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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 13
of the Thematic Questionnaire
(including Replies to Question 22 (d) of the
General Overview Questionnaire to which it refers)**

**Compilation des réponses à la Question 13
du Questionnaire Thématique
(y compris les réponses à la Question 22 (d) du Questionnaire
« Aperçu général » à laquelle elles se réfèrent)**

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

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

www.coe.int/lanzarote

Introduction

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

This document is aimed at responding to this request by compiling replies to question 13 of the thematic questionnaire (and replies to question 22 (d) of the General Overview Questionnaire to which it refers).

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^e réunion (9 décembre 2013, voir §13 du rapport ainsi que son annexe III²), 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 13 du questionnaire thématique (et à la question 22(d) du Questionnaire « Aperçu général » à laquelle elles se réfèrent).

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

¹ The 7th meeting report is online at:

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

² Le rapport de la 7^e 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 13 of the TQ: Best interest of the child.

- a. Please specify whether in situations where the alleged perpetrator is a member of the victim's family or has otherwise been in a recognised position of trust or authority towards him or her, legislative or other measures have been taken to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim of sexual abuse. (Article 30, para. 1, Explanatory Report, para. 215)
- b. The reply to question 22(d) of the GOQ will be examined by the Committee to assess the implementation of Article 31, para. 4 of the Convention with respect to the theme of the monitoring round
- c. Please also indicate whether internal law provides that sanctions, as a result of offences committed by a person considered to be in the victim's circle of trust, include withdrawal of parental rights or monitoring or supervision of convicted persons (Article 27, para. 4, Explanatory Report, para. 191)

Question 22(d) of the GOQ: Investigations and criminal measures to protect the child victim.

- d. Please clarify whether your judicial authorities may appoint a special representative for the victim who may be party, where the holders of parental responsibility are precluded from representing the child in proceedings related to sexual exploitation or sexual abuse of children as a result of a conflict of interest between them and the victim. Please specify who may be appointed as a representative and what are his/her tasks (Article 31, para. 4). Please also describe under which conditions it is possible

Question 13 du QT : Intérêt supérieur de l'enfant

- a. Veuillez préciser si, dans les situations où l'auteur présumé est un membre de la famille de la victime ou une personne en position reconnue de confiance ou d'autorité vis-à-vis de cette dernière, des mesures législatives ou autres ont été prises pour que les enquêtes et procédures pénales se déroulent dans l'intérêt supérieur et le respect des droits de l'enfant victime d'abus sexuels (article 30, par. 1, Rapport explicatif, par. 215).
- b. La réponse à la question 22 (d) du QAG sera examinée par le Comité pour évaluer la mise en œuvre de l'article 31 par. 4 de la Convention par rapport au thème du cycle de suivi.
- c. Veuillez également indiquer si le droit interne prévoit, au titre des sanctions applicables aux infractions commises par une personne considérée comme faisant partie du cercle de confiance de la victime, la déchéance des droits parentaux ou le suivi ou la surveillance des personnes condamnées (article 27, par. 4, Rapport explicatif, par. 191)

Question 22 (d) du QAG : Enquêtes et mesures pénales visant à protéger l'enfant victime.

- d. Veuillez préciser si les autorités judiciaires sont habilitées à désigner un représentant spécial pour la victime, qui pourrait être une partie, lorsqu'il est interdit aux personnes exerçant la responsabilité parentale de représenter l'enfant dans une procédure relative à des faits d'exploitation ou d'abus sexuels en raison d'un conflit d'intérêts entre elles et la victime. Veuillez préciser qui peut être nommé représentant et quel est son rôle (**article 31, par. 4**). Veuillez également décrire les conditions le permettant

Relevant extracts from the Lanzarote Convention and its Explanatory report

Lanzarote Convention, Article 27 – Sanctions and measures.

(...)

4 Each Party may adopt other measures in relation to perpetrators, such as withdrawal of parental rights or monitoring or supervision of convicted persons.

(...)

Explanatory report

(...)

191. The Convention provides also for the possibility for Parties to adopt other measures in relation to perpetrators, such as the withdrawal of parental rights. This measure could be taken, for instance, in relation to a person who was removed from the family environment as an assistance measure to the victim in accordance with Article 14 paragraph 3.

(...)

Lanzarote Convention, Article 30 – Principles.

1 Each Party shall take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child.

(...)

Explanatory report

(...)

215. This is why paragraphs 1 and 2 establish two general principles to the effect that investigations and judicial proceedings concerning acts of sexual exploitation and sexual abuse of children must always be conducted in a manner which protects the best interests and rights of children, and must aim to avoid exacerbating the trauma which they have already suffered.

(...)

Lanzarote Convention, Article 31 – General measures of protection.

(...)

4 Each Party shall provide for the possibility for the judicial authorities to appoint a special representative for the victim when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim.

(...)

Explanatory report

219. This article contains a non-exhaustive list of child-friendly procedures designed to protect children during proceedings.

220. These general measures of protection apply at all stages of the proceedings, both during the investigations (whether they are carried out by a police service or a judicial authority) and during trial proceedings.

221. First of all, the article sets out the right of children (and their families or legal representatives) to be informed of developments in the investigations and proceedings in which they are involved as victims. In this respect, the provision provides that victims should be informed of their rights and of the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigations or proceedings, and their role as well as the outcome of their cases. The negotiators stressed the importance of the obligation to inform children and their families when a person prosecuted or convicted of sexual offences against the child concerned is released, at any rate where this seems necessary (for instance, in cases where there is a risk of retaliation or intimidation or when, because the victim and the perpetrator live near each other, they might accidentally find themselves face to face with each other). This information should be provided "in a manner adapted" to the age of the child.

222. The article goes on to list a number of procedural rules designed to implement the general principles set out in Article 31: the possibility, for victims, of being heard, of supplying evidence, of having their privacy, particularly their identity and image, protected, and of being protected against any risk of retaliation and repeat victimisation. The negotiators wished to stress that the protection of the victim's identity, image and privacy extends to the risk of "public" disclosure, and that these requirements should not prevent this information being revealed in the context of the actual proceedings, in order to respect the principles that both parties must be heard and the inherent rights of the defence during a criminal prosecution.

223. Paragraph 1, sub-paragraph g, is designed to protect children who are victims of sexual exploitation or sexual abuse, in particular by preventing their being further traumatised through contact, on the premises of the investigation services and in court, with the alleged perpetrator of the offence. This provision applies to all stages of the criminal proceedings (including the investigation), with certain exceptions: the investigation services and the judicial authority must be able to waive this requirement in the best interests of the child (for example when the child wants to attend the hearing) or when contact between the child and the alleged perpetrator is necessary or useful for ensuring that the proceedings take place satisfactorily (for example, when a confrontation appears necessary).

224. Paragraph 2 also covers administrative proceedings, since procedures for compensating victims are of this type in some States. More generally, there are also situations in which protective measures, even in the context of criminal proceedings, may be delegated to the administrative authorities.

225. Paragraph 3 provides for access, free of charge, where warranted, to legal aid for victims of sexual exploitation and sexual abuse. The negotiators wanted to take account of conditions to which the granting of legal aid is subject under the Parties' domestic law, as these vary considerably from country to country. Judicial and administrative procedures are often highly complex and victims therefore need the assistance of legal counsel to be able to assert their rights satisfactorily. This

provision does not afford victims an automatic right to free legal aid. The conditions under which such aid is granted must be determined by each Party to the Convention when the victim is entitled to be a party to the criminal proceedings.

226. In addition to Article 31 paragraph 3, the Parties must take account of Article 6 ECHR. Even though Article 6, paragraph 3.c. ECHR provides for the free assistance of an officially assigned defence counsel only in the case in persons charged with criminal offences, the case law of the European Court of Human Rights (*Airey v. Ireland* judgement, 9 October 1979) also, in certain circumstances, recognises the right to free assistance from an officially assigned defence counsel in civil proceedings, under Article 6, paragraph 1 ECHR, which is interpreted as enshrining the right of access to a court for the purposes of obtaining a decision concerning civil rights and obligations (*Golder v. United Kingdom* judgment, 21 February 1975). The Court took the view that effective access to a court might necessitate the free assistance of a lawyer. For instance, the Court considered that it was necessary to ascertain whether it would be effective for the person in question to appear in court without the assistance of counsel, i.e. whether he could argue his case adequately and satisfactorily. To this end, the Court took account of the complexity of the proceedings and the passions involved – which might be incompatible with the degree of objectivity needed in order to plead in court – so as to determine whether the person in question was in a position to argue his own case effectively and held that, if not, he should be able to obtain free assistance from an officially assigned defence counsel. Thus, even in the absence of legislation affording access to an officially assigned defence counsel in civil cases, it is up to the court to assess whether, in the interests of justice, a destitute party unable to afford a lawyer's fees must be provided with legal assistance.

227. Paragraph 4 makes provision for the situation in cases of sexual abuse within the family, in which the holders of parental responsibility, while responsible for defending the child's interests, are involved in some way in the proceedings in which the child is a victim (where there is a "conflict of interest"). In such cases, this provision makes it possible for the child to be represented in judicial proceedings by a special representative appointed by the judicial authorities. This may be the case when, for example, the holders of parental responsibility are the perpetrators or joint perpetrators of the offence, or the nature of their relationship with the perpetrator is such that they cannot be expected to defend the interests of the child victim with impartiality.

228. Paragraph 5 provides for the possibility for various organisations to support victims. The reference to conditions provided for by internal law highlights the fact that it is up to the States to make provision for assistance or support, but that they are free to do so in accordance with the rules laid down in their national systems, for example by requiring certification or approval of the organisations, foundations, associations and other bodies concerned.

229. Paragraph 6 of this article refers to written or other materials that must be available in the languages most widely used in the country.

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

Convention de Lanzarote, Article 27 – Sanctions et mesures.

(...)

4 Chaque Partie peut adopter d'autres mesures à l'égard des auteurs d'infractions, telles que la déchéance des droits parentaux, le suivi ou la surveillance des personnes condamnées.

(...)

Rapport explicatif

(...)

191. La Convention laisse également aux Parties la possibilité d'adopter d'autres mesures à l'égard des auteurs d'infractions, telle que la déchéance des droits parentaux. Une telle mesure pourrait par exemple être prise à l'encontre d'une personne écartée de l'environnement familial dans le cadre des mesures d'assistance à la victime, conformément à l'article 14, paragraphe 3.

(...)

Convention de Lanzarote, Article 30 – Principes.

1 Chaque Partie prend les mesures législatives ou autres nécessaires pour que les enquêtes et procédures pénales se déroulent dans l'intérêt supérieur et le respect des droits de l'enfant.

(...)

Rapport explicatif

(...)

215. Ainsi, les paragraphes 1 et 2 énoncent deux principes généraux selon lesquels les investigations et les procédures judiciaires portant sur des faits d'exploitation et abus sexuels concernant des enfants doivent toujours se dérouler dans l'intérêt supérieur et le respect des droits des enfants et doivent viser à éviter d'aggraver le traumatisme déjà subi par ceux-ci.

(...)

Convention de Lanzarote, Article 31 – Mesures générales de protection.

(...)

4 Chaque Partie prévoit la possibilité pour l'autorité judiciaire de désigner un représentant spécial pour la victime lorsque, en vertu du droit interne, celle-ci peut avoir la qualité de partie à la procédure judiciaire et que les détenteurs des responsabilités parentales se voient privés de la faculté de la représenter dans cette procédure à la suite d'un conflit d'intérêts avec elle.

5 Chaque Partie prévoit, au moyen de mesures législatives ou autres et conformément aux conditions prévues par son droit interne, la possibilité pour des groupes, fondations, associations ou organisations gouvernementales ou non gouvernementales d'assister et/ou de soutenir les victimes qui y consentent au cours des procédures pénales concernant les infractions établies conformément à la présente Convention.

6 Chaque Partie veille à ce que les informations données aux victimes, conformément aux dispositions du présent article, le soient d'une manière adaptée à leur âge et à leur degré de maturité et dans une langue qu'elles peuvent comprendre.

Rapport explicatif

219. Cet article contient une liste non exhaustive de mesures procédurales «adaptées aux enfants» et destinées à garantir leur protection au cours de la procédure.

220. Ces mesures générales de protection s'appliquent à tous les stades de la procédure, tant durant la phase d'investigation (que cette procédure soit conduite par un service de police ou une autorité judiciaire), que durant la procédure de jugement.

221. L'article énonce tout d'abord le droit des enfants (et de leurs familles ou de leurs représentants légaux) à recevoir des informations, sur les événements liés au déroulement des enquêtes et des procédures dans lesquelles ils sont parties en tant que victimes. A cet égard, la disposition prévoit que les victimes soient informées de leurs droits et des services à leur disposition et, à moins qu'elles ne souhaitent pas recevoir une telle information, des suites données à leur plainte, des chefs d'accusation retenus, du déroulement général de l'enquête ou de la procédure, et de la décision rendue. Les négociateurs ont souligné l'importance de l'obligation d'informer l'enfant et sa famille de la remise en liberté de la personne poursuivie ou condamnée pour des infractions à caractère sexuel commises à l'encontre de l'enfant, à tout le moins si cela apparaît nécessaire (il en va ainsi, par exemple, s'il existe un risque de représailles ou d'intimidation ou encore lorsqu'en raison de la proximité de leurs lieux de vie, la victime et l'auteur des faits pourraient, sans l'avoir recherché, se trouver confrontés inopportunément). Ces informations doivent être fournies « d'une manière adaptée » à l'âge de l'enfant.

222. Il énumère ensuite de nombreuses règles de procédure visant à mettre en pratique les principes généraux énoncés à l'article 31 : possibilité d'être entendu, de fournir des éléments de preuve, de voir leur vie privée protégée, notamment leur identité et leur image, d'être maintenu à l'abri de tout risque de représailles ou nouvelle victimisation. Les négociateurs ont entendu souligner que la protection de l'identité, de l'image et de la vie privée de la victime s'entend d'un risque de divulgation « publique » et que ces exigences ne doivent donc pas faire obstacle à la révélation de ces éléments dans le cadre de la procédure elle-même, notamment afin de faire respecter les principes du contradictoire et des droits de la défense inhérents à la conduite du procès pénal.

