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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 14 of the Thematic Questionnaire

Compilation des réponses à la Question 14 du Questionnaire Thématique

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

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

www.coe.int/lanzarote

Introduction

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

This document is aimed at responding to this request by compiling replies to question 14 of the thematic questionnaire. If when replying to this question, States referred to another of their answers in both the General Overview and Thematic questionnaires, their replies will where possible, also be included in this compilation

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Lors de sa 7^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 14 du questionnaire thématique. Si, en répondant à cette question, les Etats se réfèrent à des réponses données à d'autres questions du Questionnaires Général et Thématique, leurs réponses seront, dans la mesure du possible, également incluses dans cette compilation.

¹ The 7th meeting report is online at:

[http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2013\)12Report7thMeeting_en.pdf](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 14 of the TQ: Child-friendly justice

- a Please specify whether in situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her, a protective approach towards victims has been adopted to ensure that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate (Article 30, para. 2 and Explanatory Report, paras. 211-215)
- b Which legislative or other measures been taken to ensure that investigations or prosecution of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement, especially in cases where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (Article 32, Explanatory Report, para. 230)
- c Have legislative or other measures been taken to ensure that a judge, in a criminal trial regarding an offence which can be considered to involve sexual abuse of a child within the circle of trust, may order the hearing to take place without the presence of the public or that the victim may be heard in the courtroom without being present? (Article 36, para. 2 and Explanatory Report, para. 242)

Question 14 du QT : Justice adaptée aux enfants

- a Veuillez préciser si, dans les situations où l'auteur présumé est un membre de la famille immédiate de la victime ou une personne en position reconnue de confiance ou d'autorité vis-à-vis de cette dernière, une approche protectrice des victimes a été adoptée en veillant à ce que les enquêtes et procédures pénales n'aggravent pas le traumatisme subi par l'enfant et que la réponse pénale s'accompagne d'une assistance, quand cela est approprié (article 30, par. 2, et Rapport explicatif, par. 211 à 215)
- b Quelles mesures législatives ou autres ont été prises pour s'assurer que l'instruction ou la poursuite d'infractions établies conformément à la Convention ne dépendent pas du signalement ou du dépôt de plainte par la victime et que la procédure suivra son cours même si la victime retire sa plainte, en particulier dans les cas où l'auteur présumé des faits est un membre de la famille immédiate de la victime ou une personne en position reconnue de confiance ou d'autorité à son égard ? (article 32, Rapport explicatif, par. 230) ;
- c Des dispositions législatives ou autres ont-elles été prises afin qu'un juge puisse ordonner, lors d'un procès dans une affaire qui peut être considérée comme relevant d'abus sexuels commis dans le cercle de confiance d'un enfant, que l'audience se déroule hors la présence du public ou que la victime puisse être entendue à l'audience sans y être présente ? (article 36, par. 2, Rapport explicatif, par. 242)

Relevant extracts from the Lanzarote Convention and its Explanatory report

Lanzarote Convention, Article 30 (2) – Principles

(...)

2 Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate.

(...)

Explanatory report

211. Existing international legal instruments on the protection of children give only an indication of the need for a special judicial procedure adapted to the child victim. Recommendation Rec (2001) 16, which is certainly the most detailed such instrument recalls in particular the need to safeguard child victims' rights without violating the rights of suspects, the need to respect child victims' private life and to provide special conditions for hearings with children. The Optional Protocol to the Convention on the Rights of the Child, which deals exclusively with the sale of children, child prostitution and child pornography, provides in Article 8 for recognition of child victims' vulnerability, adaptation of procedures to their special needs, their right to be kept informed of the progress of proceedings and to be represented when their interests are at stake, protection of their privacy and, lastly, protection from intimidation and retaliation. In Resolution 1307 (2002) the Parliamentary Assembly of the Council of Europe calls on member States to give priority attention to the rights of child victims unable to express their views.

212. Beyond these objectives, the definition and implementation of rules of procedure adapted to child victims are left to the discretion and initiative of each State. Recent analyses, including REACT, highlight the differences and discrepancies in the area.

213. The negotiators considered that a number of provisions should be made to implement a child-friendly and protective procedure for child victims in criminal proceedings. However, paragraph 4 underlines that these measures should not violate the rights of the defence and the principles of a fair trial as set out in Article 6 ECHR.

214. The central issue has to do with the child's testimony which constitutes a major challenge in the procedures of numerous States, as witnessed by a number of cases that have received intensive media coverage and the changes that criminal procedure systems have undergone in the last decades. In this context, it has become urgently important for States to adopt procedural rules guaranteeing and safeguarding children's testimony.

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 32 – Initiation of proceedings

Each Party shall take the necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements

Explanatory report

230. Article 32 is designed to enable the public authorities to prosecute offences established in accordance with the Convention without the victim having to file a complaint. The purpose of this provision is to facilitate prosecution, in particular by ensuring that victims do not withdraw their complaints because of pressure or threats by the perpetrators of offences

Lanzarote Convention, Article 36 (2) – Criminal court proceedings

(...)

- 2 Each Party shall take the necessary legislative or other measures to ensure, according to the rules provided by its internal law, that:
- the judge may order the hearing to take place without the presence of the public
 - the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

(...)

Explanatory report

(...)

242. Paragraph 2 contains provisions adapting certain principles governing criminal proceedings in order to protect children and make it easier to interview them. These principles concern the presence of the public and arrangements for ensuring that both parties are represented. Thus, sub-paragraph a allows the judge to order the hearing to take place without the presence of the public, and sub-paragraph b enables the child to be heard without necessarily being confronted with the physical presence of the alleged perpetrator, in particular through the use of videoconferencing

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

Convention de Lanzarote, Article 30 (2) – Principes

(...)

2 Chaque Partie veille à adopter une approche protectrice des victimes, en veillant à ce que les enquêtes et procédures pénales n'aggravent pas le traumatisme subi par l'enfant et que la réponse pénale s'accompagne d'une assistance, quand cela est approprié.

(...)

Rapport explicatif

211. Les instruments juridiques internationaux existants dans le domaine de la protection de l'enfant ne font qu'ébaucher la nécessité d'une procédure spécifique adaptée au statut des enfants victimes. La Recommandation du Comité des Ministres Rec (2001) 16, qui apparaît comme la plus détaillée, rappelle notamment la nécessité de sauvegarder les droits des enfants victimes sans porter atteinte à ceux des auteurs présumés, de respecter leur vie privée et de prévoir des conditions particulières pour leur audition. Le Protocole Additionnel facultatif à la Convention Internationale des Droits de l'Enfant, qui traite exclusivement de la vente, prostitution et pornographie relativement aux enfants, prévoit, dans son article 8, la nécessaire reconnaissance de la vulnérabilité des enfants victimes et l'adaptation des procédures à leurs besoins particuliers, leur droit à être informés du déroulement de la procédure, à être représentés pour que leurs intérêts soient respectés, la protection de leur vie privée et enfin de toute intimidation ou représailles. Dans sa Résolution 1307 (2002), l'Assemblée parlementaire du Conseil de l'Europe invite les Etats membres à privilégier les droits de l'enfant victime et sans parole

212. Au-delà de ces objectifs, la définition et la mise en œuvre de règles de procédure adaptées aux enfants victimes, est laissée à l'appréciation et à l'initiative de chaque Etat. Des analyses récentes, notamment celle de REACT, témoignent des disparités et différences existant dans ce domaine.

213. Les négociateurs ont estimé qu'un certain nombre de dispositions devaient être prises pour mettre en œuvre une procédure favorable à l'enfant victime et protectrice de sa personne dans les procédures pénales. Cependant, le paragraphe 4 souligne que ces mesures ne doivent pas porter atteinte aux droits de la défense et aux exigences d'un procès équitable, tels qu'ils résultent de l'article 6 de la Convention Européenne de Droits de l'Homme.

