of the CA.

In accordance with paragraph 2, more severe punishment (imprisonment for a term of at least five years) is provided if the criminal offence referred to in Article 158 paragraph 5 (sexual abuse of a child under the age of fifteen years), Article 162 paragraph 3 (child pandering), Article 163 paragraph 3 (exploitation of children for pornography) or Article 164 paragraph 2 (exploitation of children for pornographic performances) was committed by a person close to the child, with the severity of the sentence in each individual case depending on the application of the basic parameters provided for in Article 47 of the CA.

In other words, Article 47 of the CA specifies that in determining the type and severity of punishment, one should, among other things, take into account the degree to which the perpetrator's duties have been violated, the consequences arising from the commission of the criminal offence, and the perpetrator's relationship to the victim. There is, therefore, no doubt that the relationship of the perpetrator of a criminal offence to the child within the context of family relations or the performance of a professional or voluntary activity is of

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<sup>4</sup> Article 166 reads as follows: "(1) If as a result of the criminal offence referred to in Article 158, paragraph 1, Article 162, paragraph 1 or 2, Article 163, paragraph 1 or 2, or Article 164, paragraph 1, of this Act a child suffers severe bodily injury or his/her physical or emotional development is compromised or the child becomes pregnant, or the child becomes pregnant, or where the offence was committed by several people acting together, or where the offence was committed against a particularly vulnerable child, or where it was committed by a person close to the child or a person the child lives with in a shared household, or where it was committed in an especially cruel or degrading manner, the perpetrator shall be sentenced to imprisonment for a term of between three and fifteen years.

(2) If as a result of the criminal offence referred to in Article 158, paragraph 5, Article 162, paragraph 3, Article 163, paragraph 3, or Article 164, paragraph 2, of this Act a child suffers severe bodily injury or his/her physical or emotional development is compromised or the child becomes pregnant, or where the offence was committed by several people acting together, or where the offence was committed against a particularly vulnerable child, or where it was committed by a person close to the child or a person the child lives with in a shared household, or where it was committed in an especially cruel or degrading manner, the perpetrator shall be sentenced to imprisonment for a term of at least five years.

(3) If as a result of the criminal offence referred to in Article 158, 162, 163 or 164 of this Act a child dies, the perpetrator shall be sentenced to imprisonment for a term of at least ten years or long-term imprisonment."

relevance to the type and severity of the sanction that is to be imposed on the perpetrator by the court.

It should also be mentioned that the CA defines the term “close person” as “a family member, former spouse or cohabitant or same-sex partner and persons living in the same household” (Article 87 paragraph 9 of the CA).

According to Article 87 paragraph 8 of the CA, the term “family members” shall mean the current spouse or cohabitant or same-sex partner, their children and children of either of them, lineal blood relatives, collateral blood relatives up to the third degree of kinship, in-laws up to the second degree, adopter and adoptee.

The term “cohabitant” shall mean a person living in a cohabiting relationship of a more lasting character or in which a child is born (Article 87 paragraph 10 of the CA), and the term “same-sex partner” shall mean a person living in a same-sex partnership of a more lasting character (Article 87 paragraph 11 of the CA).

## **DENMARK / DANEMARK**

### **Question 12 of the TQ / du QT**

See answer to question 20 of the GOQ:

#### Q20 of the General Overview:

All of the circumstances referred to in Article 28 may be taken into consideration as aggravating circumstances.

## **FINLAND / FINLANDE**

### **Question 12 of the TQ / du QT**

The close relationship between the child and the offender can be taken into consideration in several ways depending on the case. The provision on Sexual abuse (Chapter 20, Section 5 of the Criminal Code (39/1889)) applies to all children under the age of 18 and provides special protection to children against sexual abuse by people in close relationships with them (such as teachers, other personnel in an institution, someone the child is dependent on). In cases where this provision applies and the child is under the age of 16 the provision(s) on child sexual abuse also apply (Chapter 20, Sections 6 and 7 the Criminal Code (39/1889)). In this way the penalty may be higher than what it would normally be.