223. Le point g) du paragraphe 1 vise à protéger les enfants victimes d'abus ou d'exploitation sexuels en évitant notamment qu'ils subissent un nouveau traumatisme résultant de leur mise en présence, dans les locaux des services d'enquête et les enceintes de justice, avec l'auteur présumé de l'infraction. Cette disposition s'applique à toutes les phases de la procédure pénale (y compris au cours de l'enquête) mais sous réserve de certaines exceptions : en effet, les services d'enquête et

l'autorité judiciaire doivent pouvoir déroger à cette exigence dans l'intérêt supérieur de l'enfant (qui veut par exemple participer à l'audience) ou lorsque le contact entre l'enfant et l'auteur présumé est nécessaire et utile pour le bon déroulement de la procédure (par exemple, lorsqu'une confrontation apparaît nécessaire).

224. Le paragraphe 2 vise également les procédures administratives car, dans certains Etats, les procédures d'indemnisation des victimes revêtent cette nature. En outre, de manière plus générale, il existe des situations dans lesquelles les mesures de protection, même dans le cadre de la procédure pénale, peuvent être déléguées aux autorités administratives.

225. Le paragraphe 3 prévoit l'accès à l'aide juridique gratuite lorsque cela est justifié au profit des victimes d'exploitation et d'abus sexuels. Les négociateurs ont entendu tenir compte des conditions auxquelles le droit interne des Parties subordonne le bénéfice d'une telle aide, dans la mesure où il existe une assez grande disparité, entre les Etats, dans les conditions et modalités d'octroi de l'aide juridictionnelle gratuite. Les procédures judiciaires et administratives sont souvent très complexes. Pour cette raison, l'assistance d'un défenseur est une mesure nécessaire pour que les victimes puissent faire valoir utilement leurs droits. Cette disposition n'accorde pas à la victime un droit automatique à l'assistance juridique gratuite. Les conditions dans lesquelles cette assistance est fournie doivent être déterminées par chaque Partie à la Convention et lorsque la victime peut avoir la qualité de partie à la procédure pénale.

226. Outre l'article 31 paragraphe 3, les Parties doivent avoir égard à l'article 6 de la CEDH. Même si l'article 6 paragraphe 3 c) de la CEDH ne prévoit l'assistance gratuite d'un avocat commis d'office qu'à l'accusé en matière pénale, la jurisprudence de la Cour européenne des Droits de l'Homme (Arrêt *Airey c. Irlande*, 9 octobre 1979) reconnaît aussi, en certaines circonstances, le droit à l'assistance gratuite d'un avocat commis d'office en matière civile en se fondant sur l'article 6 paragraphe 1 de la CEDH, interprété comme consacrant le droit d'accès à un tribunal en vue d'une décision sur des droits et obligations de caractère civil (Arrêt *Golder c. Royaume-Uni*, 21 février 1975). La Cour estime en effet que l'accès effectif à un tribunal peut nécessiter l'assistance gratuite d'un avocat. Ainsi, la Cour considère qu'il faut rechercher si la comparution sans l'assistance d'un conseil serait efficace, en ce sens que la personne concernée pourrait présenter ses arguments de manière adéquate et satisfaisante. Pour ce faire, la Cour a eu égard à la complexité de la procédure et au caractère passionnel d'une situation - qui peut être peu compatible avec le degré d'objectivité indispensable pour plaider en justice - pour déterminer si une personne était dans une situation lui permettant de plaider utilement sa propre cause. Dans la négative, la personne concernée doit obtenir l'assistance gratuite d'un avocat commis d'office. Ainsi, même en l'absence de législation octroyant le bénéfice d'un avocat commis d'office en matière civile, il appartient au juge d'apprécier si les intérêts de la justice commandent qu'un plaideur indigent se voie octroyer une assistance judiciaire lorsqu'il est incapable d'assumer les honoraires d'un avocat.

227. Le paragraphe 4 prévoit une situation qui peut se vérifier surtout dans les cas d'abus sexuels au sein de la famille, où les détenteurs des responsabilités parentales, qui ont en charge la défense des intérêts de l'enfant, sont impliqués, d'une façon ou d'une autre, dans la procédure dont l'enfant est victime («conflit d'intérêt»). Cette disposition permet que, dans une telle hypothèse, l'enfant puisse se faire représenter dans la procédure judiciaire par un représentant spécial, désigné par l'autorité judiciaire. Il en va ainsi, par exemple, lorsque les détenteurs des responsabilités parentales sont auteurs ou coauteurs des faits, ou encore lorsque la nature de leur relation avec l'auteur des faits ne permet pas d'attendre d'eux qu'ils défendent avec impartialité les intérêts de l'enfant victime.

228. Le paragraphe 5 prévoit la possibilité pour des organisations diverses de soutenir les victimes. La référence aux conditions prévues par le droit interne souligne le fait qu'il incombe aux Etats de permettre cette assistance ou soutien, mais qu'ils sont libres de le faire suivant les règles prévues dans leurs systèmes nationaux, par exemple en exigeant une certification ou un agrément des organisations, fondations, associations, etc.

229. Le paragraphe 6 de cette disposition se réfère aux matériels écrits ou autres qui doivent être disponibles dans les langues les plus utilisées dans les pays.

**COMPILATION
of replies / des réponses³**

**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 13 of the TQ / du QT

a) In any case even in situations where the defendant is a family member or in a recognized position of trust or authority towards the child, legislative measures are taken, to ensure that all investigation and criminal proceedings are carried out in the best interests of the child. Thus, with the latest amendments of the Criminal Code, namely: Article 1/c "Principles of Criminal Code".

The Criminal Code is based on the constitutional principles of the state that respect the right, the equality in front of the law, fairness in deciding about the guilt and punishment, protection of the best interest of the child as well as the humanism. It is not allowed to implement the penal law by analogy

b) Did not respond

c) As a result of offenses committed by a person considered to be in the victim's circle of trust, the internal law provides in its sanctions, the withdrawal of parental rights. Namely, Law no. 7895, dated 27.1.1995 "Criminal Code of the Republic of Albania", as amended, Article 43/a "The withdrawal of parental right".

The withdrawal of parental right is given by a court against a person exercising parental responsibility when he/she is sentenced as author or collaborating to an offense towards their child, or as collaborators in a criminal act performed by their child.

Question 22(d) of the GOQ / du QAG

Did not respond.

AUSTRIA/AUTRICHE

Question 13 of the TQ / du QT

a) All the measures to protect child victims mentioned in the replies to questions 21 to 23 of the GOQ ensure that criminal proceedings are carried out in the best interests and

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

respecting the rights of child victim. According to Section 10 par. 2 of the CCP [Codes of Criminal Procedure] the criminal police, the public prosecutor's office or the court have to take into account the victim's rights and interests. Following Section 160 par. 3 it is compulsory for the interrogations of a child (witness) who has not completed the age of 14 to have a person of trust (confidant). In case of a conflict of interest between the holder of the parental responsibility and the victim, the court will cooperate with the youth welfare office and they will appoint a person special representative if necessary. Larger prosecution authorities (at least ten prosecutors) are required by law to establish departments of specially trained prosecutors competent for violence against children committed by persons of a socially close position and other forms of domestic violence.

b) See question 22 (d) of the GOQ.

c)

1. Parental rights are withdrawn by family court, if the best interests of the child are in danger (Section 181 of the Civil Code).
2. Every person subject to a suspended sentence or on conditional release can be given instructions according to Sections 50 and 51 of the CC (e.g. to announce every change of his/her whereabouts or of employment, to report regularly to the court or to another authority.)

According to Section 52a of the CC a person on conditional release who committed a criminal offence

1. Against the sexual integrity and self-determination or
2. Against physical integrity and life or freedom with the intent to sexually excite himself/herself,

shall be placed under supervision by the court during the probation period if the supervision of the perpetrator's behaviour (especially whether he/she obeys the instruction to undergo either a treatment for curing an addiction or a psychotherapeutic or medical treatment or the instruction not to exercise certain activities) is necessary to deter him/her from committing further punishable acts of the same nature. During the period of supervision the court has to monitor the behaviour of the perpetrator with the support of the probation service, the police authorities, the youth court service or other suitable institutions.

Question 22(d) of the GOQ / du QAG

Following Section 160 para 3 of the CCP it is compulsory for the interrogations of a child (witness) who has not completed the age of 14 to have a person of trust (confidant). In case of a conflict of interest between the holder of the parental responsibility and the victim the court will cooperate with the youth welfare office and they will appoint a person special representative (*Kollisionskurator*) if necessary.

BELGIUM / BELGIQUE

Question 13 of the TQ / du QT

- a) Oui, voir les réponses données sous les questions 15, 21, 22 et 23 du questionnaire général qui s'appliquent dans tous les cas, indépendamment de la qualité de l'auteur.
- b) Voir la réponse donnée sous la question 22 d) du questionnaire général.
- c) Oui, voir les réponses sous les questions 15 c) (en ce qui concerne la déchéance des droits parentaux) et 3 a), 10 et 21 f) (en ce qui concerne le suivi et la surveillance des personnes condamnés) du questionnaire général.

Question 22(d) of the GOQ / du QAG

Oui, cette matière est réglée par les articles 378, §2, 405 et 410, § 1, 7° du Code civil. Il convient d'abord de spécifier que la règle selon laquelle le mineur ne peut pas agir seul, ne s'applique qu'aux actions en justice devant une juridiction (civile ou pénale). Il n'existe pas d'objection à que le mineur agisse seul pendant la phase préparatoire du procès pénal. Ainsi, le mineur peut se déclarer personne lésée conformément à l'article 5bis du Titre préliminaire du Code d'instruction criminelle.

Pour exercer l'action civile, il faut la capacité d'agir en justice. Pour se constituer partie civile, le mineur devra être représenté par son père ou sa mère (voir article 376 du Code civil) ou par son tuteur (voir l'article 405, § 1, du Code civil). Le juge saisi pourra désigner un tuteur ad hoc en cas de défaillance des parents (par exemple si les deux parents sont décédés, se trouvent dans l'impossibilité d'exercer l'autorité parentale ou ne prennent aucune initiative) ou du tuteur, ou en cas d'opposition d'intérêts entre le mineur et ses parents (par exemple lorsque le mineur est victime d'abus sexuels commis par un de ses parents, voir l'article 378 du Code civil). Ainsi, le juge de paix peut, à la demande de toute personne intéressée (comme le mineur, son conseil ou le procureur du Roi), désigner un tuteur ad hoc. De la même manière, le juge pénal peut, d'office ou à la demande de chaque personne intéressée, désigner un tuteur ad hoc pour représenter les intérêts du mineur. Le tuteur peut se constituer partie civile ou exercer une citation directe sans autorisation du juge de paix (voir article 410, § 1, 7°).

Il importe également de mentionner que l'incapacité du mineur n'est pas d'ordre public. La Cour de Cassation dans son arrêt du 20 décembre 1977 a décidé que le moyen de cassation pris de l'irrecevabilité de l'action civile exercée par un mineur est nouveau et irrecevable s'il n'a pas été proposé au premier juge du fond et que celui-ci n'a pas jugé pas lui-même.

« Art. 405. § 1er. Le tuteur prend soin de la personne du mineur. Il l'éduque en se conformant aux principes éventuellement adoptés par les parents, notamment en ce qui concerne les questions visées à l'article 374, alinéa 2.

Il représente le mineur dans tous les actes de la vie civile.

Il gère les biens du mineur en bon père de famille et répond des dommages qui pourraient résulter d'une mauvaise gestion.

Il peut, dans la gestion des biens du mineur, se faire assister de personnes qui agissent sous sa responsabilité, après autorisation expresse du juge de paix.

Le tuteur emploie les revenus du mineur pour assurer l'entretien de celui-ci et lui dispenser des soins, et requiert l'application de la législation sociale dans l'intérêt du mineur.

§ 2. En cas de conflit grave entre le mineur et le tuteur ou, le cas échéant, le subrogé tuteur, le mineur peut, sur simple demande écrite ou verbale, s'adresser au procureur du Roi s'il est âgé de douze ans dans les affaires relatives à sa personne et s'il est âgé de quinze ans dans les affaires relatives à ses biens.

Le procureur du Roi recueille tous les renseignements utiles. S'il estime la demande fondée, il saisit le juge de paix par requête afin qu'il tranche le différend.

Le juge de paix statue après avoir entendu le mineur, le tuteur et le subrogé tuteur. »

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« Art. 378. § 1. Sont subordonnés à l'autorisation du juge de paix, les actes prévus à l'article 410, § 1er, 1° à 6°, 8°, 9° et 11° à 14° pour lesquels le tuteur doit requérir une autorisation spéciale du juge de paix, sous réserve de ce qui est prévu à l'article 935, alinéa 3.

Est compétent :

- le juge de paix du domicile du mineur en Belgique, et à défaut,*
- celui de la résidence du mineur en Belgique, et à défaut,*
- celui du dernier domicile commun des père et mère en Belgique ou, le échéant, celui du dernier domicile en Belgique du parent qui exerce seul l'autorité parentale, et à défaut,*
- celui de la dernière résidence commune des père et mère en Belgique, ou, le cas échéant, celui de la dernière résidence en Belgique du parent qui exerce seul l'autorité parentale.*

Le juge de paix compétent conformément à l'alinéa précédent peut, dans l'intérêt du mineur, décider par ordonnance motivée de transmettre le dossier au juge de paix du canton où le mineur a établi sa résidence principale de manière durable.

Le juge de paix statue sur la requête signée par les parties ou leur avocat. S'il est saisi par un seul des père et mère, l'autre est entendu ou du moins convoqué par pli judiciaire. Cette convocation le rend partie à la cause.

En cas d'opposition d'intérêt entre les père et mère, ou lorsque l'un d'eux fait défaut, le juge de paix peut autoriser l'un des parents à accomplir seul l'acte pour lequel l'autorisation est demandée.

En cas d'opposition d'intérêts entre l'enfant et ses père et mère, le juge de paix désigne un tuteur ad hoc soit à la requête de tout intéressé soit d'office.