214. La question essentielle concerne le recueil et la place de la parole de l'enfant, qui constituent un enjeu majeur des procédures dans de nombreux Etats, comme en témoignent certaines affaires fortement médiatisées et les évolutions que les systèmes de procédure pénale ont connu dans les dernières décennies. Dans ce contexte, il est apparu urgent que les Etats se dotent de règles de procédure permettant de garantir et de sécuriser le recueil de la parole de l'enfant.

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 32 – Mise en œuvre de la procédure

Chaque Partie prend les mesures législatives ou autres nécessaires pour que les enquêtes ou les poursuites concernant les infractions établies conformément à la présente Convention ne soient pas subordonnées à la déclaration ou à l'accusation émanant d'une victime et que la procédure puisse se poursuivre même si la victime se rétracte.

Rapport explicatif

230. L'article 32 doit permettre aux autorités publiques de poursuivre les infractions établies en vertu de la Convention sans qu'une plainte de la victime ne soit nécessaire. L'objectif de cette disposition est de favoriser l'exercice des poursuites, notamment en évitant que les victimes se rétractent en raison de pressions ou des menaces exercées à leur encontre par les auteurs d'infractions.

Convention de Lanzarote, Article 36 (2) – Procédure judiciaire

(...)

2. Chaque Partie prend les mesures législatives ou autres nécessaires pour que, selon les règles prévues par le droit interne:
 - le juge puisse ordonner que l'audience se déroule hors la présence du public;
 - la victime puisse être entendue à l'audience sans y être présente, notamment par le recours à des technologies de communication appropriées

(...)

Rapport explicatif

(...)

242. Le paragraphe 2 prévoit, pour sa part, des dispositions aménageant certains principes qui régissent le déroulement du procès pénal, dans le but de protéger l'enfant et de faciliter le recueil de sa parole. Ces principes tiennent à la publicité des débats et à l'organisation de leur caractère contradictoire. Ainsi, le point a) prévoit que le juge doit pouvoir ordonner que les débats se déroulent hors la présence du public. Le point b) permet que le caractère contradictoire de l'audition de l'enfant puisse être atteint sans qu'il soit nécessairement confronté à la présence physique de l'auteur présumé, notamment par le biais du recours à la visioconférence.

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 14 of the TQ / du QT

a) During 2012- 2013 there was conducted an adaptation of facilities of police for interviewing minors. In collaboration with French Embassy in Tirana and Save the Children Organization was signed a Cooperation Agreement "Providing special facilities for interviewing minors victims, witnesses and / or involved in crimes, based on international best practices". There are approved Standard Procedures on "Treatment of Minors in a preliminary investigation".

b) Did not respond

c) According to Code of Criminal Procedure:

- Article 361 / a of the: "The question of justice collaborators and protected witnesses "

The question of collaborators of justice and witnesses protected place under special measures for their protection, which are determined by the court, primarily or at the request of the parties.

When available technical means, the court may decide questioning in the distance through audiovisual connection. When the person to be questioned, has changed his identity, the court shall order appropriate measures to enable the person's face and voice are not distinctive.

If necessary knowledge or examination of the person's identity, court orders or call for compulsory accompaniment for fulfilment of this action. In this case the court orders necessary measures to avoid distinct facial appearance of a person whose identity is changed.

- Article 340 "Cases closed door trial" point "ç"

The court decided that the question of witnesses takes place behind closed doors, when questioning of minors.

- Article 361 "Questioning of witnesses ", point 5,

The question of minor witnesses can be done by the judge. The judge may be assisted by a family member or a specialist in the field of education of children.

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.

AUSTRIA/AUTRICHE

Question 14 of the TQ / du QT

a) According to Section 10 par. 2 of the CCP [the Code of Criminal Procedure] all authorities, institutions, or persons having an active part in the criminal proceeding are obliged to respect the victim's dignity and to take into account the victims interests as well as to inform the victims on his or her main rights and the possibilities to receive compensation or other assistance.

In order to prevent secondary traumatisation, the possibility of interrogation with special care (section 165 CCP) was introduced in 1993 (in a separate room without the physical presence of the parties, in particular the accused, perhaps interrogation by a psychologist instead of a judge). This instrument is compulsory for witnesses who have not completed their fourteenth year of age and who might have been violated in their sexual sphere by the criminal offence the accused is charged with. Because this special interrogation is recorded on a video and this recording may be presented at the main trial, there is no need for the witness to appear before the court during the trial. This is in line with Art 6 of the ECHR, because the accused person had the right and possibility to ask questions during the interrogation in the pre-trial stage through the judge or the psychologist in the separate room. It is also possible (not compulsory) to use this special interrogation when the witness (victim) is at a higher age regarding the emotional and mental health status, the age (still a child until 18) or in the interest of the establishment of the truth.

Furthermore, the following provisions – which have already been mentioned in the replies to the GOQ – purpose to protect children against further traumatization: Sections 9, 66 (2), 156 (1) subpar. 2, 160 (1) (2) (3) and 162 of the CCP.

b) The Austrian criminal proceedings are based on the principles of *ex proprio motu* (sec. 2 CPP), the truth of research and objectivity (sec. 3 CCP) and the principle of accusatory (sec. 4 CPP).

c) According to Section 229 of the CCP the public may be excluded from the trial among other reasons in order to protect the witness' identity or if questions of private matters or matters of secrecy in respect of the accused, the victim, the witness or a third person are to be discussed. According to Sections 247a and 250 par.3 CCP witnesses can be examined through the use of video transmission without being present in the courtroom.

BELGIUM / BELGIQUE

Question 14 of the TQ / du QT

a) Nous renvoyons à la réponse de la question 15 c [du QG] pour ce qui concerne l'interdiction de résidence, la déchéance de l'autorité parentale, la tutelle aux prestations familiales et autres allocations sociales et le retrait du mineur de son milieu.

Nous renvoyons également à la réponse aux questions 21, 22 et 23 du questionnaire général pour ce qui concerne l'audition filmée, la protection de la vie privée, les informations communiquées à la victime, la protection de la victime, la gratuité de l'aide juridique et de l'assistance judiciaire, les délais de prescription...

Question 22a du Questionnaire Général⁴:

Il est tout d'abord référé au dispositif général d'assistance aux victimes développé en Belgique dans le cadre d'une politique en faveur des victimes axée entre autres à la prévention de la victimisation secondaire (voir entre autres les réponses sous les questions 15, 22 et 23) : l'assistance policière aux victimes par les services de police, l'accueil des victimes aux niveaux des parquets et des tribunaux et l'aide aux victimes, qui est de la compétence des entités fédérées. Cette dernière constitue de l'aide psychosociale et l'accompagnement psychologique des victimes offerts par les services d'aide aux victimes agréés à cette fin par les entités fédérées et elle se distingue de l'assistance policière et l'accueil des victimes le contenu, l'intensité et la fréquence des contacts avec la victime.

Afin de bien limiter les compétences entre l'autorité fédérale et les entités fédérées, des accords de coopération ont été signés (voir les références sous la question 3).

L'article 3bis du Titre préliminaire du Code de procédure pénale consacre le principe général que tous les acteurs de justice concernés – les policiers, les magistrats, les assistants de justice, le personnel du greffe, ...- ont l'obligation de traiter les victimes d'infractions et leurs proches de façon correcte et consciencieuse, en particulier en leur fournissant l'information nécessaire, et en les mettant, s'il échet, en contact avec les services spécialisés et, notamment, avec les assistants de justice.

« Art. 3bis. Les victimes d'infractions et leurs proches doivent être traitées de façon correcte et consciencieuse, en particulier en leur fournissant l'information nécessaire, et en les mettant, s'il échet, en contact avec les services spécialisés et, notamment, avec les assistants de justice.

Les victimes reçoivent notamment les informations utiles sur les modalités de constitution de partie civile et de déclaration de personne lésée.