Even though the age of sexual consent is 16 the provision on Sexual abuse of a child (Chapter 20, Section 6, paragraph 2) provides protection also to children between the ages of 16 and 18. This provision applies also to cases where a child who has reached the age of sixteen but is younger than eighteen years of age has been sexually abused, if the offender is the parent of the child or is in a position comparable to that of a parent and lives in the same household with the child.

One of the circumstances that make the offence considered to be an aggravated sexual abuse of a child is that the offence is conducive to causing special injury to the child due to the special trust he or she has placed in the offender or the special dependence of the child on the offender (Chapter 20, Section 7, paragraph 2, point c).

## **FRANCE**

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

## **GREECE / GRÈCE**

### **Question 12 of the TQ / du QT**

Under art. 342 par. 1 of the Penal Code, any adult, who engages in sexual activities with a child that he/she had the duty to take care of or supervise, even temporarily, is punished. Although the relationship with the child is a constituent element of the offence, there are 6 specific aggravating circumstances with regard to the perpetrator mentioned in par. 2:

- a. belonging to the family (stricto and lato sensu)
- b. cohabiting with the child or maintaining a friendly relationship with his/her family
- c. being a teacher or educator of any kind for the child
- d. being a person that accepts services from the child
- e. providing pastoral care for the child
- f. being a psychologist, doctor, nurse or any other professional that offers his/her services to the child.

Under art. 343 of the Penal Code, people working in residential care settings or institutions such as schools, hospitals, and prisons and engage in sexual activities with people receiving their services are punished. Under art. 345 of the Penal Code, sexual intercourse between relatives are punished. The offence is a felony, if a member was under 18 years of age. Under art. 346 of the Penal Code, any other sexual activity between relatives are punished as well.

Under Law 3500/2006 on combating domestic violence, a comprehensive and extended definition of "domestic" environment is provided facilitating thus prosecution under these special provisos of cases in which co-habitation is apparent irrelevantly from the particular nature of the perpetrator's relationship to the child-victim or the nature of co-habitation.

Moreover, by the same Law it is provided that perpetrators that commit such crimes against children within the domestic environment are subjected to double the sentences that would be subjected to if the same crimes were committed outside family/domestic environment.

## ICELAND / ISLANDE

### Question 12 of the TQ / du QT

See answer to question 20 of GOQ:

#### Q20 of the General Overview:

No legal amendments were made on the General Penal Code in connection with the ratification of the Convention with respect to the standards set out in Article 28. In the explanatory report to the amendment bill passed, the Standing Committee made a thorough assessment on the legal framework and Article 28. It is laid out that the relevant articles provide protection up to the standards set out in the Convention. Article 70 of the General Penal Code applies in all cases of offences under the Act. It reads that when imposing a penalty certain factors shall in particular be taken into account. These are; the importance of the interests affected by the offence, the extent of damage caused by the offence, the danger ensuing from the commission of the offence, in particular when considering the time, place and method of commission, the age of the offender, the recent behaviour of the offender, the strength and degree of the offender's resolve, the motive of the offender, the offender's conduct following upon the commission of the offence, whether the offender has provided information on the involvement of other parties to the offence. In addition it is stated that if an offence has been committed by more than one person acting together, this shall generally be viewed as an aggravating factor of penalty. The last paragraph reads that if an offence was aimed at a man, woman or a child that are close to the offender, and their connection is found to have increased the severity of the offence, this shall on average be considered aggravated circumstances.

Article 175 a meets the standards of Article 28 with respect to an offence being committed within the framework of a criminal organisation. It reads that any person who connives with another person on the commission of an act which is punishable by at least 4 years' imprisonment, the commission of which is part of the activities of a criminal organisation, shall be imprisoned for up to 4 years unless a heavier punishment for his offence is prescribed in other provisions of this Act or in other statutes. 'Criminal organisation' here refers to an association of three or more persons, the principle objective of which is, for motives of gain, directly or indirectly, deliberately to commit a criminal act that is punishable by at least 4 years' imprisonment, or a substantial part of the activities of which involves the commission of such an act.