§ 2. Les actes visés à l'article 410, § 1er, 7°, ne sont pas soumis à l'autorisation prévue au § 1er. En cas d'opposition d'intérêt entre le mineur et ses père et mère, le juge saisi du litige désigne un tuteur ad hoc, soit à la requête de tout intéressé, soit d'office. »

« Art. 410. § 1er. Le tuteur doit être spécialement autorisé par le juge de paix pour :

1° aliéner les biens du mineur, hormis les fruits et objets de rebut, sauf dans le cadre de la gestion confiée à un établissement tel que visé à l'article 407, § 1er, 4°;

2° emprunter ;

3° hypothéquer ou donner en gage les biens du mineur ;

4° consentir un bail à ferme, un bail commercial ou un bail à loyer de plus de neuf ans ainsi que pour renouveler un bail commercial ;

5° renoncer à une succession ou à un legs universel ou à titre universel ou l'accepter, ce qui ne pourra se faire que sous bénéfice d'inventaire ;

6° *accepter une donation ou un legs à titre particulier ;*
7° *représenter le mineur en justice comme demandeur dans les autres procédures et actes que ceux prévus aux articles 1150, 1180-1° et 1206 du Code judiciaire; Toutefois, aucune autorisation n'est requise pour une constitution de partie civile ;*
8° *conclure un pacte d'indivision ;*
9° *acheter un bien immeuble ;*
10° *abrogé*
11° *transiger ou conclure une convention d'arbitrage ;*
12° *continuer un commerce recueilli dans une succession légale ou testamentaire. L'administration du commerce peut être confiée à un administrateur spécial sous le contrôle du tuteur. Le juge de paix peut à tout moment retirer son autorisation ;*
13° *aliéner des souvenirs et autres objets à caractère personnel, même s'il s'agit d'objets de peu de valeur.*
4° *disposer des biens frappés d'indisponibilité en application d'une décision prise en vertu de l'article 379, en application de l'article 776 ou conformément à une décision prise par le conseil de famille avant l'entrée en vigueur de la loi du 29 avril 2001 modifiant diverses dispositions légales en matière de tutelle des mineurs.*
§ 2. *La vente des biens meubles ou immeubles du mineur est publique. Le tuteur peut toutefois se faire autoriser à vendre de gré à gré les biens meubles ou immeubles. L'autorisation est accordée si l'intérêt du mineur l'exige. Elle indique expressément la raison pour laquelle la vente de gré à gré sert l'intérêt du mineur. Lorsqu'il s'agit de la vente d'un bien immeuble, celle-ci a lieu conformément au projet d'acte de vente dressé par un notaire et approuvé par le juge de paix.*
Le juge de paix s'entoure de tous les renseignements utiles; il peut notamment recueillir l'avis de toute personne qu'il estime apte à le renseigner.
Les souvenirs et autres objets de caractère personnel sont, sauf nécessité absolue, exceptés de l'aliénation et sont gardés à la disposition du mineur jusqu'à sa majorité.
En tout cas, le mineur qui possède le discernement requis est invité pour être entendu, s'il le souhaite, avant que l'autorisation puisse être accordée. »

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Question 13 of the TQ / du QT

a) The Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of the RS, in its separate chapter entitled "Criminal offences against children and juveniles" contains provisions concerning the situation when juveniles and children are victims or witnesses of the criminal offences committed against them.

Article 184, Para. 1 of the Law prescribes the criminal offences when the injured party in the criminal proceedings is a child or a juvenile, while a judge of the juvenile division, that is, the Panel whose president is a judge of the juvenile division or a judge with special knowledge, also tries adults for the criminal offences prescribed by the Criminal Code, inter alia, the following:

a) abuse,
b) rape,
c) sexual intercourse with a helpless person,
d) sexual abuse of a child,
e) sexual intercourse by abuse of position,
f) satisfying lust in front of others,
g) trafficking in human beings for the purpose of prostitution,

h) abuse of a child or juvenile for pornography,
i) production and screening of child pornography,
j) incest,
k) cohabitation with a juvenile,
l) abduction of a juvenile,
m) neglecting and abusing a juvenile,
n) domestic violence,
o) breach of family obligations.

Juveniles are treated in accordance with the procedure prescribed by Article 186 of the Law, which reads:

(1) When dealing with criminal cases involving perpetrators of criminal offences committed to the detriment of children or juveniles, while implementing the procedural actions, a child or a juvenile to whose detriment the criminal offence was committed shall be treated with particular care in view of his/her age, personality, education and the circumstances, in order to avoid potential damaging consequences for his/her future life, upbringing and development. A child or a juvenile shall as a rule be examined in the presence of a pedagogue, psychologist or another professional.

(2) If a child or a junior juvenile who is the injured party in a criminal offence prescribed by Article 184 of this Law is being examined in the capacity of a witness, examination may be conducted two times maximum.

Prosecutor or an authorised official person shall examine the witness by using equipment for transfer of images and sounds, with the prosecutor or authorised official person not being in the same room with the witness. A child or a juvenile shall as a rule be examined in the presence of a pedagogue, psychologist or another professional.

(3) A child or a junior juvenile may be examined in his/her flat or another place where (s)he spends his/her time, or in a social care centre. When examining a witness, actions shall be taken pursuant to Para. 2 of this Article.

(4) Court shall examine a child or a juvenile in the capacity of a witness injured by a criminal offence prescribed by Article 184 of the Law, pursuant to Para. 2 of this Article in such a manner that the court, parties to the proceedings and the defence counsel can ask questions without being in the same room with the witness. A child or a juvenile shall be examined in such a manner that the questions shall be asked through the court, and if necessary, with the assistance of a pedagogue, psychologist or another professional.

(5) In order to protect the children and juveniles injured by a criminal offence prescribed by Article 184 of the Law, other appropriate provisions of the Law on Protection of Witnesses in Criminal Proceedings shall apply (Official Gazette of Republika Srpska, issue 48/03).

(6) Provisions of this Article shall also apply to examination of a child or a juvenile who is a witness-eyewitness to an offence prescribed by Article 184 of this Law.

(7) Article 184 of this Law shall apply in criminal proceedings against perpetrators of criminal offences committed to the detriment of children and juveniles

Article 187 of the Law shall refer to the ban on confrontation, specifying that if a child or a juvenile who is physically or mentally seriously traumatised by the circumstances under which the criminal offence was committed or suffers serious mental disorders rendering him/her particularly sensitive, is being examined in the capacity of a witness, (s)he shall not be confronted with the suspect, that is, the accused.

If a juvenile injured by a criminal offence or who eye-witnessed the criminal offence is to identify the suspect, that is, the accused, such identification at all stages of the proceedings shall be conducted in a manner that makes it impossible for the suspect, that is, the accused, to see the underage person.

Affective procedural laws in BiH also prescribe the manner of examination of an underage person. To wit, during *an examination of an underage person*, particularly if such a person was injured by the criminal offence, due care shall be exercised in view of his/her age, degree of mental, emotional and social maturity, level of education, circumstances and the surroundings in which (s)he lives, so that the examination would not have an adverse effect on the juvenile's mental state, and shall be conducted with the assistance of a psychologist, pedagogue or another professional². This provision also enables the authorities involved in the criminal proceedings to examine the juvenile in the presence of his/her parent or guardian as they are the persons whom the juvenile trusts and whose presence should provide psychological support during the examination. Even in cases when parents demand to attend examination of a juvenile injured party, particular care shall be required and the opinion by a psychologist, pedagogue or another professional or⁴ other evidence indicating such necessity should be obtained in order to enable that. That shall not be done if, in the opinion of the law-enforcement agency, one might expect that the presence of a parent might affect the readiness of the underage injured party to give a statement or to give a truthful statement.

Due care on the part of the law-enforcement agencies may also mean that they should avoid multiple examinations of an underage injured party.

The Law also prescribes that a person injured by a criminal offence cannot be asked about his/her sex life prior to the criminal offence committed, and if such examination was already conducted, such a statement cannot represent the basis for a court ruling⁵, that is, a person injured by a criminal offence cannot be asked about his/her sex life prior to the criminal offence subject to the proceedings, and no evidence presented with the view to indicate the injured party's prior sex experience, behaviour or sexual orientation shall be admitted. In the last two situations, which pertain to the victims of the so-called sex crimes, the law also prescribes the procedural consequences for failure to act in accordance with those provisions, that is, imposes limits in proposing and presenting evidence that might lead to breach of the provisions that protect the personal integrity of victims of the foregoing criminal offences.

⁴ Criminal Procedure Code of the Federation of Bosnia and Herzegovina, Article 100(4)

⁵ Criminal Procedure Code of the FBiH, Article 100(5); Criminal Procedure Code of the RS, Article 279

The Law also contains a provision that makes *audio or audio-visual recording of examination of juveniles* who did not turn sixteen yet and who were injured by the criminal offence, mandatory.⁶ It is not possible to conclude on the basis of this provision that its goal is to protect the underage victims of criminal offences. However, this provision should also be used for protection of an underage victim of a criminal offence from secondary victimisation during the proceedings in such a way that its application, with the right to defence of the suspect, that is, the accused, already ensured, should result in avoiding multiple examinations of an underage victim or his/her exposure to the negative effects of appearing in a courtroom.⁷

b) See answer to Q22 (d)

c) One of the most important provisions in the RS Family Law bans parents and other family members from subjecting a child to degrading treatment, mental or corporal punishment, that is, abuse⁸. If the parents, that is, the parent with whom the child lives, abused the child or neglected to take care of the child, neglected the child's upbringing, or the child's upbringing is irregular, a guardian authority may take the child and entrust him/her to the other parent, some other person or an appropriate institution if there is no court ruling on entrusting the child. Additionally, a court may take the parental right of a parent who abuses the child, abuses the parental right, or abandoned the child, neglected to care about the child and neglected his/her parental duties⁹. It is very important to highlight that pursuant to Article 107(2), the guardian authority has the duty to initiate the procedure for taking of parental right when it learns about any of the previously listed circumstances in any way.

The Family Law provides a definition of abuse of parental right. Also, pursuant to Article 106(2), a parent abuses parental rights and duties if (s)he, among other things, sexually exploits a child.

Family Laws of the FBiH and the Brčko District of BiH also provide definitions of abuse of parental right. Additionally, pursuant to Article 154(2) of the Family Law of the FBiH, *a parent abuses parental rights and duties in cases of mental and physical violence against a child, sexual exploitation of a child, incitement of a child to behave inappropriately, and gross violations of a child's rights in other ways*. Parents who, by abusing their rights or by gross neglect of their duties, or by abandoning a child, that is, by not caring for a child they live with, clearly endanger the child's safety, health, and morals, particularly in cases involving violence against the child, will have their *parental care taken* by a court in a non-contentious procedure. This measure ends all parental rights and duties, with the exception of the duty to support the child. During the procedure for taking parental right, the guardian

⁶ Criminal Procedure Code of the FBiH, Article 104

⁷ Even though it prescribes mandatory audio or audio-visual recording of examination of underage persons who did not turn sixteen yet and who were injured by a criminal offence, the CPC of FBiH does not explicitly provide for the possibility to replay the recording at the main trial, without the re-examination of the underage injured party at the main trial. With such a possibility enabled, naturally, having previously enabled the parties and the defence counsel to examine the witness who is in another room using the video link, or in the same room, mandatory recording of the statement given by an injured party who is under 16, would truly make sense, and it would also make a court ruling based on such a statement possible to render

⁸ Family Law of Republika Srpska, Article 97.

⁹ Family Law of Republika Srpska, Article 106(1).

authority will appoint a special guardian for the child, who will carry out his/her duty as long as the imposed measure is in effect. The court will, ex officio, submit to the competent registrar the final decision on taking and reinstating parental care so it could be registered in the book of births.

In case of sexual violence against a child in the family, pursuant to the current laws on protection from domestic violence, the police, prosecutor's offices, courts, guardian authorities and other services in charge of social protection and healthcare have the duty to protect a child who is a victim of domestic violence from the violent behaviour in an urgent procedure. After it receives a report or intelligence that a case of domestic violence occurred, the police has the duty to immediately, without any delay, inform the social care centre, that is, the social protection services, which will without delay directly provide the social protection services and the psycho-social help to the victim, and make a report on it. According to the RS Law on Protection from Domestic Violence, a child shall enjoy special help and protection. In order to ensure physical protection and exercising of the rights and interests of the victim of domestic violence, the police and the guardian authority have the duty to, with the prior consent of the victim of domestic violence, temporarily place the victim in a shelter/safe house.

The RS Law stipulates that placing a victim in a safe house is not mandatory (Article 15). A person cannot be in a safe house for more than six months, however, the stay may be extended if the guardian authority gives a consent in writing,¹⁰ that is, it may be extended for another six months after the completion of the procedure and execution of the decision imposing a protective measure against the perpetrator¹¹. Funds for the temporary accommodation and care for victims of domestic violence are provided from the FBiH budget (70% of the price of the victim's accommodation), and from the cantonal budget (30% of the price of the victim's accommodation), that is, from the RS budget (70% of the price of the victim's accommodation), and from the municipal budget (30% of the price of the victim's accommodation). In the Federation of BiH, at the request of the guardian authority and with the agreement of the victim, the victim of domestic violence is placed in another appropriate institution or a family when the guardian authority assess it as better for the victim.

Article 11 of the FBiH Law on Protection from Domestic Violence prescribes the protective measure of removal from a flat, house or other residence and a ban on returning to a flat, house or some other residence. This measure can be imposed on a person who acted violently against a family member with whom (s)he lives in a flat, house, or some other residence, if the court of jurisdiction decides that there is danger that the violent person might repeat the violence if such measure is not effected.

Person against whom the measure from Para. 1 of this Article was imposed must immediately leave the flat, house or other residence, accompanied by a police officer if necessary.

The measure from Para. 1 of this Article shall be imposed for no less than a month and no more than two years.

¹⁰ FBiH Law on Protection from Domestic Violence, Article 33(3)

¹¹ RS Law on Protection from Domestic Violence, Article 15(5)

The RS law provides that such a measure shall be imposed for no less than 30 (thirty) days, and no more than 6 (six) months.

Article 12 of the foregoing Law prescribes the protective measure of “ban on approaching a victim of domestic violence”, which may be imposed on the person who committed domestic violence. In the decision imposing the ban on approaching a victim of domestic violence, the court of jurisdiction will define the locations and areas, as well as the distance that the violent person must keep from the victim of domestic violence. The measure from Para. 1 of this Article shall be imposed for no less than one month and no longer than two years, unless the court decides that an extended restraining order is in the interest of the victim.

Regulation on the manner of implementation of the measure from Para. 1 of this Article is adopted by the FBiH Minister of Interior.

As for the RS Law on Protection from Domestic Violence, in the decision imposing the ban on approaching a victim of domestic violence, the court of jurisdiction will define the locations and areas, as well as the distance of 200 m that the violent person must keep from the victim of domestic violence.