⁴ Note of the Secretariat: The full text of the replies to Questions 15, 21, 22 and 23 is not reproduced below since it is more than 10 pages long. The Secretariat decided to reproduce only the reply to Question 22a which seems to be the most relevant reply for Question 14 of the Thematic Questionnaire.

Note du Secrétariat : Le texte complet des réponses aux Questions 15, 21, 22 et 23 n'est pas reproduit ci-dessous puisqu'il fait plus de 10 pages. Le Secrétariat a donc décidé de ne reproduire que la réponse à la Question 22a qui semble être la réponse la plus pertinente à la Question 14 du Questionnaire Thématique.

Sont assistants de justice, les membres du personnel du Service des maisons de Justice du Ministère de la Justice] qui prêtent assistance aux magistrats compétents dans la guidance des personnes engagées dans des procédures judiciaires.

Par ressort de Cour d'Appel, des agents du Service des Maisons de justice du Ministère de la Justice interviennent pour assister le procureur général dans l'exécution d'une politique criminelle en accueil des victimes, pour l'évaluation, la coordination et la supervision de l'application de l'accueil des victimes dans les différents parquets du ressort du procureur général et pour assister les agents mentionnés dans l'alinéa 2, qui s'occupent de l'accueil des victimes. Ils travaillent en collaboration étroite avec le procureur général. »

En ce qui concerne les services de police, l'article 46 de la loi du 5 août 1992 sur la fonction de police répète explicitement cette obligation :

« Article 46. Les services de police mettent les personnes qui demandent du secours ou de l'assistance en contact avec des services spécialisés.

Ils portent assistance aux victimes d'infractions, notamment en leur procurant l'information nécessaire.»

Les instructions pour les services de police sont prévues dans le Circulaire du 4 mai 2007 GPI 58 concernant l'assistance policière aux victimes dans la police intégrée, structurée à deux niveaux.

En ce qui concerne les assistants de justice, dès 1993, des maisons de justice ont été instaurées graduellement dans chaque arrondissement judiciaire. La maison de justice est un service de la Justice qui a comme missions principales :

- de fournir des informations aux autorités judiciaires et administratives
- de suivre les auteurs d'infractions dans l'exécution de la peine ou de la mesure décidée par le juge
- d'informer et assister les victimes d'infractions
- d'informer les citoyens

Actuellement il existe 28 maisons de justice en Belgique, soit une par arrondissement judiciaire, excepté pour Bruxelles qui en compte deux (une francophone et une néerlandophone).

L'assistant de justice accueil des victimes garantit l'accueil, la guidance, l'information et l'enquête auprès des victimes dans les différentes phases de la procédure judiciaire et dans la phase de l'exécution de la peine.

La circulaire commune n° 16/2012 du ministre de la justice et du Collège des procureurs généraux près les cours d'appel relative à l'accueil des victimes au sein des parquets et des tribunaux, définit le rôle et les missions des personnes qui, dans le cadre de l'accueil des victimes au sein des parquets et des tribunaux, sont investies d'une compétence particulière, principalement les magistrats, les membres du personnel des parquets et des greffes et les membres des services de la Direction Général Maisons de justice. La circulaire évoque également la collaboration et la concertation entre les différents services d'assistance aux victimes.

Pour l'offre d'aide aux victimes fait par les entités fédérées, il est renvoyé aux réponses données sous la question 15.

b) Oui, voir la réponse sous la question 22 b) du QAG qui s'applique indépendamment de la qualité de l'auteur :

En Belgique l'action publique appartient au ministère public qui dispose du monopole de la poursuite. Le ministère public a dès lors le droit d'intenter des poursuites dès qu'il a connaissance d'une infraction sans 'se préoccuper de l'attitude qu'adoptera la personne lésée par l'infraction'. C'est uniquement dans des cas très limitativement fixés par la loi, que le législateur a subordonné l'intentement des poursuites à l'existence d'une plainte (par des considérations d'ordre politique, sociale et commercial) : atteinte à l'honneur et à la considération, harcèlement et outrage à un membre des chambres législatives. Ces cas exceptionnels sont limitativement fixés par la loi et donc de stricte interprétation.

Article 2 du Titre préliminaire du Code de procédure pénale détermine en plus que le retrait de la plainte avant l'intentement de l'action arrête la procédure, tandis que le retrait de la plainte après l'intentement de l'action, est sans effet :

« Art. 2. Lorsque la loi subordonne l'exercice de l'action publique à la plainte de la partie lésée, le désistement de cette partie, avant tout acte de poursuite, arrête la procédure. »

Question 22b du Questionnaire Général :

En Belgique l'action publique appartient au ministère public qui dispose du monopole de la poursuite. Le ministère public a dès lors le droit d'intenter des poursuites dès qu'il a connaissance d'une infraction sans 'se préoccuper de l'attitude qu'adoptera la personne lésée par l'infraction'. C'est uniquement dans des cas très limitativement fixés par la loi, que le législateur a subordonné l'intentement des poursuites à l'existence d'une plainte (par des considérations d'ordre politique, sociale et commercial) : atteinte à l'honneur et à la considération, harcèlement et outrage à un membre des chambres législatives. Ces cas exceptionnels sont limitativement fixés par la loi et donc de stricte interprétation.

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« Art. 2. Lorsque la loi subordonne l'exercice de l'action publique à la plainte de la partie lésée, le désistement de cette partie, avant tout acte de poursuite, arrête la procédure. »

c) Oui, voir la réponse sous les questions 21 d) et 22 c) du QAG qui s'applique indépendant de la qualité de l'auteur présumé.

Question 21d) du Questionnaire Général :

L'article 378bis du Code pénal prévoit le suivant :

« Art. 378bis. La publication et la diffusion par le livre, la presse, la cinématographie, la radiophonie, la télévision ou par quelque autre manière, de textes, de dessins, de photographies, d'images quelconques ou de messages sonores de nature à révéler l'identité de la victime d'une infraction visée au présent chapitre sont interdites, sauf si cette dernière a donné son accord écrit ou si le procureur du Roi ou le magistrat chargé de l'instruction a donné son accord pour les besoins de l'information ou de l'instruction.

Les infractions au présent article sont punies d'un emprisonnement de deux mois à deux ans et d'une amende de trois cents euros à trois mille euros ou d'une de ces peines seulement.»

L'article 433bis du Code pénal, prévoit une disposition similaire dans le cadre des procédures en matière de protection judiciaire devant le tribunal de la jeunesse :

« Art. 433bis. La publication et la diffusion au moyen de livres, par voie de presse, par la cinématographie, par la radiophonie, par la télévision ou par quelque autre manière, du compte rendu des débats devant le tribunal de la jeunesse, devant le juge d'instruction et devant les chambres de la cour d'appel compétentes pour se prononcer sur l'appel introduit contre leurs décisions, sont interdites.

Seuls sont exceptés les motifs et le dispositif de la décision judiciaire prononcée en audience publique, sous réserve de l'application de l'alinéa 3.

La publication et la diffusion, par tout procédé, de textes, dessins, photographies ou images de nature à révéler l'identité d'une personne poursuivie ou qui fait l'objet d'une mesure prévue aux articles 37, 39, 43, 49, 52, 52quater et 57bis de la loi du 8 avril 1965 relative à la protection de la jeunesse ou dans la loi du 1er mars 2002 relative au placement provisoire de mineurs ayant commis un fait qualifié infraction, sont également interdites. Il en va de même pour la personne qui fait l'objet d'une mesure prise dans le cadre de la procédure visée à l'article 63bis de la loi du 8 avril 1965 relative à la protection de la jeunesse à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait.