Article 195 states aggravating circumstances with respect to rape. It reads that when punishment for violations of Article 194 is determined, it shall be considered as increasing the severity of the punishment: if the victim is a child under the age of 18, if the violence employed by the perpetrator is of serious proportions, if the offence is perpetrated in such a way as to cause particular pain or injury. In respect to Article 28 g of the Convention, this is provided for in Article 71 of the General Penal Code, laying out the circumstances for the application of when the Law provides for or authorizes an increased penalty or alternative sanctions in case of a repeated offence. An example of this is Article 205 that reads that if a person who is to be punished for any of the sexual offences described above has previously been convicted of such an offence, the punishment may be increased by as much as half the

prescribed punishment. Article 72 of the General Penal Code may also be mentioned in this respect as it reads that if a person commits one or more offences habitually or professionally the penalty ordered may be increased by an addition of up to one half thereof. If this is repeated the penalty ordered may be doubled.

## ITALY / ITALIE

### Question 12 of the TQ / du QT

See question 20 GOQ for the cases where the personal quality of the offender is a constituent element of the offence or an aggravating circumstance; see also under question 22 for consequences on prosecution of the offence.

#### Q20 of the General Overview:

All the circumstances referred to in Article 28 of the Lanzarote Convention are taken into consideration as aggravating circumstance and they determine the sanctions.

According to the Italian law, for the crimes under the Lanzarote Convention, aggravating Circumstances must be considered, which vary according to different types of offences:

- the quality of parent is regarded as an aggravating circumstance of the offense;
- being a public official or civil servant;
- if the victim is less than eighteen years of age;
- if the facts are directed at the exploitation of prostitution;
- the offence was preceded or accompanied by acts of torture or serious violence;
- if the act results in a serious danger to the life or physical or psychological integrity of the victim;
- if the offense is committed with violence or threat;
- if the offenders have taken advantage of the circumstances of time, place or person, including with regard to age, such as to obstruct the public or private defence;
- having committed the act with abuse of authority or of domestic relations, or with abuse of office, employee, cohabiting, or hospitality;
- if the offense is committed by taking advantage of the situation of necessity of the child;
- if the offense is committed by an ascendant, the adoptive parent, or their spouse or partner, the spouse or relatives up to the second degree, by relatives up to the fourth degree, by the guardian or other person to whom the child was entrusted for reasons of care, education, instruction, supervision, custody, employment, or by public officials or people in charge of public service in the exercise of their functions;
- if it is committed against a child in a state of infirmity or natural or provoked mental handicap;
- if the offense is committed through the administration of alcohol, narcotic, drugs or substances otherwise detrimental to the physical or mental health of the child;
- if it is committed against three or more persons;
- if it is committed with the use of weapons;
- if it is committed by a person simulating the quality of a public official or civil servant;
- if it is committed against a person subjected to limitations of personal freedom;

- if it is committed inside or in the close proximity to educational institutions attended by the victim;
- if the offence is committed within the framework of a criminal organisation;
- in the case the perpetrator has previously been convicted of offences.

Q22 of the General Overview:

(...) For all crimes relative to sexual exploitation of children prosecution is *ex officio*. According to the Italian Law these are the main offenses relating to ill-treatment and abuse that can be prosecuted without a specific request of a party and for which prosecution is obligatory:

|  |                              |
|--|------------------------------|
| Personal injury due to illness lasting more than twenty days   | Art. 582 cp                  |
| Abandonment of a minor   | Art. 591 cp                  |
| Breach of the obligations of family support  | Art. 570 cp                  |
| Abuse of the means of correction and discipline  | Art. 571 cp                  |
| Abuse in the family or towards children  | Art. 572 cp                  |
| Female genital mutilations   | Art. 583 <i>bis</i> cp       |
| Enslavement  | Art. 600 cp                  |
| Domestic violence  | Art. 610 cp                  |
| Violence or threats to force a person to commit a crime  | Art. 611 cp                  |
| Engagement of children in begging  | Art. 671 cp                  |
| Sexual Violence :<br>- gang rape;<br>- sexual violence with minors aged less than 18 years;<br>- if the offense is committed by an ascendant, parent even if adoptive, or by his/her partner, guardian, or other person to whom the child is entrusted for reasons of care, education, supervision or custody and with whom the minor has a relationship of cohabitation;<br>- if the offense is committed by a public official or a person in charge of public service in the performance of its functions;<br>sexual acts with minors under the age 10;<br>- if the offense is connected with another offense that can be prosecuted without a specific request of a party involved. | Art. 609 <i>bis</i> cp e ss. |
| Incest   | Art. 564 cp                  |
| Child Prostitution   | Art. 600 <i>bis</i> cp       |
| Child Pornography  | Art. 600 <i>ter</i> cp       |
| Possession child pornography   | Art. 600 <i>quater</i> cp    |
| Tourism initiatives for the exploitation of child prostitution   | Art. 600 <i>quinquies</i> cp |
| Incitement to practices paedophilia and child pornography  | Art. 414 <i>bis</i>          |
| Solicitation of Minors   | Art. 609 <i>undecies</i>     |

## LITHUANIA / LITUANIE

### Question 12 of the TQ / du QT

In internal law the circumstance that a *person from the child's circle of trust* committed an act of the category under discussion (abuse of sexual nature) shall not be held an aggravating circumstance or a factor affecting the size of sanction.

It should be noted that in the national law Article 60<sup>5</sup> of CC the (Criminal Code of the Republic of Lithuania) provides for an exhaustive list of aggravating circumstances and the court cannot consider the circumstances other than those specified in Article 60 of the CC as aggravating.

Regarding criminal law, only Article 1511 of the CC defines liability for sexual abuse of the child committed by *persons in the circle of trust* (father, mother, guardian, custodian or another lawful representative of a child or another person holding statutory powers in respect of a minor). This law also provides for a stricter punishment:

*“Article 1511. Satisfaction of sexual desires by violating a minor’s freedom of sexual self-determination and/or inviolability*

*3. A father, mother, guardian, custodian or another lawful representative of a child or another person holding statutory powers in respect of a minor who has sexual intercourse or otherwise satisfied his sexual desires with that minor, in the absence of characteristics of a rape, sexual assault or sexual abuse [...].”*

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<sup>5</sup> Text as reproduced in the reply to question 20 of the GOQ

1. The following shall be considered as aggravating circumstances:

1) the act has been committed by a group of accomplices. Taking into consideration the nature and the extent of participation of each accomplice in committing the criminal act, a court shall have the right to disregard this circumstance as aggravating;

2) the act has been committed by an organised group;

(...)

4) the act has been committed by torturing the victim or subjecting him to taunting;

(...)

6) the act has been committed against a person in a helpless state owing to an illness, disability, old age or for other reasons, in the absence of the person’s request;

(...)

11) the committed act has caused grave consequences;

(...)

2. When imposing a penalty, a court shall not take into consideration an aggravating circumstance which is provided for in a law as constituting the body of a crime.”

Article 54 of the CC. Basic Principles for imposing penalty

1. A court shall impose a penalty according to the sanction of an article of the Special Part of this Code providing for liability for the committed criminal act and in compliance with provisions of the General Part of this Code.

2. When imposing a penalty, a court shall take into consideration:

1) the degree of dangerousness of the committed criminal act;

2) the form and type of guilt;

3) the motives and objectives of the committed criminal act;

4) the stage of the criminal act;

5) the personality of the offender;

6) the form and type of participation of the person as an accomplice in committing the criminal act;

7) mitigating and aggravating circumstances.