Question 22(d) of the GOQ / du QAG

One of the basic principles in the entity laws on protection and treatment of children and juveniles in the criminal proceedings is the recognition of an underage person’s right to privacy during all stages of the proceedings. Law stipulates exclusion of public from the main trial, ban on publishing the case file and the course of the proceedings, as well as the personal details of the underage person or his legal representative. Name and other data that indicate the juvenile’s identity will not be published in the media.

During the main trial, a judge may order that, with the exception of the prosecutor, defence counsel and the representative of the guardian authority, all or some persons leave the courtroom. During the presentation of some of the evidence or presentations by the parties, a judge may order a minor to leave the courtroom due to the potential detrimental effect on his/her upbringing. If it is relevant for the juvenile’s defence, the defence counsel will inform him/her of the contents and course of the proceedings during his/her absence.

Witness Support Section has been operational in the District Court of Banja Luka for the past four years. Head of the Section is a psychologist who applies the special protective measures on children witnesses. In her work, she uses all the legal solutions concerning the protection of children, their privacy, and subsequent traumatisation. She is familiar with the Lanzarote Convention and participated in the drafting of indicators for monitoring of the Convention’s implementation.

BULGARIA / BULGARIE

Question 13 of the TQ / du QT

a) & b) & c)

First, the safeguards for best interest of the child victim and enjoyment of his/her rights in the investigation stage and during the judicial proceeding are enshrined in the special Child Protection Act.

Child Protection Act

Section I „General Rules“

Art. 3. The protection of the child is based on the following principles:

.....

3. (amended 2009) provision of child's best interest;
4. (amended 2009) special protection of a child at risk;

.....

Second, there is an opportunity for simultaneous taking of protection measures enlisted in art 4 of the Child Protection Act together with proceedings' activities; the foreseen special protection for child at risk; the enshrined in art 10 right for child protection for his/her normal physical, mental, moral and social development and for protection of his/her rights and interests; art 11 – right to be protected against all forms of violence; art.11a – the right of protection of child's personality; art. 13 – the right to be informed and consulted; art 15, par.1 - the obligation the child to be heard in all administrative or judicial proceedings which concern his/her rights and interests.

The main safeguards for the best interest of the child are envisaged in art 15 of the CPA, where is regulated the child involvement in proceedings – the hearings conditions, the participation of a representative from the SAD and presentation of the social report, the right of the child of legal aid and complaints in all proceedings which affects his/her rights or interests.

Involvement in proceedings

Article 15.

(1) All cases of administrative or judicial proceedings affecting the rights and interests of a child should provide for an obligatory hearing of the child, provided he or she has reached the age of 10, unless that proves harmful to his or her interests.

(2) In cases where the child has not reached the age of 10, he or she may be given a hearing depending on the level of his or her development. The decision to hear the child shall be substantiated.

(3) Before the child is given a hearing, the court or the administrative body shall:

1. provide the child with the necessary information, which would help him or her form his or her opinion;
2. inform the child about the possible consequences of his or her desire, of the opinion supported by him or her, as well as about all the decisions made by the judicial or administrative body.

(4) The hearing and the consultation of a child shall by all means take place in appropriate surroundings and in the presence of a social worker from the Social Assistance Directorate

at the current address of the child and when there is necessity – in the presence of another appropriate specialist.

(5) The court or the administrative body shall order that the hearing of the child shall take place also in the presence of a parent, guardian or other close to the child person, with the exception when this is not in the child's best interest.

(6) In every legal case the court or the administrative body shall notify the Social Assistance Directorate at the current address of the child. The Social Assistance Directorate shall send a representative of its own to the case, who shall express a viewpoint, and if it becomes impossible, he/she shall present a report.

(7) The Social Assistance Directorate may represent the child in cases provided for by law.

(8) The child has a right to legal aid and appeal in all proceedings, affecting his or her rights or interests.

Supplementary regulations

5. "the best interest of a child" is the discretion of :

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

Penal-procedure Code

Special representative

Art. 101.

(1) Whereas the interests of the juvenile or of the under-aged injured and of the his/her parent, guardian or trustee are in collision, the respective body shall appoint for him/her a special representative – attorney-at-law.

(2) A special representative – attorney-at-law shall be also appointed to the injured, if he/she is incapacitated or of limited capability and his/her interests are in contradiction with the interests of his/her guardian or trustee.

(3) The special representative shall participate in the penal procedure as a trustee.

Interrogation of a juvenile witness

Art. 140.

(1) A juvenile witness under the age of 14 years shall be interrogated in the presence of a pedagogue or a psychologist, and where necessary, in the presence of the parent or the guardian.

(2) A juvenile witness above the age of 14 years shall be interrogated in the presence of the persons under the Para 1, if the respective body deems so necessary.

(3) With the permission of the body conducting the interrogation, the persons under Para 1 may put questions to the witness.

(4) The body conducting the interrogation shall explain the juvenile witness less than 14 years of age the necessity to give true testimony, without warning him/her liability.

Interrogation of a witness whose identity is kept secret

(5) The interrogation of a minor or juvenile in the state can be done via videoconference if necessary

Setting Down of Court Session Outside the Court Premises

Art. 262.

Where necessary, the Court session or separate Court actions shall be conducted outside the Court premises.

Hearing the case behind closed doors

Art. 263.

(1) The hearing of the case or performance of concrete Court procedural actions shall be performed behind closed doors, if it is needed for the keeping the state secret and morality, as well as in the cases of Art. 123 Para. 2, Item 2.

(2) The provision of the preceding Para. may also be applied where necessary in order to prevent the disclosure of facts of the intimate relations of citizens.

(3) A witness of minor age or a juvenile witness having suffered from a crime, may be questioned in camera.

(4) In all the cases, the verdict shall be announced in public.

Reading the testimony of a witness

Art. 281.

(1) The testimony of a witness, given under the same case before a judge on the pre-trial procedure or before another court body shall be read, where:

The deprivation of parental rights is another legal proceeding envisaged in the Family Code. The consequence of this proceeding is the deprived parental rights and deprived parental function to conduct legal representation. This proceeding is developing independently from the development of penal proceeding initiated by the other parent, prosecutor or SAD. It is not a part of the punishment which defines the parent as a perpetrator of the offense within the circle of thrust and it is complementary safeguard for the protection of the child.

According to the Penal Code, the penalty "probation" includes elements of supervision and monitoring of convicted persons. Based on the provisions of the Penal Code regulating sexual offenses against children, it can be concluded that this penalty is provided only in the provision of chl.155b. In all other cases, the legislature has provided for the imposition of a more severe punishment - „imprisonment".

Question 22(d) of the GOQ / du QAG

Yes, such a possibility is legally regulated under the Criminal Procedure Code, as well as the terms and conditions for the appointment of a special representative of the child victim. Please see below the relevant provisions:

Criminal Procedure Code

Special Representative

Art.101.

(1) Where the interests of the juvenile or of the under-aged victim and of the his/her parent, guardian or trustee are in collision, the respective body shall appoint for him/her a special representative – attorney-at-law.

(2) A special representative – attorney-at-law shall also be appointed to the victim, if he/she is incapacitated or of limited capability and his/her interests are in contradiction with the interests of his/her guardian or trustee.

(3) The special representative shall participate in the penal procedure as a trustee.

(4) The provisions of Art.91, Para 3 and Art. 92 shall also apply respectively to the special representative.

Persons who may participate as defenders

Art. 91.

(1) Defender of the defendant may be each person, who exercises the profession of attorney-at-law.

(2) Defender may also be the spouse, a direct descendant of the defendant.

(3) Defender may not be:

1. who has been or is a defender of another defendant and the defence of the one contradicts the defence of the other;

2. who has been representing or giving advice to another defendant, if the defence which is assigned to him/her contradicts the defence of the other defendant;

3. who has been representing or giving advice to the opposite party;

4. who has been participating in the procedure in another procedural capacity;

5. who is a spouse, direct descendent without limitation, collateral relative up to the fourth degree or relative – in law up to the third degree to a judge, juror, prosecutor or a body of investigation on the case.

Challenging the defender

Art.92.

The persons who may not be defenders shall be obliged to beg themselves to be struck off. If they fail to do that, the respective body shall remove them from participation in the penal procedure ex-officio or upon request of the interested person.

CROATIA / CROATIE

Question 13 of the TQ / du QT

a) See the answers to questions 21b and 23c of the General Overview Questionnaire.

Q21b of the General Questionnaire:

In the course of proceedings children victims are questioned as provided by law. The CPA [Criminal Procedure Act] makes special provision for the questioning of children witnesses under the age of fourteen years. By contrast, where children victims are questioned for the criminal offences referred to in Article 113 of the said Act, the Juvenile Courts Act extends the protection offered to them to the age of sixteen years.

The questioning of children who are under the age of fourteen, i.e., sixteen years about criminal offences covered by the Convention is conducted by the judge of investigation. The questioning takes place in a room where the child is located without either the judge or the parties being present and is conducted via audio-visual link operated by a technical assistant. The questioning takes place with the assistance of a social educator, a social worker or a psychologist. Where this is not contrary to the interests of the proceedings or

the child, the questioning is conducted in the presence of a parent or a guardian. The questioning may also take place in the presence of a person whom the child trusts. Subject to authorisation from the judge of investigation, the parties may put questions to the child witness through a qualified person. The questioning must be recorded by an audio visual recorder and the recording sealed and attached to the minutes. In the case of criminal offences against sexual freedom and criminal offences of child sexual abuse and exploitation, the videotaped questioning will always be transcribed. Only exceptionally and provided this is done in the same manner as the first time may the child be re-questioned¹²When questioning a child, special care must be taken in order to avoid the questioning having a harmful effect on the child's mental condition¹³.

Q23c of the General Questionnaire:

Criminal proceedings in which the victim is a child take place without the presence of the public. This fact ensues from Article 44 of the CPA which explicitly states that the child victim is entitled to have the public excluded. Also, case files of proceedings from which the public is excluded may only be accessed by persons to whom this exclusion does not apply. Furthermore, the provisions of Article 388 of the CPA on the trial also provide for the exclusion of the public from the trial in order to protect a person under the age of eighteen. Under the said statutory provision the public may also be excluded from the trial for the purpose of protecting the personal or family life of the accused, the victim, the injured person or any other participant in the proceedings. The exclusion of the public does not apply to the parties, the victim, the injured party, their representatives and the defence counsel, while certain official persons, scholars, public figures, persons trusted, as well as, at the defendant's request, the defendant's spouse or common-law spouse and close relative may be granted permission to be present at the trial. In such a case, those present are instructed of their duty to preserve secret whatever they hear at the trial and that unauthorised disclosure of secrets constitutes a criminal offence.¹⁴ Article 292, paragraph 1, of the CPA which provides for the questioning of the child explicitly states that this questioning must be conducted without the judge or the parties being present in the room in which the child is located and shall be transmitted by an audio-visual link. (For more details on the way in which children are questioned see the answer to question 21 b)).

b) See the answer to question 22d of the General Overview Questionnaire.

c) Internal law provides through the Family Act¹⁵ for the possibility that a parent who abuses or grossly violates his/her parental responsibilities, duties and rights be deprived of parental care. Furthermore, the Act explicitly states that physical and/or mental violence against the child, including the child's exposure to violence among adult family members and sexual abuse of the child, are to be regarded as abuse or grave violations of parental responsibility, in which case the parents are to be deprived of parental care.

¹² Article 292, paragraph 1, of the CPA.

¹³ Article 292, paragraph 2, of the CPA.

¹⁴ Article 145, paragraph 1, of the CA reads as follows: "An attorney-at-law, notary public, healthcare worker, psychologist, employee of a social welfare institution, religious confessor or any other person who discloses without authorisation a piece of information about somebody's personal or family life that was confided to him/her in the performance of his/her profession, shall be punished by imprisonment of up to one year".

¹⁵ Official Gazette 116/03, 17/04, 136/04, 107/07, 57/11 and 61/11.

The said Act also provides for the ordering of supervision over parental care in cases where mistakes and omissions in the care provided to the child are frequent or various or when parents need to be provided with special assistance in raising the child.

Question 22(d) of the GOQ / du QAG

Pursuant to the provisions of the CPA, in order to ensure the protection of the legal interests of the child victim or the child injured party, the child victim of a criminal offence is entitled (in addition to his/her other statutory entitlements) to a representative paid for from the budget¹⁶. The same Article further specifies that the child victim will also be appointed a representative from among attorneys-at-law in cases where the criminal offence in question carries the sentence of five years' imprisonment or a more severe penalty as well as when the perpetrator of a criminal offence against sexual freedom and a criminal offence of child sexual abuse and exploitation is the child's direct-line relative, a third-degree collateral relative, a relative by affinity up to and including the second degree of kinship, or the adoptive parent. Here it should also be mentioned that where the injured party is a child and where the interests of the child are contrary to the interests of the parents, the authority conducting the proceedings must call on the competent social welfare body to appoint a special guardian for the child where this is necessary for the protection of the child's interests¹⁷.

DENMARK / DANEMARK

Question 13 of the TQ / du QT

- a) See answer to question 21 of the GOQ
- b) See answer to question 21(b) of the GOQ

Q21b of the General Questionnaire:

The court may appoint counsel to represent a victim, including a child victim, of a sexual offence. Council will assist the victim during the trial and with presenting any claim for compensation. Counsel is paid by the public purse (unless the expense is covered by a private insurance).

c) Under Danish law, "withdrawal of parental rights" is solely a family law matter. According to sections 4, 11 and 14 of the Act on Parental Responsibility, all decisions on custody must be taken in accordance with the best interests of the child. In accordance with this it appears clearly from the explanatory report on the Act that when a parent having sole or joint custody commits offences against the child the other parent may request that the joint custody is dissolved and that the requesting parent is appointed sole holder of custody or may request having sole custody transferred to her or him.

Monitoring or supervision of convicted persons may be ordered in connection with a suspended sentence or a conditional release. Such measures, however, cease, at the latest,

¹⁶ See the answer to question 21h).

¹⁷ Article 53, paragraph 1, of the CPA.

when the full term of imprisonment has been served. Orders not to contact another person or not to enter a specified area may, depending on the circumstances, be imposed for a period of time extending beyond serving the full term of imprisonment.

Unofficial translation of sections 4, 11 and 14 of the Act on Parental Responsibility:

“Section 4. Decisions made pursuant to the Act will be based on the child’s best interests.