Les infractions au présent article sont punies d'un emprisonnement de deux mois à deux ans et d'une amende de trois cents euros à trois mille euros ou d'une de ces peines seulement. »

L'article 190, alinéa 2 du CIC prévoit une exception au principe constitutionnelle de la publicité des audiences comme prévue par l'article 148 de la Constitution :

« Art. 190. L'instruction sera publique, à peine de nullité. Lorsque les poursuites sont fondées sur les articles 372 à 378 du Code pénal, la juridiction de jugement peut ordonner le huis clos à la demande de l'une des parties ou de la victime, notamment en vue de la protection de leur vie privée.

Le procureur du Roi, la partie civile ou son défenseur, exposeront l'affaire; les procès-verbaux ou rapports, s'il en a été dressé, seront lus par le greffier; les témoins pour et contre seront entendus, s'il y a lieu, et les reproches proposés et jugés; les pièces pouvant servir à conviction ou à décharge seront représentées aux témoins et aux parties; le prévenu sera interrogé; le prévenu et les personnes civilement responsables ou leur avocat proposeront leur défense; le procureur du Roi résumera l'affaire et donnera ses conclusions; le prévenu et les personnes civilement responsables du délit ou leur avocat pourront répliquer.

Le jugement sera prononcé de suite, ou, au plus tard, à l'audience qui suivra celle où les débats ont été clos. »

Il est remarqué que la victime ne se doit avoir constituée partie civile pour pouvoir demander le huis clos.

Une autre exception à la publicité des débats est prévue par l'article 24 de la loi du 20 juillet 1990 relative à la détention préventive en faisant référence explicitement aux intérêts des mineurs et la protection de la vie privée comme motif de refus de publicité de cette procédure spécifique :

« Art. 24. Après six mois de privation de liberté si le maximum de la peine applicable ne dépasse pas quinze ans de réclusion ou après un an dans le cas contraire, l'inculpé pourra, lors de sa comparution en chambre du conseil ou en chambre des mises en accusation en application des articles 22 ou 30, demander de comparaître en audience publique.

Cette demande ne pourra être rejetée, par décision motivée, que :

- si cette publicité est dangereuse pour l'ordre, les mœurs ou la sécurité nationale ;
- si les intérêts des mineurs ou la protection de la vie privée des victimes ou des autres inculpés l'exigent ;
- si la publicité est de nature à porter atteinte aux intérêts de la justice en raison des dangers qu'elle entraîne pour la sécurité des victimes ou des témoins. »

Question 22c du Questionnaire Général :

Outre les causes de suspension et d'interruption du délai de prescription, il convient de se référer aux articles 21 et 21bis du Titre préliminaire du Code d'instruction criminelle, qui aménagent ce délai pour les infractions d'attentats à la pudeur, de viol, de corruption de la jeunesse, d'exploitation de la débauche et de la prostitution, et pour la traite des êtres humains à finalité d'exploitation sexuelle (toutes les formes d'exploitation sexuelle sont visées dans l'infraction de traite depuis la loi du 29 avril 2013 : esclavage sexuel à titre personnel ou non, exploitation de la prostitution, production de matériel pédopornographique...).

“Art. 21 Sauf en ce qui concerne les infractions définies dans les articles 136bis, 136ter et 136quater du Code pénal, l'action publique sera prescrite après dix ans, cinq ans ou six mois à compter du jour où l'infraction a été commise, selon que cette infraction constitue un crime, un délit ou une contravention.

Le délai sera cependant de quinze ans si cette infraction est un crime qui ne peut être correctionnalisé en application de l'article 2 de la loi du 4 octobre 1867 sur les circonstances atténuantes.

En ce qui concerne les infractions définies aux articles 372 à 377, 379, 380, 409 et 433 quinquies, § 1er, alinéa 1er, 1°, du Code pénal, le délai sera de quinze ans si elles ont été commises sur une personne âgée de moins de dix-huit ans.

Le délai sera cependant de dix ans si cette infraction est un crime qui est passible de plus de vingt ans de réclusion et qui est correctionnalisé en application de l'article 2 de la loi du 4 octobre 1867 sur les circonstances atténuantes.

Par ailleurs, le délai sera d'un an en cas de contraventionnalisation d'un délit.

Art. 21bis. Dans les cas visés aux articles 372 à 377, 379, 380, 409 et 433 quinquies, § 1er, alinéa 1er, du Code pénal, le délai de prescription de l'action publique ne commence à courir qu'à partir du jour où la victime atteint l'âge de dix-huit ans.

En cas de correctionnalisation d'un crime visé à l'alinéa premier, le délai de prescription de l'action publique reste celui qui est prévu à l'article 21, alinéa 3. »

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Question 14 of the TQ / du QT

a) Article 6 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses stipulates provision of psychological, social, and professional help.

During the investigation, the Prosecutor, and after the indictment has been issued, the Court, shall, provided the witness agrees, and without disclosing any of the witness's personal details, ensure that the body responsible for issues of social care is aware of the involvement of the vulnerable witness in the proceedings and shall enable the assistance of

this body as well as psychological support to the witness, including the presence of appropriate professionals at examination or hearings.

Family laws regulate the concept of guardianship in specific cases, which means appointing guardians for certain issues in situations when this is necessary in order to protect the rights and interests of certain persons. A special guardian is appointed for a person (a child) whose parents have the parental right in order to conduct a lawsuit between the child and the parents (adoptive parents) as well as in all other situations when their interests are conflicting (the so-called collision guardian). Special guardian can be a person working in the social care centre, or a child's relative, who is justifiably expected to protect the child's interest to the greatest extent. A guardian must conscientiously care for the person, rights, duties and interests of the charge and for the management of his/her property. A guardian may also be appointed by the authority before which the procedure is conducted (the court), and which will inform the guardian authority without delay, or the procedure will be conducted by the competent guardian authority, in accordance with the law.

b) Pursuant to Article 35 of the FBiH Criminal Procedure Code, a prosecutor is in charge of prosecuting all criminal offences prosecuted ex officio, regardless of the injured party's position and regardless of whether the victim withdrew the report. A prosecutor has the right and duty to, immediately upon learning there are grounds for suspicion that a criminal offence was committed, take the necessary measures towards discovering the offence and conducting an investigation, finding the suspect, leading and supervising the investigation, as well as directing the activities of authorised official persons related to finding the suspect and collecting statements and evidence.

Identical legal solutions are offered by the Criminal Procedure Codes of BiH, RS, and the Brčko District of BiH.

c) Criminal procedure prescribes that from the moment of opening the session till the completion of the main trial, a judge, that is, a panel, may at any point, ex officio, or following a motion by the parties and the defense counsel, but always upon hearing them, exclude the public throughout the main trial or part of it, if it is in the interest of protecting a juvenile or a witness.

Exclusion of public does not relate to the parties to the proceedings, the defense counsel, the injured party, the legal representative and the agent.

A judge, that is, a panel, may allow official persons, scientists and public officials to attend the main trial from which public was excluded, and at the request of the accused person, his/her spouse or extramarital partner and close relatives may also be allowed to attend.

A judge, that is, a panel, may warn the persons attending the main trial from which public was excluded, that they must keep as a secret all the things they heard at the trial, and that unauthorised disclosure of a secret constitutes a criminal offence.

Decision to remove the public will be rendered in a reasoned procedural decision by the judge, that is, the panel, and made public.

When a juvenile is on trial, pursuant to the current laws on protection and treatment of children and juveniles in criminal proceedings, public is always excluded. A judge may allow persons who work on protection and upbringing of juveniles or suppressing juvenile

delinquency, as well as scientists, to attend the main trial. During the main trial, a judge may order that, with the exception of the prosecutor, defense 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 defense, the defense counsel will inform him/her of the contents and course of the proceedings during his/her absence. 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 defense, the defense 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 14 of the TQ / du QT

a)

l) In all cases, children who are victims of sexual abuse are subject to special protection and care aimed at ensuring their security and overcome the trauma of violence. For this purpose, the protection shall apply the principle of the best interests of the child and ensuring special protection for him/her as stipulated in Article 3 of the Law on Child Protection.