3. Where imposition of the penalty provided for in the sanction of an article is evidently in contravention to the principle of justice, a court may, taking into consideration the purpose of the penalty, impose a commuted penalty subject to a reasoned decision.“

The currently applicable par. 6 of Article 60.1 is going to be supplemented in the Draft Criminal Code as follows:

6) the act has been committed against a person in a helpless state owing to an illness, disability, old age or for other reasons, in the absence of the person’s request, or the act has been committed against a minor making use of his/her dependence or misusing his/her trust by authority or influence;“



It should be noted that the draft Law Amending and Supplementing Articles 7, 8, 60, 95, 151, 1511, 153, 162, 307, 308, 309 of the Criminal Code of the Republic of Lithuania, Supplementing the Code with Articles 1001, 1002, 1521 and 2521 and Supplementing the Annex to the Code registered in the Seimas of the Republic of Lithuania (Registration No. XIP-4796) stipulates an aggravating circumstance where an act was committed with respect to a minor having taken advantage of his dependence or by abuse of trust, authority or influence (Article 3 of the draft law).

Furthermore, Article 1511(3) of the CC stipulates a criminal liability with regard to father, mother, guardian, custodian or another lawful representative of a child or another person holding statutory powers in respect of a minor who had sexual intercourse or otherwise satisfied his sexual desires with that minor, in the absence of characteristics of a rape, sexual assault or sexual abuse.

## **LUXEMBOURG**

### **Question 12 of the TQ / du QT**

Pour les infractions d'attentat à la pudeur et de viol, la circonstance aggravante prévue à l'article 377 du Code pénal est susceptible de jouer dans le cas sus-mentionné. En effet, cet article dispose que « Le minimum des peines portées par les articles précédents sera élevé conformément à l'article 266 et le maximum pourra être doublé: 1° lorsque le viol ou l'attentat à la pudeur est commis par un ascendant légitime, naturel ou adoptif, ou par toute autre personne ayant autorité sur la victime; 2° lorsque le viol ou l'attentat à la pudeur est commis par une personne qui abuse de l'autorité que lui confèrent ses fonctions; (...). »

Pour l'infraction de proxénétisme, la circonstance aggravante de l'article 379bis du Code pénal peut être invoquée si un mineur est impliqué. Cette disposition entraînera une augmentation de la peine prévue. Le texte dispose que « (...) Les faits énoncés aux numéros 3°, 4° et 5° du présent article seront punis chacun d'un emprisonnement de deux à cinq ans et d'une amende de 251 à 75.000 euros s'ils ont été commis envers un mineur âgé de moins de dix-huit ans, d'un emprisonnement de trois à cinq ans, s'ils ont été commis envers un mineur âgé de moins de seize ans, et de la réclusion de cinq à dix ans, s'ils ont été commis envers un mineur de moins de onze ans. (...) »

D'autres infraction prévues par la Convention de Lanzarote n'existent que lorsque des mineurs sont victimes mais il n'y a pas de peines plus lourdes si l'auteur est un membre de la famille ou une personne qui cohabite avec l'enfant etc. :

- Infractions spécifiques pour ceux qui ont facilité ou favorisé la débauche, la corruption ou la prostitution de mineurs (article 379, 1° du Code pénal), ceux qui ont recruté, exploité, contraint, forcé, menacé ou eu recours à un mineur aux fins de la production de spectacles ou de matériel pornographique ou aux fins de participation à tels spectacles (article 379, 2° du Code pénal), ceux qui ont assisté à des spectacles pornographiques impliquant la participation d'un mineur (article 379 3° du Code pénal), ceux qui ont contraint ou forcé un mineur à se livrer à des activités sexuelles avec un tiers (article 379 4° du Code pénal).

- Articles 383, 383bis, 383ter et 384 du Code pénal relatifs à la pédopornographie.

- Article 385-2 du Code pénal : La proposition sexuelle faite à un mineur en utilisant un moyen de communication électronique.

- Article 385bis du Code pénal : La vente ou la distribution de matériel indécent ou de nature à troubler l'imagination d'un enfant de moins de 16 ans.

La loi ne distingue pas au niveau de la peine si l'auteur est un membre de la famille ou dans le cercle d'une activité professionnelle ou bénévole mais il y a cependant possibilité d'adapter les 7 peines accessoires comme par exemple l'interdiction de remplir certaines fonctions ou la déchéance de l'autorité parentale etc.