Section 11. If non-cohabiting parents with joint custody disagree about custody, the court will decide whether joint custody is to continue or whether one of the parents is to have sole custody. The court can only terminate joint custody if it is to be presumed that the parents cannot co-operate in relation to the child, taken into consideration the best interests of the child.

Section 14. (1) On the request of a parent who does not have custody, the court can order joint custody or transfer custody to this parent.

(2) The court can change an agreement under section 13(2) or can change a decision under section 15.”

Question 22(d) of the GOQ / du QAG

See answer to question 21(b) above.

FINLAND / FINLANDE

Question 13 of the TQ / du QT

a) The general rules on investigations and criminal proceedings apply to all cases regardless of the relationship between the child and the alleged offender

b) Did not respond

c) The child can be taken into care but it is not possible to permanently withdraw parental rights. The monitoring or supervision of the offender is done by the general ruler on supervision of convicted persons. If the child has been taken into care and the offender has been given a right to meet the child a supervised meeting can be organised where a social worker is present.

Question 22(d) of the GOQ / du QAG

According to the Criminal Investigations Act the court has to assign a legal guardian to the child victim for the duration of the criminal proceedings if there is a reason to believe that the holder of the parental responsibility is not able to supervise the best interests of the child (Chapter 4, Section 8, translation not available). The costs of the legal guardian are paid by the state. The role of the legal guardian is to see that the best interests of the child are taken into consideration during the proceedings.

FRANCE

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

GREECE / GRÈCE

Question 13 of the TQ / du QT

a) Currently there are not particular legal or formal provisos for specific measures to taken in order to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim in cases where the alleged perpetrator is a member of the victim's family or has otherwise been in a recognised position of trust or authority towards him/her. However, reasonable such measures are not usual in practice of law enforcement or legal authorities but without a specific reference to particular legislation on the subject matter. Thus, under prosecuting procedures often the best interests of the child represent a primary theme of consideration in cases of child sexual victimization within the circle of trust. However, given that most often professionals involved are untrained in matters of sexual abuse or children's rights, occasionally there might be incidents in which operational procedures (for prosecution etc) might be prioritized instead.

b) Under art. 1517 of the Civil Code, whenever there is a conflict of interest between the parents and the child, a special representative is assigned to the child. His/her task is solely to defend the child's interests in judicial proceedings.

c) Under art. 1537 of the Civil Code the parent, who has been convicted of an intentional crime against the life, health and morality of his/her child, is sanctioned with termination of his/her parental rights. Yet, this does not happen automatically with the conviction, rather a petition must be filed in civil court by the other parent or a close relative or the District Attorney. However, it should be noted that this is rather a common practice in Hellenic courts.

Moreover, under art. 1532 of the Civil Code the parent, who violates his/her parental duties by infringing on the rights of his/her child or is in no position to exercise his/her role as a parent may have his/her parental rights partly or entirely terminated.

Monitoring or supervision of convicted parents in practice faces substantial difficulties in implementation, mainly due to lack of staff in social services. In years 2010-2012 under the framework of EU's DAPHNE program, the Institute of Child Health had implemented a particular project (DAP/) in female prisons (Elaionas and Korydallos) for maintaining under supervision and appropriate support relationship between imprisoned mothers with their children developing also training material for prisons' social services or other relevant services in order to replicate such actions in their daily practice.

ICELAND / ISLANDE

Question 13 of the TQ / du QT

- a) See answer to question 21 of the GOQ
- b) See answer to question 21a) and 21b) of the GOQ

Q21a of the General Questionnaire:

According to Article 39 in The Law on Criminal Procedure 88/2002 a guardian is an agent for the victim if he or she is a minor, who is under the age of 18. The guardian makes decisions on behalf of the minor when he or she isn't considered to have the capacity to do so.

According to Article 40 in The Law on Criminal Procedure the police is obligated to inform the victim on its legal rights when needed. The police is also obligated to inform the victim if the investigation is closed. The victim has the right to justification on that matter. Furthermore, the police is obligated to inform the victim that the decision is open to appeal to the State Prosecutor. The police is also obligated to inform the victim or its legal counsel when an indictment is issued, if the victim has no knowledge in that regard.

According to Article 41 in The Law on Criminal Procedure the police is obligated to appoint the victim legal counsel if the victim is under the age of 18 at the beginning of the investigation. According to Article 45 in The Law on Criminal Procedure the legal counsel protects the interest of the child during the investigation and provides needed legal assistance. The legal counsel also assists the victim on making compensation claims if an indictment is issued. The legal counsel is required to keep confidential anything pertaining to the representation of the victim. Furthermore, the legal counsel is always allowed be present during a hearing of the victim according to Article 46 in The Law on Criminal Procedure.

Q21b of the General Questionnaire:

The child victim is most often heard in a court testimony either in the *Barnahus* or special facility in the courthouse in Reykjavik. There are not restrictions on the child victims to supply evidence. The child victim does not have a say where or who performs the interviewing as this is solely determined at the discretion of a court judge. For further elaboration see 22a).

- c) See answer to question 9.b regarding article 25 and 27 in the Child Protection Act as well as answer 15. b of the GOQ.

According to Article 29 in the Child Protection Act, the local child protection services can make the claim of custody deprivation in court. Among the conditions for that claim is that a child has been sexually abused by the parent or failed to protect the child from sexual abuse or sexual exploitation. Also, if a child has been sexually abused by its parent, the non-offending parent can seek sole custody. When parents disagree on custody or their child's domicile, and if attempts at mediation prove fruitless, a judge shall resolve the issue by a judgement, according to Article 34 in The Children's Act no 76/2003. The judge shall decide the arrangements regarding the custody or domicile of a child in accordance with the child's best interests. According to Article 46 in The Children's Act a child has the right to regular

access to the parent that he or she does not live with, providing it would not be at variance with the child's best interests. If parents disagree about access the district commissioner shall decide on access by means of a ruling according to Article 47 in The Children's Act. Decisions shall at all times be taken according to the best interests of the child. The district commissioner shall assess the danger that the child will be exposed to violence or harsh treatment. If the district commissioner considers that access between the child and the parent would be contrary to the child's best interests and needs, he may decide that no right of access shall apply. Also, when there is particular reason to do so, the district commissioner may specify in the ruling that access is to take place under the supervision of a specialist in children's affairs.

With regard to monitoring and supervision of a convicted person a reference is made to the answer to question 9.b regarding Article 37 in the Child Protection Act.

Furthermore, according to Article 5 in The Act on Expulsion of a Person from the Home and Injunctions no 85/2001 it is possible to exclude a person from its home if he or she is accused of committing a crime that is punishable according to chapter XXII on sexual offences in The General Penal Code no. 19/1940. It is also possible to prohibit the accused person from being in a certain place or area, and from following, visiting or otherwise making contact with a child if it is considered necessary to ensure the safety of the child. There are no sanctions in The General Penal Code, no. 19/1940 that include the withdrawal of parental rights.

Question 22(d) of the GOQ / du QAG

See answer to question 21 c.

The child is always appointed a legal advocate at the onset of the criminal investigation who has the role of legal safeguarding the best interest of the child vis-à-vis the parents during the legal proceedings including cases if there is a conflict of interest. The local child protection services also has a role in safeguarding the safety and best interest of the child vis-à-vis the parents, for example if one of the parents is a suspected perpetrator and/or there are concerns that the holders of parental responsibility do not secure the safety of the child or provide the appropriate emotional support.

ITALY / ITALIE

Question 13 of the TQ / du QT

a) Investigations in the Italian legal systems are ruled by a principle of strict legality; consequently, even in cases where the alleged offender is a member of the victim's family or is in another close personal relationship, investigations will always only aim at ascertaining criminal liability, protecting the victim at the same time through the measures described above.

b) See under question 22 (d) of the GOQ below.

c) See under question 18. GOQ.

Question 22(d) of the GOQ / du QAG

The representation of a child includes:

1. Legal guardian

Appointed by the judge, or in some cases by the Juvenile Court, when the child's parents have died or for other reasons are not in a position to exercise parental authority (art. 343 c.c.). The guardian informs the child of the outcomes and the status of the proceedings that interest him/her, and represents the child in all civil acts (Art. 357 c.c.). For the performance of its functions, the guardian is connected with all the subjects entrusted with the care and nurturing of the child (e.g. host communities, foster family, etc.).

2. The guardian *ad litem*

The guardian ad litem is appointed by the juvenile court when there is a conflict of interest between the child and the person exercising the parental authority, or when there is no one who represents the child (art. 78 CCP).

In addition, in criminal matters, in the event of a conflict of interest between the child under the age of 14 years, who is victim of a crime, and his/her legal representatives, it is possible to appoint a guardian ad litem who shall perform specific functions in order to court procedures. The appointment is done by the judge for preliminary investigations. The appointment may also be promoted by organizations that have as their purpose the care, education, housing of minors. This makes it possible to ensure the adequate representation of the child from the beginning of the preliminary investigation. This is particularly useful when the abusers are the parents.

3. Lawyer of the child

Law no. 184/83 provides for the appointment of a lawyer for the child and for his/her parents in the procedures relating to the declaration of the state of adoptability.

Relevant texts:

Article 330 of the Civil Code

Loss of parental authority

The Court may declare the loss of parental authority if a parent contravenes or neglect the obligations deriving from such a role or abuses the powers related thereto thus causing serious harm to the child.

In such a case, due to serious grounds, the Court may order the child's removal from the family home or the parent's or live-in partner's removal if he/she mistreats or abuses the child.

Article 120 of the Criminal Code

Right to file a complaint

Any person who is the victim of an offence, in respect of which prosecution ex officio or upon request or petition is not required, shall be entitled to file a complaint.

If a person is under the age of fourteen or has been disqualified by reason of mental deficiency, the right of complaint shall be exercised by a parent or guardian.

Minors who have attained the age of fourteen and incapacitated persons may exercise the right of complaint, and a parent, guardian or curator may also exercise such a right on their behalf notwithstanding any declaration of intent, either express or implied, by the minor or incapacitated person.

Article 121

Right of complaint exercised by a special curator

If the victim is under the age of fourteen or with a mental deficiency, and there is nobody who is his/her legal representative, or the legal representative has a conflict of interest with the person, the right of complaint shall be exercised by a special curator.

LITHUANIA / LITUANIE

Question 13 of the TQ / du QT

a) In Lithuania all cases where victims are children are heard with respect to the interests and rights of the child. First, cases of crimes and misdemeanours against freedom of sexual self-determination and inviolability may be heard *in camera* (Article 9(3) of the CPC).

“Article 9. Public hearing

[...]

3. Besides cases specified in paragraph 1 of this Article, a hearing in camera shall be permitted in cases involving charges for criminal acts against persons under eighteen years of age, in cases involving crimes and misdemeanours against freedom of sexual self-determination and inviolability, as well as in other cases with the aim to prevent making public information about the private life of persons involved in the case or when questioning a witness or a victim subject to non-disclosure of the identity. [...]”

A different examination procedure applies when a child participates in criminal proceedings, i.e. when examination is carried out during a pre-trial investigation, a juvenile witness or a victim under eighteen years of age is, as a rule, examined during a pre-trial investigation not more than once. A video and audio recording may be made during their examination. Where a suspect or his counsel for defence participates in the questioning of a juvenile witness or a victim under eighteen years of age, a pre-trial judge must ensure that no unauthorised impact is exerted with respect to a witness or a victim. A juvenile witness or a victim under eighteen years of age is summoned to a sentencing hearing only in exceptional cases. If a suspect may exert impact on a juvenile witness or a victim under eighteen years of age, a pre-trial judge will not allow the suspect to participate in the examination by a ruling. For the protection of a juvenile witness or a victim under eighteen years of age a pre-trial judge by a ruling may prohibit the suspect and other participants of the proceedings, with the exception of a representative from a state child rights protection institution or a psychologist, to be present in the premises where examination is carried out. In this case, a

video and audio recording must be made, and the suspect and other participants of the proceedings must be provided with the conditions to watch and hear the examination from other premises as well as to put questions to the examined person through the pre-trial judge. If it is impossible to create the conditions for the suspect and other participants of the proceedings to watch and hear the examination from other premises, the examination is carried out in the absence of the suspect and other participants of the proceedings.

A video and audio recording made during this examination is demonstrated to the suspect and other participants of the proceedings immediately after the examination, and they have the right to put questions to the examined person through the pre-trial judge. A representative of a juvenile witness or a victim under eighteen years of age has the right to participate in his examination. Upon the request of the participants of the proceedings or upon the initiative of a pre-trial investigation officer, prosecutor or pre-trial judge, a representative from a state child rights protection institution or a psychologist must be summoned to the examination of a juvenile witness or a victim under eighteen years of age, who help to question a minor with regard to his social and psychological maturity (Article 186 of the CPC).

“Article 186. Questioning of a juvenile witness and victim

1. A juvenile witness or a victim under eighteen years of age shall be examined by the pre-trial judge in accordance with the procedure prescribed in Article 184(3)(4)(5) of this Code when requested so to the best interests of the child by his representative, prosecutor or counsel for the defence or in cases specified in Article 184(1) of this Code 2. A juvenile witness or a victim under eighteen years of age shall, as a rule, be examined during a pre-trial investigation not more than once. A video and audio recording may be made during their examination. Where a suspect or his counsel for defence participates in the questioning of a juvenile witness or a victim under eighteen years of age, a pre-trial judge shall ensure that no unauthorised impact is exerted with respect to a witness or a victim. A juvenile witness or a victim under eighteen years of age shall be summoned to a sentencing hearing only in exceptional cases.

3. If a suspect may exert impact on a juvenile witness or a victim under eighteen years of age, a pre-trial judge shall not allow the suspect to participate in the examination by a ruling. The prosecutor shall inform the suspect and his counsel for defence about the ruling passed by a pre-trial judge prohibiting participation in the examination by handing in a copy of the ruling.

4. For the protection of a juvenile witness or a victim under eighteen years of age a pre-trial judge by a ruling may prohibit the suspect and other participants of the proceedings, with the exception of a representative from a state child rights protection institution or a psychologist, to be present in the premises where examination is carried out. In this case, a video and audio recording must be made, and the suspect and other participants of the proceedings shall be provided with the conditions to watch and hear the examination from other premises as well as to put questions to the examined person through the pre-trial judge. If it is impossible to create the conditions for the suspect and other participants of the proceedings to watch and hear the examination from other premises, the examination shall be carried out in the absence of the suspect and other participants of the proceedings. A video and audio recording made during this examination shall be provided to the suspect

and other participants of the proceedings immediately after the examination, and they shall have the right to put questions to the examined person through the pre-trial judge.