The special child protection is implemented through applying of the appropriate protection measures, stipulated in article 4 of the CPA – in or outside the family environment.

Protection measures: Article 4.

(1) Child protection under the present Act shall be carried out through:

1. assistance, support and services rendered in the child's family environment;
2. placement of the child with relatives or close families;

3. adoption – in accordance with the Family Code;
4. placement of the child with a foster family;
5. placement of the child in a specialised institution;
6. police protection;
7. specialised protection at public places;
8. provision of information with regard to the rights and obligations of children and parents;
9. provision of preventative measures for security and protection of the child;
11. provision of legal assistance by the state;
12. specialised care for children with physical and mental disabilities.

Protection of the child's possibility: Art. 11a.

(1) Information and data for a child are not announced without the permission of his/her parents or legal representatives except in cases under art. 7, para. 1.

(2) In cases where a protection measure is taken, no information and measures concerning the child shall be disseminated without the written statement of the authority who has undertaken the measure.

(3) Where a child is above 14 years old, his/her consent is also required.

Information and Consultation: Article 13.

Every child has a right to be informed and consulted by the child protection body even without the knowledge thereof of his or her parents or of the persons who take care of his or her rearing and upbringing, should that be deemed necessary in view of protecting his or her interests in the best possible way and in case where informing the said persons might harm the child's interests.

Note: all the above mentioned measures are applicable before, during and/or after the completion of the criminal proceeding (due to the nature of the measures taken and the stages).

II) Law on support and financial compensation to crime victims

Chapter one.
GENERAL PROVISIONS

Art. 1.

(1) This Law shall regulate the terms and the procedure for support and financial compensation granted by the state to victims of crime - Bulgarian citizens or citizens of Member States of the European Union.

(2) Under the terms and following the procedure of this Law, support and financial compensation may also be granted to foreign citizens in the cases, provided for in international agreements, to which the Republic of Bulgaria is a party.

Art. 2.

The purpose of this Law is the protection of the rights and the lawful interests of crime victims to be acknowledged and guaranteed.

Art. 3.

(1) Under the terms and following the procedure of this Law support may be granted to victims, who have suffered material and non-material damages of crimes, and financial compensation – to victims, who have suffered material damages.

(2) Where the victim has passed away as a result of the crime, the right of support and financial compensation shall pass to his/her children, parents, spouse or the person, with whom he/she was in actual cohabitation.

(3) Support and financial compensation may be granted to the persons referred to in para 1 and 2, who have suffered damages from the following crimes: terrorism; deliberate homicide; deliberate serious bodily harm; sexual molestation and rape, as a result of which serious health damages have been caused; traffic of people; crimes, committed by an order or in fulfilment of a decision of an organised criminal group, as well as other serious deliberate crimes as a result of which death or serious bodily harm have been caused as corpus delicti consequence.

Art. 4.

This Law shall apply in the cases where the crimes referred to in Art. 3, para 3 have been committed on the territory of the Republic of Bulgaria or if the crimes have been committed out of its territory and the victim is a Bulgarian citizen.

Art. 5.

The support and the financial compensation are an act of humane attitude of the state towards the victims of crime.

INFORMING THE CRIME VICTIMS OF THEIR RIGHTS

Art. 6.

(1) The bodies of the Ministry of Interior and the victim support organizations shall notify the victims of:

1. the organizations, the victims can turn to for free psychological help and support, as well as the types of free psychological help and support, which they may receive;

2. their right of legal support, the bodies which they may address in order to exercise this right, the terms and the procedure of providing legal support for free;

3. the bodies, before which may be filed signals for the crime committed, the procedures after filing the signal and the opportunities of action of the victims under the terms and the manner of these procedures;

4. their rights in the penal procedure and the possibilities of participation in it;

5. the bodies they can turn to in order to obtain protection for themselves and their next of kin, the terms and the procedure of obtaining such protection;

6. the bodies they can turn to in order to be granted financial compensation by the state, as well as the terms and the procedure for the receipt thereof;

7. the opportunities for protection of their rights and interests, in case they are foreign citizens, who have become victims of crime on the territory of the Republic of Bulgaria;

8. the opportunities for protection of their rights and interests, if they have become victims of crime on the territory of another state and the bodies they may turn to in such cases.

(2) The notification shall be carried out in writing or verbally in a language understandable to the victims.

(3) Written records shall be drawn up for the notification, which shall be registered at the registry office of the respective body or organization under para 1.

FORMS OF SUPPORT AND FINANCIAL COMPENSATION TO CRIME VICTIMS

Art. 8.

(1) The forms of support of the crime victims shall be:

1. medical support upon state of emergency following the procedure of the Law of Health;
2. psychological consultation and help;
3. free legal support;
4. practical assistance.

(2) The persons referred to in Art. 3, para 2 can use the forms of support as per para 1, item 2.

(3) In addition to the above-mentioned forms of support the crime victims shall be entitled to one-time financial compensation under the terms and following the procedure, laid down in this Law.

b) Crimes defined under all the provisions of the Penal Code which criminalise sexual offences against children are crimes of a general nature and proceedings for them are initiated ex officio by the competent bodies.

From the scope of Art. 161 (Supplementary Provisions) Chapter Two "Crimes against the person" of the Penal Code where are explicitly mentioned the crimes of a private nature (i.e. these for which criminal proceedings are instituted upon complaint of the victim) are excluded the offences under Section VIII "Debauchery", Art. 149-159. In terms of art. 188 (coercing a child into prostitution), the Penal Code does not provide in Chapter Four any special provision, which means that the latter is also a crime of a general nature.

c) Yes, such measures have been undertaken and exist. Please, see below for further information:

PENAL-PROCEEDING CODE

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 ask questions to the witness.

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

(5) (new – SG 109/08) Interrogation of a juvenile witness under and above the age of 14 in the country may take place if relevant also by videoconference.

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.

Note: When possible, the interrogation of a child takes place in a special hearing room.

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 a crime, may be questioned in camera.

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

CROATIA / CROATIE

Question 14 of the TQ / du QT

a) The Ministry of the Interior has equipped 15 child interview rooms at police administrations and another 45 such rooms at police stations throughout Croatia. The said rooms are equipped and furnished in such a manner that they be visually acceptable to children, that is, that the child would not have the impression that he/she is on official premises, which is why all elements that would point to these rooms being used for official purposes, such as, for instance, personal computers, office furniture and the like, have been removed from them.

The appearance of the rooms gives the impression that the rooms are children's rooms with a desk, box for toys, play mat, and the odd toy, all of which makes it easier for the child to relax and recount to the police officer what he/she has experienced. There are no special limitations with regard to the duration of interviews with children or their stay on official police premises. It is, however, generally recommended that the duration of the said stay be as short as possible and that children and minors not be kept on official premises after the purpose of their stay has been fulfilled.

For the duration of inquiries into a criminal offence, the child is to be interviewed by a police officer specialised in dealing with youth, unless actual circumstances render this impossible. Police officers specialised in dealing with youth are officers trained to work with the youngest age group in cases where children and minors are perpetrators of punishable acts or where children are victims of punishable acts.

These police officers have an affinity towards working with children and youth, are highly educated, primarily in the humanities (graduate criminologists, social educators, educators, psychologists, social workers, lawyers, and the like), have completed a specialised six-week training course on how to work with minors which focuses, among other things, on child

interviewing methods and techniques. The child is interviewed in the presence of a parent, guardian, foster parent, a person entrusted with the child's upbringing, or a professional working with the social welfare centre, unless there is suspicion that the parent, guardian, foster parent or another person in whose care the child has been placed has committed a criminal offence against this child. The 28 rooms are also equipped with a concealed audio-visual recording device.

In accordance with the Sexual Violence Protocol, persons providing assistance to the victim are required to acquaint the victim of sexual violence with the possibilities of obtaining extrainstitutional assistance and support within the framework of civil society organisations specialised in providing assistance to victims of sexual violence.