## **MALTA/MALTE**

### **Question 12 of the TQ / du QT**

The law provides for aggravating circumstances for each of the various offences:

In the case of rape the offence is deemed aggravated if committed by any ascendant, tutor, or institutor or when the offence is committed on the person of a brother or sister, an ascendant or descendant, another person living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence, other persons who are related to each other by consanguinity or affinity up to the third degree inclusively or when the crime is committed in the presence of, or within hearing distance of a minor.

The offence of defilement of minors or instigation thereof and the offences related to the inducing of persons under age to prostitution are deemed aggravated if committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor of the minor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the minor.

Participation in sexual activities with minors is aggravated where the offender abuses of a recognised position of trust, authority or influence over the minor and any of the following circumstances occurs:

- (i) the offender wilfully or recklessly endangered the life of the person under age;
- (ii) the offence involves violence or grievous bodily harm to such person;
- (iii) the offence is committed with the involvement of a criminal organization.

In the case of the offence of violent indecent assault, the offence shall be deemed aggravated if committed on the person of a brother or sister, an ascendant or descendant, another person living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence, other persons who are related to each other by consanguinity or affinity up to the third degree inclusively or when the crime is committed in the presence of, or within hearing distance of a minor.

Where offences relating to the producing, offering, distributing of pornography depicting minors are committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the minor, the offence is also deemed aggravated.

The above mentioned offences as well as offences of inducing or instigating with violence persons under age into prostitution, participating in sexual acts with a minor and other

unlawful sexual activities and solicitation of persons under age are also deemed aggravated in the following circumstances:

- (i) when the crime is committed by any ascendant, tutor,
- (ii) when the offence is committed on the person of a brother or sister, an ascendant or descendant, another person living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence, other persons who are related to each other by consanguinity or affinity up to the third degree inclusively or when the crime is committed in the presence of, or within hearing distance of a minor;

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

### **Question 12 of the TQ / du QT**

Law No 73 of 12.04.2012 on amending and supplementing certain acts stipulates: committed against children who are in care under protection, protected, educated, offender treatment”

More details in answer to Q20 of the GOQ:

#### Q20 of the General Overview:

As aggravating circumstances in determining penalties, related to provisions of the Lanzarote Convention, are provided in the following paragraphs from the article of the 77 Criminal Code, namely:

- Lit. (a) corresponds to the letter. (g), i.e. an offense committed by a person who was previously convicted of similar offenses.
- Lit. (c) corresponds to the letter. (e), i.e. a crime by any form of participation
- Lit. (h) corresponds to (b), namely committing the crime with particular cruelty
- Lit. (e) corresponds to (c) knowingly committing a crime against a minor or a pregnant woman or by taking advantage of known or obvious state of helplessness of the victim.
- Lit. (n) corresponds to the letter. (d) commission of a crime's trust.

Aggravating circumstances are provided in Article 28 of the Convention, in the Criminal Code of the Republic of Moldova, art 77.

Aggravating - the crime committed by a family member, by a person who lives with the child or a person who has abused their authority and committing crime by more persons are taken into account, the aggravating offenses of rape, violence and the trafficking of children.

## **MONTENEGRO**

### **Question 12 of the TQ / du QT**

Yes, in addition to the criminal offence of Sexual Intercourse by Abuse of Position, which in its severe form includes the abuse of position by people in the child’s circle of trust, the court shall, in accordance with the rules of fixing a sentence, in particular take into account: the degree of culpability, the motives for committing the crime, the degree of jeopardizing or severity of injury of the victim, the circumstances under which the offence was

committed, the attitude of the perpetrator to the victim, his / her prior convictions, etc. The new Amendments to the Criminal Code introduced a special circumstance for fixing a sentence, for a criminal offence motivated by hatred.

## **NETHERLANDS / PAYS BAS**

Did not reply. / N'a pas répondu.