5. A representative of a juvenile witness or a victim under eighteen years of age shall have the right to participate in his examination. Upon the request of the participants of the proceedings or upon the initiative of a pre-trial investigation officer, prosecutor or pre-trial judge, a representative from a state child rights protection institution or a psychologist shall be summoned to the examination of a juvenile witness or a victim under eighteen years of age, who help to question a minor with regard to his social and psychological maturity.”

A representative of a juvenile victim under eighteen years of age has to participate in his examination at court. A victim of such an age and his representative may participate only in part of the hearing under a court ruling. If a court examination might cause a mental trauma or have any other severe consequences to a juvenile victim under eighteen years of age, a victim may not be questioned at the sentencing hearing. In this case the testimony given by a victim to a pre-trial judge must be read out at court (Article 283(3) of the CPC).

“Article 283. Procedure of examination of a victim

[...]

3. A representative of a juvenile victim under eighteen years of age shall participate in his examination at court. A victim of such an age and his representative may participate only in part of the hearing under a court ruling. If a court examination might cause a mental trauma or have any other severe consequences to a juvenile victim under eighteen years of age, a victim may not be questioned at the sentencing hearing. In this case the testimony given by a victim to a pre-trial judge must be read out at court. [...].”

It should be noted the draft Law Amending and Supplementing Articles 9, 154, 186, 280, 283 of the Criminal Procedure Code of the Republic of Lithuania and Supplementing the Annex to the Code registered in the Seimas of the Republic of Lithuania (draft Registration No. XIP-4797 (hereinafter referred to as the draft CPC) stipulates that cases, where victims are under eighteen years of age, may also be heard *in camera*

The draft CPC also proposes stipulating an obligatory video and audio recording when carrying out the examination of a minor witness and a victim during a pre-trial investigation. In these cases, after an obligatory recording during a pre-trial investigation is established, a recording may be demonstrated at the sentencing hearing during the examination of the evidence. If a child is summoned to a hearing, he should be provided with the possibilities not to stay in the same premises together with other participants of the proceedings and provided with the conditions to carry out the child’s examination by means of video and audio recording equipment.

New CPC provisions will take effect as of 1 January 2014, which will enable court examination by means of audio and video remote transmission equipment (Article 279(6) of the CPC; Article 283(2) of the CPC).

b) See question 22 (d) of the GOQ.

c) Article 72 of the CC lays down a penal sanction – a prohibition to approach the victim, i.e. a court may impose a prohibition to approach the victim where this is necessary with a view to protecting the legitimate interests of the victim (Article 721(1) of the CC). Upon

imposition of prohibition to approach the victim, the offender shall be prohibited, until the expiry of a time limit laid down by a court, from communicating and seeking contacts with the victim, visiting the indicated places at which the victim is usually present (Article 721(2) of the CC). Upon imposition of prohibition to approach the victim and where the offender and the victim share the same residential premises, a court shall place the offender under the obligation to live separately until the expiry of a time limit laid down by the court or until solving of the issue of granting of the right to live in those residential premises to the victim or to the offender (Article 721(3) of the CC).

Article 722 of the CC lays down a penal sanction – participation in the programmes addressing violent behaviour, i.e. a court shall place under the obligation to participate in violence correction programmes the persons who have committed criminal acts in respect of a close relative or family member. This instruction must be complied with within a time limit laid down by the court.

Question 22(d) of the GOQ / du QAG

It is allowed for the legal representative to participate in the proceedings upon submitting a written or verbal request, when the pre-trial investigation officer or prosecutor passes the decision, and the court – the judgement. The legal representative is usually participating in the proceedings together with the person he represents. It may be refused by the decision of the pre-trial investigation officer or prosecutor, or by the judgement of the court to allow the legal representative to participate in the proceedings as the representative of the person in question, provided it is contradictory to the interests of a minor or an incapable person. In such cases the pre-trial investigation officer, prosecutor, or the court shall ensure the participation in the proceedings of another legal representative, and through absence of such possibility – to appoint temporarily, until the issue of the new legal representative is addressed, as a representative any other person adequate of properly representing the interests of a minor or an incapable person (par. 3 in Article 53 of the Criminal Procedure Code).

LUXEMBOURG

Question 13 of the TQ / du QT

- a) Il n'existe pas de dispositions législatives spécifiques qui seraient applicables dans un tel cas de figure. Le Code d'Instruction criminelle ne prévoit pas de procédure différente pour ces cas de sorte à ce que les règles usuelles sont d'application. Néanmoins, il appartient au parquet - protection de la jeunesse, qui est notamment en charge de la centralisation de tous ces dossiers, de veiller au respect de l'intérêt supérieur de l'enfant. Si le parquet estime que l'enfant continue à être en danger ou que l'enfant a besoin d'un suivi spécifique, il charge le juge de la jeunesse du cas de ce mineur et lui demande de prendre les mesures de protection qui s'imposent.
- b) Il est renvoyé à la réponse à la question 22d du questionnaire d'aperçu général (voir ci-dessous).

c) Conformément aux dispositions de l'article 378, paragraphe 4 du Code pénal luxembourgeois, la déchéance de l'autorité parentale peut être décidée. Le suivi et la surveillance de l'auteur condamné sont possibles via l'application de la procédure du sursis probatoire ou dans le cadre d'une libération conditionnelle, sinon il appartient au juge de la jeunesse d'assurer la sécurité de l'enfant victime.

Question 22(d) of the GOQ / du QAG

L'enfant victime a droit à une aide juridictionnelle gratuite. Il y a en effet deux cas qui peuvent se présenter :

- Nomination d'un avocat par le juge de jeunesse (article 18 de la loi modifiée de 1992 relative à la protection de la jeunesse) et d'un administrateur ad hoc (pour permettre à l'enfant de se constituer partie civile) pour les enfants placés judiciairement par le juge des tutelles (article 11 de la loi modifiée de 1992 relative à la protection de la jeunesse).
- Possibilité pour le parquet et le juge d'instruction de désigner un administrateur ad hoc pour le mineur (article 41-1 de la loi modifiée de 1992 relative à la protection de la jeunesse).

Les autorités judiciaires sont donc habilitées à désigner un représentant spécial pour la victime.

En effet, l'article 41-1 de la loi modifiée du 10 août 1992 relative à la protection de la jeunesse dispose que « le procureur d'Etat ou le juge d'instruction, saisis de faits commis volontairement à l'encontre d'un mineur, désigne un administrateur ad hoc choisi sur la liste des avocats à la Cour publiée par les conseils de l'ordre des avocats, lorsque la protection des intérêts du mineur n'est pas complètement assurée par l'un au moins de ses représentants légaux. L'administrateur ad hoc assure la protection des intérêts du mineur et exerce, s'il y a lieu, au nom de celui-ci les droits reconnus à la partie civile».

MALTA/MALTE

Question 13 of the TQ / du QT

a) The legislative measures that exist to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim of sexual abuse are as follows:

Children's Advocate – The law provides for a child advocate to be appointed to a child upon the request of the child, or the parents, but remains at the discretion of the judge/magistrate.

Hearing of vulnerable witnesses by means of a contemporaneous video conference – Chapter 164 of the Laws of Malta (Police Act) Article 90 – this is used to allow children to testify in the quiet of the magistrate's/judge's chambers without being present in front of the perpetrator.

Amongst the functions, the Commissioner for Children seeks to ensure that the rights and interests of children are properly taken into account by government departments, local authorities, other public bodies and voluntary and public organizations when decisions on policies affecting children are taken. One of the principles with which the Commissioner is

guided is that which states that all children are to be treated with dignity, respect and fairness.

(Chapter 462 of the Laws of Malta (Commissioner for Children Act, 2003) Articles 9(f), 10(b) & 17(1)).

Child Protection Services strives to ensure that the rights of the child are upheld at all moments, acting as champions and advocates for the needs and wellbeing of children in such situations.

b) Refer to reply to Question 22(d) of the GOQ. Whereas no legal imposition is made so that a child victim of sexual abuse is represented by an independent person when the parents have a conflict of interest to assist the child, an understanding exists with the judiciary and the police prosecuting the case to allow a social worker from Child Protection Service to accompany the child during his/her testimony. Interventions by the social worker depend on the magistrate or judge and have at times ranged from the social worker not being allowed to assist the child but just remain present for the sitting to allowing the social worker to assist the child through encouragement and stating the questions in a different way to assist the child in his/her testimony. Nevertheless, the social worker's primary role implies support to the child before and after giving witness, firstly assisting the child to understand what giving witness is like and all about and later assisting the child after giving witness to process the whole matter. This is far from an ideal situation as social workers wish to have a more active role in this aspect to assist children in a child friendly manner to make this process less traumatic. The social worker of the child is not allowed to be a part of this process as this has often been seen as a means to influence a child's testimony.

c) Refer to reply to Question 9(b) above. No sanctions for monitoring or supervision of convicted persons are currently in force.

Q9b of the Thematic Questionnaire:

Yes, a conviction for an offence of prostitution of a descendant under age by an ascendant, or of a spouse under age by another spouse or of a minor by a tutor, or of defilement of minors, entails the forfeiture of parental authority, or of every right over the property of the spouse and in the case of a tutor perpetual disability from holding the office of tutor. The same applies for offences relating to the producing, offering, distributing of pornography depicting minors, where the offences 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 person under age. The Court may also order that the offender be temporarily or permanently prevented from exercising activities related to the supervision of children. This also applies in the case of convictions for 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

Question 22(d) of the GOQ / du QAG

Did not reply

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Question 13 of the TQ / du QT

a) According to art. 10 para. 6 Code of Criminal Procedure "Respect for the rights, freedoms and human dignity" - for when a minor victim or witness will act to meet its interests at any stage of the criminal process.

b) No additional information

c) Under the Family Code, a parent may be deprived of parental rights if he/she:

- a) avoids the exercise of parental obligations, including the payment of alimony;
- b) refuses to take the child from the hospital or other institution of healing, education, a social institution or a similar one;
- c) abuses their parental rights;
- d) behaves with cruelty to the child, applying physical or mental violence, threatens the child's sexual inviolability;
- e) by immoral behaviour, adversely affects the child;
- f) suffers from chronic alcoholism or drug addiction;
- g) committed premeditated offenses against life and health of children or spouse, as well as
- h) in other cases when it is necessary to respect the interest of a child .

Upon request of the guardianship/tutoring authority, the court may decide to take children from their parents without the deprivation of parental rights if children are in situation of danger to life and health.

According to Law no. 140 for special protection of children at risk and children separated from their parents if, as a result of the initial assessment of the child by authority investigating, there is immediate danger to the life or health of the child , guardianship/tutoring authority in whose place of location is the child immediately available shall take the child from the parents or caregivers, and communicate about it to the prosecutor within maximum 24 hours. Local guardianship/tutoring authority within 3 working days will bring an action in court for deprivation of parental rights or taking away of children from their parents without their deprivation of parental rights. If this requirement is not fulfilled, the child will be returned to parents immediately.

Question 22(d) of the GOQ / du QAG

Under the Family Code parents are the legal representatives of children and acting on their behalf in relation to all natural and legal persons, including public authorities and courts without the need for special powers. In case of conflict of interests between parents and children, guardianship/tutoring authority is required to appoint a representative to defend the rights and interests of the child. When the child is taken from parents without loss of parental rights, parents lose the right to communicate with him/her, to personally attend his/her education and to represent his/her interests. In cases where the child is deprived of

parental care (parents are deprived of parental rights, incompetent or missing, and in other cases), children's rights to education are provided by the guardianship/tutoring authority. According to the Civil Code of guardian/tutor and trustee powers over the person admitted to an institution of public welfare, education, treatment or a similar institution are exercised by those institutions, unless the person has a guardian/tutor or curator. Also, in case of placement of person that is under guardianship/tutorship or trusteeship in an institution of public welfare, education, treatment or other similar institution, guardian/tutor or guardianship/tutoring authority issued curator of his obligations if it is not contrary to the interests of person that is under guardianship/tutorship or trusteeship.

MONTENEGRO

Question 13 of the TQ / du QT

a) Within the framework of Gender Equality Programme IPA 2010, in November 2011, the Protocol on the procedures, prevention and protection from domestic violence was passed in Podgorica, with a special focus on child victims. The Protocol prescribes rules of procedures of all relevant institutions involved in the protection of children from violence, which primarily include respect for the rights of the child and the conduct of proceedings in his / her best interest. The Law on Protection from Domestic Violence prescribes urgency of procedures, taking into account the interests and welfare of the victim. Also, the same Law prescribes the duty to report violence, establishing victim assistance plan by a professional team of representatives of institutions dealing with family (social welfare centre, non-governmental organisations). Victims have the right to free legal aid. Protection of victims is exercised in accordance with the Strategy for Protection against Domestic Violence passed by the Government of Montenegro.

The basic principle of the Law on the Treatment of Juveniles in Criminal Proceedings is the respect for the best interests of the juvenile, as well as the observance of human rights and fundamental freedoms, prohibition of discrimination on any grounds, comprehensibility of language, the use of technology adapted to the age and level of development of the juvenile; respect for the right to privacy of the juvenile at all stages of the proceedings, observance of the right of the juvenile to freely express his / her opinion, avoiding restrictions of personal liberty of the juvenile as much as possible, urgency of proceedings involving juveniles, judicial review of the enforcement of criminal sanctions against juveniles; rehabilitation and erasing the conviction.

b) Article 67 of the Family Law provides that the child capable of forming his / her own opinion shall have the right to freely express this opinion. Child who has reached ten years of age can address the court or the administrative authority and ask for help in the realisation of this right either independently or through another person or institution. The competent authority shall establish the child's opinion in an informal conversation that takes place in an appropriate place, in cooperation with the school psychologist or guardianship body, family counselling body or other institution specialised in family relationships, and in the presence of persons selected by the child. 29

Article 246 of the same Law stipulates that for a minor whose parents exercise their parental rights in relation to him/her a special guardian shall be appointed for the purposes

of a dispute conducted between him/her and his/her parents, for the purposes of making certain business arrangements between them, as well as in other cases when their interests are conflicting.