Extraintitutional assistance and support includes wider measures of assistance and support provided to victims of sexual violence. Besides counselling and/or psychotherapy (individual or group), these measures include working with family members, preparations for court proceedings, monitoring of the victim during the proceedings, and efforts to further improve the treatment of victims.

b) See the answer to question 22b of the GOQ

Q22 of the General Overview Questionnaire:

In cases where the witness/victim does not claim exemption from his/her duty to testify and makes a statement/testifies, provision has been made for the possibility of using this statement/witness testimony. Under Article 285, paragraph 3, of the CPA the said persons must be notified that their testimony/statement, if they have given it, can be used in evidence irrespective of what they decide later. The notification and the answer are entered in the minutes. Thus, the following testimonies may be used under the Act: defendant's spouse or common-law spouse, defendant's direct-line relatives, collateral relatives up to and including the third degree of kinship and relatives by affinity up to and including the second degree of kinship, defendant's adoptee and defendant's adopter, if they have been notified that their statement can be used in evidence irrespective of their subsequent decision.

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

Q21b of the General Overview Questionnaire:

In the course of proceedings children victims are questioned as provided by law. The CPA 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-questioned. When questioning a child, special care must be taken in order to avoid the questioning having a harmful effect on the child's mental condition.

Q23c of the General Overview 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.¹³⁴ 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 of GOQ)).

DENMARK / DANEMARK

Question 14 of the TQ / du QT

a) See answer to question 21 of the GOQ

Q21 of the General Overview Questionnaire:

a) When a child reports a sexual abuse, the police informs the child victim of its rights and the services at its disposal, e.g. the right to free legal counsel and the right to compensation by application to the Criminal Injuries Compensation Board (*Erstatningsnævnet*). The police also hands out the leaflet "Advice and guidelines to young people under the age of 18 who have been raped or suffered other forms of sexual assault" which describes the child's rights and services at its disposal. The parents or others closely related to the child receive the

leaflet "Advice and guidelines to parents and others closely related to a child who has been sexually assaulted".

The child victim will receive the name and telephone number of a contact person from the police service whom the child can call and talk to about the case.

The child victim will receive information about important steps in the investigation, e.g. if the suspected offender is arrested or taken into custody.

If the prosecution service decides not to prosecute the suspected offender, the child's legal guardian and the child's legal counsel are informed about the decision. If the prosecution service decides to prosecute the suspected offender and take the case to court, the legal guardian and the legal counsel are informed about the pending trial. The legal guardian will at the same time receive information about whether or not the child has to testify in court, and the legal guardian will also receive information about how to obtain a copy of the court verdict. If the child victim has made a claim for compensation against the suspected offender, the court must inform the child victim of the verdict regarding the claim.

b) 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) See answer to 21a & 21b

d) It is an offence to make public the identity of a victim of a sexual offence. However, if it is necessary during the investigation for the apprehension of the offender, the police may make public the identity of the victim. As described in the answers to questions 23(a) and 23(b) police interviews with a child victim or witness up to and including the age of 12 (exceptionally police interviews with older children) may be videotaped, and the videotaped interviews may be used as evidence during court proceedings. Hence such child victims will not have to appear in court to testify. When the recording of a videotaped interview with a victim of rape or sexual abuse within the family is played in court, the victim may request that the court proceedings be held *in camera*. Similarly, a victim of rape or sexual abuse within the family who testifies in court may request to testify *in camera*. The court may order that the victim of other sexual offences testify *in camera*. Furthermore, the court may decide that the accused has to leave the courtroom while the victim testifies if there is reason to believe that the witness will not be able to give an unreserved testimony with the accused present.

e) In case of a well-founded suspicion of a sexual offence, the police may order the suspect not to contact or follow the victim or the victim's close relatives, if, in view of the seriousness of the offence, the victim or the victim's close relatives should not be subject to such contact. If such order is not sufficient to protect the victim or the victim's close relatives, the police may order the suspect not to enter a specified area close to the victim's or the victim's close relatives' place of residence, work or education or other place where the victim or the victim's close relatives are often to be found. An order not to contact or follow may be given for a specified period of time not exceeding 5 years. An order not to enter a specified area may be given for a specified period of time not exceeding 1 year. Such

orders may be extended for a maximum period of 5 years or 1 year, respectively, at a time (if the conditions continue to be fulfilled).

An order not to contact or follow may be appealed to the higher administrative authority. Such order, like any other administrative decision, is also subject to judicial review if the suspect brings a civil law suit against the authorities. As regards an order not to enter a specified area, the suspect may request that the police bring the matter before the court. The order remains in force until the court has made a decision on the matter. A restraining order may not be issued, or extended, if this would be a disproportionate measure in the circumstances.

f) It is required by law that any victim of a serious offence, including sexual abuse, must be informed when the offender is released temporarily or definitely from detention or custody, if the victim has asked to be informed and provided that the offender was remanded in custody during the trial and was not released between the passing of the judgment and enforcement of the sentence. If the victim has died, the notification will be given to the victim's close relatives upon request. Notification may be refused if essential considerations in favour of the offender make it appropriate. Notification is given by the the Prison and Probation Service (in case of prison and safe custody sentences), the State Prosecutor (in case of sentences to custody in a psychiatric hospital or a social institution), or the police district (in case of sentences to custody for young offenders). Notification will normally be in writing.

g) Several measures have been taken to ensure that contact between the victim and offender, within court and law enforcement agency premises, is avoided, e.g. the suspected offender and the victim will not be asked to give testimony at the police station at the same time. Moreover, the child's legal counsel will accompany the child victim when entering the court premises, and the child will be placed in a separate room before giving testimony. Separate waiting rooms are established in most of the courts. In addition, the court in cooperation with the prosecutor and the police may take other measures to limit the child's distress, e.g. a member of the staff of the court may welcome the child and accompany the child during the court hearing.

As described in the answers to questions 23(a) and 23(b) police interviews with a child victim or witness up to and including the age of 12 (exceptionally police interviews with older children) may be videotaped, and the videotaped interviews may be used as evidence during court proceedings. Hence such child victims will not have to appear in court to testify.

When child victims testify in court the court may decide that the accused has to leave the court room while the child testifies. In most of the courts the accused will have the opportunity to listen to the questioning from a separate room.

h) See answer to Q21(b)

g) Several measures have been taken to ensure that contact between the victim and offender, within court and law enforcement agency premises, is avoided, e.g. the suspected offender and the victim will not be asked to give testimony at the police station at the same

time. Moreover, the child's legal counsel will accompany the child victim when entering the court premises, and the child will be placed in a separate room before giving testimony. Separate waiting rooms are established in most of the courts. In addition, the court in cooperation with the prosecutor and the police may take other measures to limit the child's distress, e.g. a member of the staff of the court may welcome the child and the court hearing.

As described in the answers to questions 23(a) and 23(b) police interviews with a child victim or witness up to and including the age of 12 (exceptionally police interviews with older children) may be videotaped, and the videotaped interviews may be used as evidence during court proceedings. Hence such child victims will not have to appear in court to testify.

When child victims testify in court the court may decide that the accused has to leave the court room while the child testifies. In most of the courts the accused will have the opportunity to listen to the questioning from a separate room.

b) See answers to question 22(b) of the GOQ

Q22(b) of the General Questionnaire:

The offences referred to in question 16 may be investigated by the police of its own motion, charges may be brought without a report or accusation made by a victim, and proceedings may continue even if the victim withdraws his or her statement.

c) See answers to question 21(d) & 23(a) of the GOQ

Q21(d) of the General Questionnaire:

It is an offence to make public the identity of a victim of a sexual offence. However, if it is necessary during the investigation for the apprehension of the offender, the police may make public the identity of the victim. As described in the answers to questions 23(a) and 23(b) police interviews with a child victim or witness up to and including the age of 12 (exceptionally police interviews with older children) may be videotaped, and the videotaped interviews may be used as evidence during court proceedings. Hence such child victims will not have to appear in court to testify. When the recording of a videotaped interview with a victim of rape or sexual abuse within the family is played in court, the victim may request that the court proceedings be held *in camera*.