## **PORTUGAL**

### **Question 12 of the TQ / du QT**

Yes. The crime of sexual abuse of dependent children aged 14 to 18 years old by the person to whom their education or assistance has been trusted typified in Article 172 of the Criminal Code. The ratio underlying the autonomous typification is the special situation of vulnerability of the abused child towards his/ her caretaker; and thus the seriousness attached to the violation of the bond of trust that was established.

The crime of solicitation of minors for prostitution explicitly previews and sanctions the circumstance where this solicitation takes place with the abuse of a position of authority resulting from a family relationship, tutorship, curatorship or hierarchical dependency (Article 175 (2) c) of the Criminal Code).

Moreover, Article 177 of the Criminal Code provides for an aggravation of one third in the minimum and maximum thresholds of the penalty in the case where the victim is a descendent, adopted, stepchild or a in a tutorship, family, hierarchical, economical or labour relationship with the perpetrator and the crime is committed by taking advantage of these circumstances.

## **ROMANIA / ROUMANIE**

### **Question 12 of the TQ / du QT**

The offences of rape and sexual aggression are provided for in their aggravated form (punished with 5 to 12 years imprisonment and to 10 years imprisonment) when committed against the victim who is in the care, protection, education or guard or treatment of the offender or when the victim is a direct relative, brother or sister.

As well, the offences regarding the sexual intercourse with a minor and sexual corruption of minors are punished more severe (3 to 10 years imprisonment and 2 to 7 years imprisonment), when the minor is a direct relative, brother or sister of the offender or the minor is in the care, protection, education or guard or treatment of the offender.

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

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

## **SERBIA / SERBIE**

### **Question 12 of the TQ / du QT**

(...)

Article 181 of the Criminal Code regulates criminal offence of Sexual Intercourse through Abuse of Position. The perpetrator of such a criminal offence is a person who by abuse of position induces to sexual intercourse or an equal act a person who is in a subordinate or dependant position. The sentence for such a criminal offence is imprisonment of three months to three years.

Teacher, tutor, guardian, adoptive parent, stepfather or other person who through abuse of his position or authority has sexual intercourse or commits an act of equal magnitude a juvenile entrusted to him for learning, tutoring, guardianship or care, shall be punished with imprisonment from one to ten years.

If the offence specified in paragraph 2 of this Article is committed against a child, the offender shall be punished with imprisonment of three to twelve years.

If the offence specified in paragraphs 1 to 3 of this Article resulted in pregnancy, the offender shall be punished for the offence specified in paragraph 1 by imprisonment from six months to five years, and for the offence specified in paragraph 2 by imprisonment from two to twelve years, and for the offence specified in paragraph 3 by imprisonment from three to fifteen years.

If the offence referred to in paragraph 3 of this Article results in the death of the child, the offender shall be punished with imprisonment of a minimum of ten years.

Consequently, the referred to circumstances are elements of criminal offence under Article 183 Of the Criminal Code. If the offence was committed to detriment of a juvenile or a child, then it is a "qualified" ('classified) criminal offence, which was duly taken into account by the legislator in determining the punishment under the law.

## **SPAIN / ESPAGNE**

### **Question 12 of the TQ / du QT**

See 9b GOQ.

#### Q9b of the General Overview:

Circumstances provided for in article 28 of the Convention are considered aggravating circumstances by the Spanish Criminal Code.

## "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / "L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE"

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

## TURKEY / TURQUIE

### Question 12 of the TQ / du QT

Turkish Penal Code regards the commission of the offences indicated in the Convention, by the child's close relatives, guardian, educators, whom the child trusts and who are within the child's circle of trust, as an aggravating circumstance. In relation to this, Paragraph 3, Article 103 of the Turkish Penal Code, which provides legal arrangements with regard to the "offence of sexual abuse of children," is as follows:

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

## UKRAINE

### Question 12 of the TQ / du QT

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

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

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

### **III – Other stakeholders / Autres parties prenantes**

#### **UNICEF (ICELAND / ISLANDE)**

##### **Question 12 of the TQ**

All circumstances involving persons in the circle of trust may be taken into consideration in the Icelandic law as aggravating circumstances in the determination of sanctions of sexual offenders.