Article 356 prescribes that, where there are conflicting interests between the child and his/her legal representative, the child shall be represented by a “guardian in case of conflict of interests” (collision guardian).

Article 357 prescribes that, if the court estimates that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights the child as a party is not represented in an appropriate manner, the court shall be obliged to appoint a temporary representative for the child. If the court establishes that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights the party is a child capable of forming an opinion, the court shall be obliged to take the statement of the opinion of the child in the manner and on the place which is in line with the child’s age and maturity, unless that would be obviously in conflict with the best interest of the child.

Article 358 prescribes that, if the collision guardian or temporary representative establishes that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights i.e. deprivation of parental rights he/she is representing a child who is capable of forming an opinion, he/she shall be obliged to provide that the child timely obtains all the information that he/she might need; to provide explanation to the child related to the possible consequences of the actions he/she is undertaking; to convey to the court the opinion of the child, if the child did not directly express the opinion at the court, unless that would obviously be in conflict with the best interest of the child.

Provisions of the Articles 356-358 of this Law (on collision guardian and temporary representative) shall also apply in other court proceedings related to family relations if these proceedings also refer to the rights of a child. Bodies conducting other proceedings shall also be obliged to apply provisions of the Articles 356-358 of this Law if these proceedings also refer to the rights of a child.

- c) The Criminal Code prescribes for criminal sanctions as a result of criminal offences committed by persons considered to be in the child’s circle of trust. The Family Law prescribes that a parent who abuses the child in a physical, sexual or emotional manner; exploits the child by forcing it to excessive work or to work that threatens morality, health and education of the child, or work which is forbidden by law; instigates the child to perpetrate criminal acts, etc., shall be deprived of the parental right. The Law on the Treatment of Juveniles in Criminal Proceedings prescribes, in Article 94 – Impossibility of Confrontation, that a child under 14 years of age who is injured by the criminal offence or heard as a witness cannot confront the defendant (while children older than 14 years can confront the defendant), and that “the competent authorities taking action in the proceedings in which a juvenile is participating shall take all necessary measures to ensure that, in their official premises, meeting between the juvenile and the defendant is avoided”.

Question 22(d) of the GOQ / du QAG

The judicial authorities can appoint a special representative for the victim, which may be a party to the proceedings. In cases where the injured part (victim) is a child, and his / her legal representative (parent, adoptive parent or guardian) is precluded from representing the child, the guardianship body (social welfare centre) sets a temporary guardian for the

child, who may be a person of exceptional trust, indicated by the child as such, or a person from the ranks of professionals who has special expertise in working with children. This right is regulated by the Law on Protection from Domestic Violence, Article 16 – trusted person may be a family member, a person from an authority, institution, non-governmental organisation or other legal entity, or other person trusted by the victim. Perpetrator of the violence cannot be the trusted person. The victim can choose a trusted person before or during the proceedings and taking actions on protection. The competent authorities are obliged to allow the presence of a trusted person in all proceedings and actions in which the victim is included, and which are related to family relationships.

Article 54 of the Law on the Treatment of Juveniles in Criminal Proceedings provides that the guardianship authority has the right to become familiar with the course of the proceedings during the proceedings involving a juvenile, as well as to file motions during the proceedings and to point out the facts and evidence that are important for making the right decision. It is also prescribed that the public prosecutor for juveniles shall inform the guardianship body of any proceedings against a juvenile, (in Montenegro the guardianship body is the social welfare centre).

Article 95 of the same Law stipulates that a legal counsel from among the lawyers who have, as a rule, gained special knowledge in the field of children's rights and procedures with juveniles in criminal proceedings, shall be appointed to the juvenile by the judge or the presiding judge, following the motion of the public prosecutor, guardianship body or ex officio, in line with the equity requirements, if he / she finds that this is in the best interest of the protection of the juvenile's personality.

Article 67 of the Family Law provides that the child capable of forming his / her own opinion shall have the right to freely express this opinion. Child who has reached ten years of age can address the court or the administrative authority and ask for help in the realisation of this right either independently or through another person or institution. The competent authority shall establish the child's opinion in an informal conversation that takes place in an appropriate place, in cooperation with the school psychologist or guardianship body, family counselling body or other institution specialized in family relationships, and in the presence of persons selected by the child.

Article 246 of the same Law stipulates that for a minor whose parents exercise their parental rights in relation to him/her a special guardian shall be appointed for the purposes of a dispute conducted between him/her and his/her parents, for the purposes of making certain business arrangements between them, as well as in other cases when their interests are conflicting. Article 356 of the same Law prescribes that, where there are conflicting interests between the child and his/her legal representative, the child shall be represented by a "guardian in case of conflict of interests" (collision guardian). Article 357 of the same Law prescribes that, if the court estimates that in the dispute related to protection of a child's rights and in the dispute related to exercising parental rights the child as a party is not represented in an appropriate manner, the court shall be obliged to appoint a temporary representative for the child. If the court establishes that in the dispute related to protection of a child's rights and in the dispute related to exercising parental rights the party is a child capable of forming an opinion, the court shall be obliged to take the statement of the opinion of the child in the manner and on the place which is in line with the child's age

and maturity, unless that would be obviously in conflict with the best interest of the child. Article 358 of the same Law prescribes that, if the collision guardian or temporary representative establishes that in the dispute related to protection of a child's rights and in the dispute related to exercising parental rights i.e. deprivation of parental rights he/she is representing a child who is capable of forming an opinion, he/she shall be obliged to provide that the child timely obtains all the information that he/she might need; to provide explanation to the child related to the possible consequences of the actions he/she is undertaking; to convey to the court the opinion of the child, if the child did not directly express the opinion at the court, unless that would obviously be in conflict with the best interest of the child.

Provisions of the Articles 356-358 of this Law (on collision guardian and temporary representative) shall also apply in other court proceedings related to family relations if these proceedings also refer to the rights of a child. Bodies conducting other proceedings shall also be obliged to apply provisions of the Articles 356-358 of this Law if these proceedings also refer to the rights of a child.

NETHERLANDS / PAYS BAS

Question 13 of the TQ

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

Question 22(d) of the GOQ / du QAG

According to the Dutch Civil Code (art. 1:250) de judge can install a special curator to deal with matters with respect to take care of nurturing and educating children. The article intends to cover all situations of conflict with regard to taking care and provide for children. Also other institutes are entitled to ask for the appointment of a special curator, especially the Child care and Probation Board, which is an organization that will first notice a situation of abuse within a family.

The special curator will represent the child de jure and in practical situations. By Interpreting the rules in de Civil code it is deducted that acts of sexual abuse against a child by the parents or caretakers constitutes a conflict of interest, that will serious endanger the safety and education of children, because of which installation of a curator is needed.

In case of a conflict of interest between the holders of parental responsibility and the child victim, a special representative may be appointed.

PORTUGAL

Question 13 of the TQ

Although Portuguese criminal procedural law does not have a specific provision stating that investigations and criminal law proceedings should take place according to the best interests of the child, it should be underlined that the Convention on the Rights of the Child, which once ratified is integrated automatically in the Portuguese legal order, provides that all actions concerning children, whether undertaken by public or private social welfare

institutions, courts of law, administrative authorities or legislative bodies, shall take into account the best interests of the child (Article 3 (1)).

This Article resonates throughout the Portuguese domestic law provisions that aim at the protection of childhood, specially through the explicit inscription of the principle of the protection of the best interests of the child in Article 4 of the Law on the Protection of Children and Youngsters at Risk.

In the case where the holders of parental responsibility are precluded from representing the child as a result of a conflict of interests, the child shall be represented by a Public Prosecutor.

Question 22(d) of the GOQ / du QAG

All crimes related to Articles 18, 19, 20 and 21 of the Convention are of a public nature, and therefore do not require that a complaint be submitted by the victim or his legal representative (Article 178 (1) and (2) of the Criminal Code). The crime under Article 173 (sexual activity with adolescents) constitutes an exception, unless it results in suicide or death of the victim.

Article 118 (5) of the Criminal Code provides that in sexual crimes against children criminal proceedings do not end, as a result of the statute of limitation, before the offended completes 23 years of age. This provision seems to comply with article 33 of the Convention. In criminal proceedings, the Statute of the Attorney General's Office attaches to prosecutors the power to represent the child (Article 3 (1 a)). The Public Prosecution Service is also responsible for representing the minor in case of a civil claim (Article 76 (3) of the Civil Procedure Code).

The Law provides for the possibility to use undercover actions in relation to child sexual crimes that are punishable by imprisonment over 5 years, provided that the agent is not known or when the victim is under the age of 16 or is incapable. Thus, it covers all crimes under Articles 171-176 (sexual abuse of children/ offenses against sexual self-determination) of the Criminal Code. Are excluded from these undercover actions crimes whose victim is aged between 16 and 18 years and that are punishable by less than five years imprisonment.

Portugal ratified recently the European Convention on the Exercise of Children's Rights, of the Council of Europe.

ROMANIA / ROUMANIE

Question 13 of the TQ / du QT

a) Any of the actions concerning the minor are taken, giving consideration to the minor's best interest. (To this aim, see the answer given to question 4b of the GOQ)

In what concerns the special rules regarding the development of the criminal procedure, the victim who is a minor has a special status during the criminal procedure and the new Code of Penal Procedures contains a set of rules meant to protect his or her interests (To this aim, see the answer given to question 21 of the General Questionnaire).

b) See question 22 (d) of the GOQ below.

c) Once with the main sentence, the court may also apply the complementary punishment of prohibition on the exercise of certain rights.

This penalty may be applied if the main penalty is imprisonment or a fine and the court considers that it is necessary, taking into consideration the nature and seriousness of the offence, the circumstances of the case and the persona of the offender.

For some of the offences provisioned by this convention, imposing this complementary penalty is even mandatory (see the content of the offences presented in the general questionnaire). Parental rights are among the rights which may be prohibited.

The service of the penalty of prohibition on the exercise of certain rights runs from the execution of the imprisonment sentence, or if parole was ordered, from the release date. Please refer to the footnotes related to the answer given to the question 9a) for the content of the legal provisions.

As well, the prohibition on the exercise of parental rights may be also applied as accessory penalty, during the service of the sentence when ordered by the court as complementary penalty¹⁸.

Question 22(d) of the GOQ / du QAG

In this field, the provisions of the code of criminal procedure supplement the provisions of the code of civil procedure, as well as of the special laws concerning child protection.

When between the child and the holders of parental responsibility (parents, legal guardians, other legal representatives) there is a conflict of interests within the criminal trial, the court can order the measure of the special guardianship, according with the provisions of the Code of civil procedure¹⁹. The appointment of these special guardians shall be made by the

¹⁸ ARTICLE 65

The content and the manner of service concerning the accessory penalty of prohibition on the exercise of certain rights

(1) The accessory penalty shall consist in the prohibition of rights provisioned under Article 66 paragraph (1) a), b) and d) - o), the exercise of which was prohibited by the court as additional penalty.

(2) In case of life imprisonment, additional punishment by the court is the prohibition on the exercise of the rights referred to in Article 66 paragraph (1). a) - o) or some of them.

(3) The accessory penalty of prohibition on the exercise of certain rights shall be served from the moment when the sentencing judgment is rendered enforceable until the main custodial sentence has been served or deemed served.

(5) In case of life imprisonment, the accessory penalty provided for in Article 66 paragraphs (1) c) shall be served from the date of release on parole or after the sentence was deemed served.

¹⁹ ARTICLE 2

General applicability of the Code of Civil Procedures

(1) The provisions hereof shall also constitute general law procedures for civil matters.

(2) Furthermore, the provisions hereof shall also apply to other matters, unless otherwise provided by the laws governing the latter.

ARTICLE 58

Special guardianship

(1) As a matter of emergency, if the natural person without legal standing in relation to their civil rights has no legal representative, the court, upon the demand of the interested party, shall appoint a special guardian, to represent the former until the appointment of their legal representative, in accordance with the law. In addition, the court shall appoint a special guardian if there is a conflict of interests between the legal representative and the represented person or when a legal entity or an entity among the ones provisioned for in Article 56 paragraph (2), brought before the court, does not have a representative.

(2) The provisions of paragraph (1) shall also apply accordingly to the persons with restricted legal standing.

(3) The appointment of such guardians shall be made by the court conducting the proceedings, from among the attorneys especially designated in this regard by the Bar Association for each court of law. The special guardian shall have all the rights and obligations provided by law to the legal representative.

court which has jurisdiction for the case from among the lawyers especially designated by the Bar for each court. The special guardian has all rights and obligations provided for by the law for the legal representative which means that he can perform any procedural acts on behalf of the child he represents and can participate in the criminal trial instead of the child, except the cases in which the presence of the child is absolutely necessary, like for example the hearing of the child.

Procedural acts of disposition, like for example renouncing the trial or the right which is the subject matter of the trial, the approval of the court decision, conclusion of a settlement concerning the civil aspects of the case by the representatives of the child, will not hinder the trial if the court finds that they are not in the interest of these persons.

SAN MARINO / SAINT-MARIN

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

SERBIA / SERBIE

Question 13 of the TQ / du QT

a)

Ministry of Justice:

Criminal Code proscribes provisions on protection of the right of the injured party, as well as on representing the injured party by the legal representatives with the powers.

State Prosecutor:

The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles proscribes special rules of criminal procedure in which minors/juveniles appear as injured parties. Primarily, state authorities that conduct/are involved in the procedure that is conducted for committed criminal offences against juveniles must have special knowledge in the field of the right of the child and criminal law protection of juveniles. When conducting proceeding for criminal offences committed against juveniles, the state prosecutor, investigative judge and judges of the bench shall treat the victim with care, having regard to his age, character, education and living circumstances, particularly endeavouring to avoid all possible prejudicial consequences of the proceeding on his character and development. Questioning of a child or juvenile shall be conducted with the assistance of psychologist, pedagogue or other qualified person.

If a juvenile is questioned as witness who is victim of a criminal offence against sexual freedoms, the questioning may be conducted at most twice, and exceptionally more if necessary to achieve the purpose of criminal proceeding. If the juvenile is questioned more than twice, the judge shall particularly have regard for the protection of personality and development of the juvenile.

(..)

If, due to the nature of the criminal offence and the juvenile's character the judge considers it necessary, he shall order questioning of the juvenile with the aid of technical devices for transmitting of image and sound, and the questioning shall be conducted without presence of the parties and other participants in the proceeding in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogue, social worker or other qualified person.