Similarly, a victim of rape or sexual abuse within the family who testifies in court may request to testify *in camera*. The court may order that the victim of other sexual offences testify *in camera*. Furthermore, the court may decide that the accused has to leave the courtroom while the victim testifies if there is reason to believe that the witness will not be able to give an unreserved testimony with the accused present

Q23 (a) of the General Questionnaire:

When the police receives a report that a child has been sexually abused, the child victim must be interviewed as soon as possible and if possible within a week from the time of the report. Police interviews with a child victim or witness up to and including the age of 12, and exceptionally older children, are conducted by a police officer who has received professional training in interviewing children. The interview usually takes place in a Child Advocacy

Centre that provides a child-friendly and supportive environment in which law enforcement and Child Protective Services investigators may conduct and observe forensic interviews with children who are alleged victims of crimes.

As a rule the child should only be interviewed once. If, however, it is considered necessary for the purpose of the proceedings, the child may be interviewed more than once. The interview will then be conducted by the same police officer who conducted the first interview. When a child under the age of 15 is interviewed by the police, a representative from the social authorities has to be present. When the interview takes place in a Child Advocacy Centre, the interview will be videotaped. In these cases the representative from the social authorities, as well as the child's legal counsel and the suspect's legal counsel (but not the suspect), watches the interview on closed-circuit television while the police officer interviews the child victim or witness in another room. If necessary the child may be accompanied in the interviewing room by an adult whom the child trusts unless the person is expected to be required to testify during the court proceedings. If this is the case, the person cannot accompany the child. The suspect will subsequently be shown the video-recording of the interview and may, where relevant, request that the child be interviewed again. If so, it is required that the second interview take place shortly after the first interview, and, except in extremely rare cases, a third interview is not possible.

When a child victim testifies in court the court decides how and by whom the questioning should be done. The court may decide that a competent person should give assistance during the questioning of the child to make sure the questioning is done as gently as possible.

FINLAND / FINLANDE

Question 14 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. As mentioned in the general questionnaire (22.g) a legal guardian may be assigned for the child in these kinds of cases

b) See general questionnaire question 22.b. All the offences established according to the Convention can be investigated and prosecuted regardless of whether the victim has made a report or withdrawn their statement. This applies regardless of the relationship between the child and the alleged offender

c) See general questionnaire question 23.c. General rules apply to all cases regardless of the relationship between the child and the alleged offender.

Question 23c of the General Questionnaire:

The main rule is that in the hearings during the investigations only the questioned party (and a possible legal advisor and/or support person) is present. According to the Criminal Investigations Act (Chapter 7, Section 13) the investigator may allow another party to be present if this does not jeopardize the investigations. When making the decision on allowing

for another party to be present during the hearing it should be ensured that this does not cause suffering or other kind of harm to the victim.

As stated in point e) the victim may be heard in the main court hearing without the presence of a party or another person, if the court deems that this is appropriate and such hearing is necessary in order to protect the person being heard or a person related to said person from a threat directed at life or health (Code of Judicial Procedure (4/1734) Chapter 17, Section 34, paragraph 1). In addition to this it is also possible to hear the victim without the presence of another party (e.g. offender) if otherwise the person that is being heard would not express what they know about the case.

If the victim is under 15 years of age he/she can be heard in the main hearing without his or her appearance in person with the use of a video conference or other appropriate technical means of communication, where the persons participating in the hearing have an audio and video link with one another, if the court deems that this is suitable (Code of Judicial Procedure (4/1734) Chapter 17, Section 34a, paragraph 1).

FRANCE

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

GREECE / GRÈCE

Question 14 of the TQ / du QT

a) Law 3500/2006 for combating domestic violence provides that child victims of domestic violence are not called to testify again in the court room, rather their testimony (recorded during the investigation procedure) is read or viewed during the hearing (art. 19 par.2). There is an exception for cases where, according to the judge's decision, it is deemed necessary for the victim to testify again in court. Although victims of domestic violence are afforded assistance (law 3500/2006, art. 21), there is no specific measure regarding the criminal justice response other than common law procedures for affording such aid or specifying that such aid should be specialized in such cases.

b) All crimes related to sexual abuse by a person in the circle of trust are prosecuted independently from victim's complaint or withdrawal (see *Ibid.*, art. 17 par.1; Code of Criminal Procedure, art. 36; Penal Code, art. 344).

c) Under art. 330 of the Code of Criminal Procedure the judge can order either part of or the entire hearing procedure to take place without the presence of the public for cases of sexual abuse or exploitation of children, whenever the case's publicity may cause immense emotional suffering or the child's private life is being threatened. In fact, since many years, this is rather a common practice in Hellenic courts whenever a case of child sexual abuse is being trialed, especially if concerning domestic child sexual abuse.

ICELAND / ISLANDE

Question 14 of the TQ / du QT

a) See answer to question 21; 22 & 23 of the GOQ

Question 22a of the General Questionnaire:

From 1999 the Act on Criminal Procedure has stipulated that children's testimony during the criminal investigation of sexual exploitation and sexual abuse has to be taken in a court session under the auspice of a court judge with the aim of saving the child from the possible harmful effect that repeating the testimony during court proceeding may have on the child. This implies that as a main rule, if an indictment is made the child need not give his or her statement again during the main hearing of the case. In order to ensure the principle of "due process", this arrangement requires that the defence should have the opportunity to participate in the procedure. Also present is the child's legal advocate who has the role of safeguard the child's interest in the procedure, including the formulation of claims for compensations. In addition to this, representatives from the prosecution, the police and the relevant local child protection services are legally entitled to observe this court session. The actual interview takes place in a special interviewing room where only the interviewer is with the child but the interview is observed in a different room either through one way mirror (the courthouse) or by closed circuit television (*Barnahus*).

Further, the Act stipulates that this court session should be arranged in facilities suitable to the child and the court judge in charge is entitled call in child specialist to conduct the interview with the child. This is however not uniformly implemented as the law allows for the court judge discretion on where and who should perform the interview. In practice there are mainly two variations in the implementation. The judges that prefer to use the courthouse in Reykjavik, entrust the police to take the child's testimony. On the other hand the court judges that prefer the testimony to be taken in *Barnahus*, child specialists (most often psychologists) trained in forensic interviewing elicit the child's disclosure according to evidence based protocol. Increasingly the court judges prefer this court session to take place in the *Barnahus* (in approximately 2/3 of cases 2013, see Appendix Fig.11).

The arrangement described above can be seen as a compromise between the principle of "the best interests of the child" on the one hand and the principle of "the fair trial" on the other. It can be ascertained that it is basically in line with The Council of Europe Guidelines on Child-friendly Justice. The Guidelines have on the other hand inspired a discourse on possible scope for improvement in this respect. Thus, it has been debated if the discretion of the court judge invested in the legislation on deciding upon the way in which the court statement is taken from the child can be regarded to be in harmony with the Guidelines. In this context it should be pointed out that there is no obligation on behalf of the court judges to listen to views of the child or his/her care takers in the antecedents to the decision in this matter.

Finally, amendments made on the Act on Criminal Procedure No. 88/2008 exempted children between 15 and 18 years from giving their statement in court sessions described

above. The children of this age group give their testimony in most cases at police stations and will need to repeat their statements during the main hearing of cases in Courts if an indictment is made (see Appendix Fig. 14). It can be argued that is change in the legislation was a step back with regard to the proceedings that previously existed for this age group described above.