Juveniles may be questioned as witness victims in their apartment or other premises and/or authorised institution – organisation that is professionally qualified for questioning of minors.

When a juvenile has been questioned in the referred to manner, the record of his testimony shall always be read at the main hearing or a recording of the questioning heard.

If a juvenile is questioned as witness, who due to the nature of the criminal offence, consequences or other circumstances is particularly vulnerable or is in a particularly difficult mental state, confrontation between him and the defendant is prohibited.

A juvenile who is a victim shall have a legal representative from the first questioning of the defendant.

If the juvenile does not have a legal representative, the President of the Court shall appoint him from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles.

The costs of representation shall be borne by the Court budget.

If recognition of the defendant is done by a juvenile who is a victim, the Court shall proceed with particular care and shall conduct such recognition in all phases of the proceeding in a manner that completely prevents the defendant from seeing the juvenile.

Criminal proceeding for offences specified in Article 150 hereof is summary.

Under the Family Code of the Republic of Serbia, a court may order one or more protective measures against domestic violence pertaining to a family member who acts violently, temporarily prohibiting or limiting the maintenance of his/her personal relations with another family member. Domestic violence is the behaviour by which one family member endangers the physical integrity, mental health or tranquillity of another family member, and in particular forcing to sexual intercourse or abetting to sexual intercourse or sexual intercourse with a person who has not reached fourteen years of age or a helpless person.

Protective measures against domestic violence are:

1. the issuance of a warrant for eviction from a family apartment or house, regardless of a right to property or a lease to immovable property
2. the issuance of a warrant for moving into a family apartment or house, regardless of a right to property or a lease to immovable property
3. prohibition of getting closer to a family member than a certain distance
4. prohibition of access to the vicinity of the place of residence or workplace of a family member
5. prohibition of further molestation of a family member.

A protective measure against domestic violence may not last longer than one year, and it may be prolonged until the reasons for which it had been ordered cease to exist.

NVO Astra answer:

Article 266 of the Family Act states:

(1) In a dispute over the protection of a child's rights and in a dispute over the exercise or deprivation of parental rights the court is always under the obligation to act in the best interest of the child.

(2) If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights a child as a party has not been adequately

19 represented, the court is under the obligation to appoint a temporary representative to the child.

b) See question 22 (d) of the GOQ below.

c)

Ministry of Justice:

Provisions of the Criminal Procedure Law and Criminal Code are applicable.

State Prosecutor:

Under Article 81 of the Family Code, a parent who abuses his/her rights or grossly neglects duties that comprise a part of his/her parental rights may be fully deprived of parental rights. A parent abuses rights that comprise a part of parental rights if he/she physically, sexually or emotionally abuses the child.

Under the Law on Special Measures for the Prevention of Criminal Offences Against Sexual Freedoms of Minors, after the perpetrator of such an offence has served the sentence of imprisonment, the following special measures shall be taken:

Mandatory reporting to a competent police authority and Authority for the Enforcement of Criminal Sanctions

2) Prohibition of going to places where minors assemble (kindergartens, schools, etc.)

3) Mandatory attendance at professional counselling centres and institutions

4) mandatory notification on new place of residence or job 5) Mandatory notification on a travel abroad

The measures are in effect for maximum 20 years from the served prison sentence.

After the expiry of every four years from the initial application of the special measure, the court that issued first-degree judgement shall decide ex officio on a need for further application of such measures.

The person these measures are applied to may submit request for review of the need for further application of special measures. Also, the request may be submitted after expiry of every two years from the initial application of special measures.

In the procedure in which it is decided on a need for further application of special measures, the court shall obtain reports of authorities and organisations competent for enforcement of such measures.

NVO Astra answer:

If a person considered to be in the victim's circle of trust committed the criminal act, sanctions are provided in a form of termination of parental rights or through monitoring and supervision of convicted persons. Social Welfare centres play an important role in this process, as during the proceedings they deliver the opinion about necessary measures of precaution, and after the verdict, continue with the long term monitoring of the family in order to protect the best interest of a child.

Question 22(d) of the GOQ / du QAG

NGO Astra:

The Article 265 of the Family Act: Collision Guardian and Temporary Representative of the Child states:

(1) If adverse interests exist between the child and the child's legal representative, the child is to be represented by a collision guardian.

(2) A child who has reached the age of ten and who is able to reason has the right to request from the guardianship authority, personally or through another person or institution, to appoint a collision guardian for him/her.

(3) A child who has reached the age of ten and who is able to reason has the right to request from the court, personally or through another person or institution, to appoint a temporary representative for him/her, due to the existence of adverse interests between him/her and his/her legal representative.

Also, the paragraph (2) of the Article 266 of the Family Act states: If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights a child as a party has not been adequately represented, the court is under the obligation to appoint a temporary representative to the child.

If court does not appoint the temporary representative to the child, the court is obliged to inform the Custodial Body about the need for a special representation of the child, which will consequently appoint a legal representative.

NGO Centre for Children Rights:

In Serbia there is absence of special representative of the victim who would represent the child in the proceedings in an independent manner and who would institute all the necessary proceedings before criminal, civil, administrative and independent bodies to ensure adequate protection for the child.

In case there is conflict of interest between the parent and child, in internal law, the centre for social work (or guardianship authority) shall designate a 'conflict' guardian. However, either parents or 'conflict' guardian often do not have legal knowledge, and thus are not capable to represent the child's interests in an adequate way in the proceedings or to institute all the proceedings required to protect the child.

It is particularly so in situations which require institution of more than one proceedings before court in different processing systems (e.g. criminal offence of domestic violence in which a child victim is in the criminal proceedings and where it has legal aid free of charge, alongside which simultaneously the procedure for pronouncing security measure against domestic violence should be instituted before civil courts, i.e. family council where the child is not provided under the law with legal aid free of charge nor independent legal representative/counsellor).

SPAIN / ESPAGNE

Question 13 of the TQ / du QT

a-c) For all answers see 9b GOQ

Q9b of the General Questionnaire:

Records are not public and few employers ask the applicant to bring with him a conviction record certificate.

The criminal record certificate is issued under these circumstances:

- When requested by the interested party either directly or through a representative.
- When requested through a competent body, as part of processing a procedure in which it is legally required. In these cases the certificate is sent directly to the body.

The Ministry of Justice directly issues criminal record certificates to the competent body in the procedures described below of the following Ministries:

- Ministry for Home Affairs, in the area of the Guardia Civil: cancellation of criminal records; cancellation of unfavourable notes for personnel in the Civil Guard Corps; firearms and explosives permits; selection procedures for entry in the different levels of the Corps; private rural Guards; protection and security services.
- Ministry for Home Affairs, in the area of policing: protection and security service (security guards, heads of security, bodyguards, private detectives); police rank selection; cancellation of police/criminal records; cancellation of unfavourable notes.
- Ministries for Home Affairs, of Employment and Social Security: residence permits (granting and renewal) and non-nationals working in Spain.
- Ministry of Defence: selection of officers, non-commissioned officers, soldiers and sailors; cancellation of unfavourable notes in military records; selection of volunteer reservists; granting military recognition.

The criminal record certificate is also issued directly to the competent body in the selection procedures for Justice Administration personnel. For legal procedures related to incapacity, guardianship and tutorship, the certificate is issued directly to the Courts hearing the case. Royal Decree 95/2009 introduced some minor changes but upheld the basic principle that the certificate is only accessible to judges, public prosecutors and the judicial police.

To obtain cancellation of criminal records, the following requirements must be met:

- Having settled the civil liabilities arising from the offence, except in cases of insolvency declared by the Judge or Court of Law.
- When next terms have elapsed without the convict reoffending: six months for minor penalties; two years for penalties that do not exceed twelve months and those imposed for negligent offences; three years for the remaining less serious penalties; five for serious penalties.

Q9b GOQ: *Does the screening of candidates apply to voluntary activities (Explanatory Report, para. 57)?*

The same rule applies.

Question 22(d) of the GOQ / du QAG

Criminal Law does not regulate this matter, which is envisaged, however, by the draft Law on the Standing of Victims. The Civil Code (article 163) provides a rule that may be applied to the mentioned case:

“Whenever, in any affair, the father’s and mother’s interest should be opposed to that of their non-emancipated children, the latter shall be appointed a defender who shall

represent them in the court and out of court. This appointment shall also take place when the parents' interest is opposed to that of the underage emancipated child whose capacity they are required to supplement.

If the conflict of interest should exist in respect of one of the parents, the other shall be entitled to represent the minor or supplement his capacity by operation of Law and without the need for a specific appointment."

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

TURKEY / TURQUIE

Question 13 of the TQ / du QT

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

b + c): The answer to Question 22(d) of the General Overview Questionnaire includes an explanation regarding this matter.

Question 22(d) of the GOQ / du QAG

Article 348 of the Turkish Civil Code (TCC) provides that in case the parents neglect their responsibilities arising out of their parental rights towards the child, as a result of which the child remains unprotected, the parental rights of the parents shall be lifted and a guardian shall be appointed for the child by the court.

It is important, however, to point out that parent's responsibility of meeting the child's care and education expenses shall continue (TCC, Art. 350).

In cases of sexual abuse or sexual exploitation of a child, in situations where the parents are incapable or fall short of protecting the child, or in places where the child is sexually abused by its own mother or father, the court decides in favour of lifting the parental right and placing the child under a guardianship. The guardian, appointed by the court based on special conditions, required by TCC, is also vested with the right and responsibility to represent the child in any and all the cases the child is a party of and to protect its interests.

According to the provisions of TCC, regulating guardianship, the guardian shall be appointed by the Civil Court of Peace of the location of the child. The Court may appoint an adult who is capable of fulfilling his duties as a guardian (TCC, Art. 413).

The court, in appointing the guardian, primarily takes into consideration relatives with close personal relations and location proximity to the child (TCC, Art. 414). Persons, who are appointed as guardians, are obligated to accept the duty. However, those of age sixty and above, those who are handicapped or have a chronic illness, those who are parents to more than four children, those who are already guardians, the President, members of the Parliament, members of the Council of State, judges and prosecutors, are not obligated to accept this task (TCC, Art. 417). Besides, according to article 418 of TCC, those who are handicapped, banned from public service or those who lead an infamous way of life, those whose interests conflict significantly with those of the guarded person or those who have enmities with him and judges of the related guardianship offices, may not be appointed as guardians.

From this perspective, the court which is a guardianship authority, shall decide upon the guardianship after having conducted a comprehensive research on personal traits, morals, and criminal past of the individual who is intended to be appointed as a guardian.

In this regard, that the child is a victim of sexual abuse and exploitation, and therefore observing the interests of the child, in cases when the child is taken under guardianship with the purpose of being protected, the criminal past of the future guardian is of utmost importance and those, convicted for a sexual offense, even if the legal consequences (such as being banned from public services) of the conviction may have died out, may not be appointed as guardians.

UKRAINE

Question 13 of the TQ / du QT

- a) Information on issues stipulated in items “a” and “b” of this question was provided within responses to the general overview questionnaire, including questions 21 – 23.

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

Question 22(d) of the GOQ / du QAG

In accordance with Paragraph four, Article 44 and Paragraph two, Article 56 of the CPCU [Criminal Procedure Code of Ukraine] where actions or interests of a legal representative contradict the interests of the represented individual, such legal representative by decision of investigator / public prosecutor / investigating judge / court shall be replaced with another one chosen from among individuals who can be appointed legal representatives.

* * *

III – Other stakeholders / Autres parties prenantes

UNICEF (ICELAND / ISLANDE)

Question 13 of the GOQ / du QAG

a) There are no normative best interest determinations in cases where the perpetrator is a member of the victim's family or in its circle of trust. Several legal acts reiterate the duty to always consider the best interests of the child and to allow the child to express its opinions on matters relating to it.

b) All child victims have the right to be appointed a special representative to assist them with the complaint, charges, the general progress of the investigation and the proceedings. Articles 39 – 48 of the Law on Criminal Procedure deals with this.²⁰

c) Articles 26-31 of the Child Protection Act deal with custody removal and all measures that can be taken without the consent of parents; they also deal with placement of children out of their homes. There is no mention of a possibility to remove the perpetrator, only the child.²¹

Question 22(d) of the GOQ / du QAG

All child victims are appointed a special representative to assist them with the complaint, charges, the general progress of the investigation and the proceedings. Articles 39 – 48 of the Law on Criminal Procedure deals with this.²²

ASTRA (SERBIA/SERBIE)

Question 13 of the TQ / du QT

a) Article 266 of the Family Act states:

(1)In a dispute over the protection of a child's rights and in a dispute over the exercise or deprivation of parental rights the court is always under the obligation to act in the best interest of the child.

(2) If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights a child as a party has not been adequately represented, the court is under the obligation to appoint a temporary representative to the child)

²⁰ <http://eng.innanrikisraduneyti.is/laws-and-regulations/english/procedural-law/nr/1339>

²¹ English version of the Child Protection Act: http://eng.velferdarraduneyti.is/media/acrobat-enskar_sidur/Child-Protection-Act-as-amended-2013.pdf

²² <http://eng.innanrikisraduneyti.is/laws-and-regulations/english/procedural-law/nr/1339>

- c) If the criminal act was committed by a person considered to be in the victim's circle of trust, sanctions are provided in a form of termination of parental rights or through monitoring and supervision of convicted persons. Social Welfare centres play an important role in this process, as during the proceedings they deliver the opinion about necessary measures of precaution, and after the verdict, continue with the long term monitoring of the family in order to protect the best interest of a child.

Question 22 (d) of the GOQ / du QAG

The Article 265 of the Family Act: Collision Guardian and Temporary Representative of the Child states:

(1) If adverse interests exist between the child and the child's legal representative, the child is to be represented by a collision guardian.

(2) A child who has reached the age of ten and who is able to reason has the right to request from the guardianship authority, personally or through another person or institution, to appoint a collision guardian for him/her.

(3) A child who has reached the age of ten and who is able to reason has the right to request from the court, personally or through another person or institution, to appoint a temporary representative for him/her, due to the existence of adverse interests between him/her and his/her legal representative.

Also, the paragraph (2) of the Article 266 of the Family Act states:

If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights a child as a party has not been adequately represented, the court is under the obligation to appoint a temporary representative to the child.

If court does not appoint the temporary representative to the child, the court is obliged to inform the Custodial Body about the need for a special representation of the child, which will consequently appoint a legal representative.