In the answer to Question 3 c the main purpose and features of the *Barnahus* is address. The overt aim is to save the child from re-victimisation by multiple interviews in many locations by different professions. Thus the child victim generally is only interviewed once in a child friendly facility by a professional interviewer according to evidence based protocol as explained above

b) See answer to question 22b of the GOQ

Q22b of the General Questionnaire:

According to Icelandic law, investigations and prosecutions for crimes established by the Convention is not dependent upon the report or accusation made by a victim and the proceedings may proceed even if the victim withdraws his/her statement.

c) See answer to question 21d of the GOQ

Q 21d of the General Questionnaire:

All court hearings in cases of sexual abuse and sexual exploitation of children are closed hearing. The Judicial Council sets rules on publication of judgements, now rules No 1/2014 from January 24. According to Article 4 anonymity shall be granted to other people than the defendant. Article 5 also stipulates that other information that should be kept in confidence should also be removed from judgements before they are published

ITALY / ITALIE

Question 14 of the TQ / du QT

a) &b) &c): See answer to Q22 GOQ :

Q22a of the General Questionnaire:

According to Law 66/1996, "Norms against sexual violence", in every phase and step of the criminal proceedings the child victim should be provided with appropriate support and psychological assistance, by his/her parents or other adequate persons indicated by the child himself and accepted by the Judicial Authority entitled of the case. In any case, the child is protected by the Juvenile Services of the Ministry of Justice and of the local administration.

The mass media diffusion of the child victim's personal data and photos is forbidden without his/her consent.

Moreover, pursuant to Art.5, letters c), d) and f) of Law 172/12 - amending the relevant articles of the code of criminal procedure – in proceedings for crimes such as sexual exploitation of children, corruption of children, solicitation of children, trafficking of persons,

and sexual violence, information from minors during the pre-trial investigations are obtained with the assistance of a psychology or a child psychiatry

Q22b of the General Questionnaire:

For all crimes relative to sexual exploitation of children prosecution is *ex officio*.

According to the Italian Law these are the main offenses relating to ill-treatment and abuse that can be prosecuted without a specific request of a party and for which prosecution is obligatory:

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

RELEVANT TEXTS:

Article 609-septies : Complaint filed by the victim

The offences covered by Articles 609-bis, 609-ter and 609-quater are punishable upon complaint filed by the victim Without prejudice to Article 597, paragraph three, the term for filing the complaint is six months.

Once a complaint has been filed, it is irrevocable.

The court shall nonetheless proceed *ex officio*:

- 1) if the act as per Article 609-bis is committed against a person that is under the age of 14 at the time of the offence; (1)
- 2) if the act is committed by an ascendant, a parent, including a foster parent, or his/her live-in partner, the guardian or any person to which the child is entrusted to provide for the child's care, education, instruction, supervision or custody or with whom the child lives; (2)
- 3) if the act is committed by a public official or a person in charge of a public service while performing his/her office;
- 4) if the act is linked with another offence prosecutable *ex officio*;
- 5) if the act is committed in the case as per Article 609 quater, last paragraph

Q22c of the General Questionnaire:

Art 407, c.2, lett. a), n.7bis of the Code of Criminal Procedure stipulates that for the offences in question the maximum time limits for the preliminary investigations is two years, longer than the ordinary one.

Moreover, the ratification law of the Lanzarote convention has doubled the time needed to prescribe the crime for the following offenses: child prostitution (Article 600-bis), child pornography, even "virtual" (Article 600-ter and art. 600-quater.1), possession of pornographic material (600-c) sex tourism (600-d), use of children in begging (Section 600-g), sexual violence, simple and in group (609-bis and 609-g) sexual acts with a minor (609-ac), corruption of minors (art. 609-cd)

In general, the statute of limitation cancels the offence when a lapse of time equal to the maximum punishment provided for by the law has passed, and in any case, not less than 6 years if a criminal offence is concerned.

Q22d of the General Questionnaire:

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.

Q22e of the General Questionnaire:

The law ratifying the Lanzarote Convention has broadened the categories of persons who can ensure the child victim emotional and psychological assistance during the criminal proceedings. In particular, groups, foundations, associations, non-governmental organizations are added as long as they have the following characteristics: they have proven experience in the field of assistance and support to children victims of sexual offenses, are included in a special list; receive the consent of the minor. Moreover, the presence of these subjects must be permitted by the court.

Q22f of the General Questionnaire:

The use of covert operations is always allowed in relation to the investigation of the offences of sexual exploitation (please see Art. 9 of L. 16 March 2006, n. 146). Furthermore, law no. 269 of 1998 (art. 14, par. 1) authorizes the simulated purchase of pornographic material, brokerage activities and participation in sex tourism initiatives in order to obtain elements of proof in relation to crimes of child prostitution of minors aged less than 18 years and to crimes related to sex tourism initiatives aimed at the exploitation of the prostitution of child pornography. The people authorized for the completion of these activities are those belonging to the judiciary police of the units specialized for the repression of sexual crimes or for the protection of children and in the units for the fight against organized crime, and in certain circumstances even private persons cooperating with

the police. Law n. 38/2006 extended the “covered” investigations to online child pornography.

More specifically, in compliance with Article 14, section 2 of the 269/98 Law, the *special department of the Ministry of the Interior for the security and regulation of telecommunications services*, that is “the National Centre for the Fight against Paedopornography on the Internet”, within the Postal and Communications Police Service of the Central Directorate of Highway, Railway and Communications Police with the Special Units of the Italian State Police, is entitled to take necessary steps, at the judicial authority’s request, to investigate the aforesaid crimes when they are committed by using computer systems or the Internet or by using telecommunications networks available to the public, and to carry out the following undercover activities:

- Using fictitious data in order to open websites, to create or manage communication areas or exchanges on the web or web systems, or to participate in them;
- Simulating, via the Internet, purchases of pornographic material and carrying out the relevant intermediation activities;
- Participation, via the Internet, in tourism initiatives aimed at exploiting child prostitution.

The undercover activities are authorized with regard to child prostitution, child pornography and sex tourism (articles 600-bis, 600-ter, 600-quinquies P.C.) if these offences are committed via the Internet, and also with regard to virtual pornography (Article 600-quarter. 1).

The undercover activities are carried out upon the Judicial Authority’s request. In this context, the simulated purchase shall be immediately communicated to the Judicial Authority who can defer – through a specific order – the relevant seizure until the conclusion of the investigations.

In the same way, the Judicial Authority can postpone the capture and/or the arrest of the offenders, in order to acquire much more evidence concerning the afore-said offences. However, should the execution of custodial measures be delayed and the victim be identified, or if he/she is identifiable, the same measure shall be executed provided that the Public Prosecutor at the Juvenile Court in the district where the minor victim usually resides has been consulted.

As to the non-online offences, covered by the Convention, undercover activities are allowed for the following offences:

- Placing or holding a person in conditions of slavery or servitude, trafficking in human beings, purchase and sale of slaves;
- Possession of pornographic material;
- Use of children for begging
- Child prostitution and pornography

Q22g of the General Questionnaire:

The law 38/2006 establishes the "National Centre for the fight against child pornography on the Internet" within the Unit of Postal and Communication Police of the Department of Public Safety. The center collects reports of child pornography sites from both other police

units, including foreign ones, and citizens, voluntary associations and providers. In particular, within the “National Centre for the Fight against Paedo-pornography on the Internet”, the File Analysis Area for the Identification of Abused Children deals with the reports concerning paedo-pornographic material transmitted by police local offices and national and international NGOs that are authorized to send reports on child abuse. The tasks of This File Analysis Area are the following:

- To identify the victim, in order to avoid that the abuse keeps on and to provide, if requested, the necessary psychological support;
- To identify the abuser and bring him to justice.

Since 2011, the afore-said File Analysis Area has been the national centre of the database of the paedo-pornographic images, located at the Interpol Secretariat General in Lyon; it can directly access the ICSE (International Child Sexual Exploitation) database where the files useful for the identification of children and abusers are stored and shared by the international police forces.

From all this activity, the Centre provides to draft a list of child pornography sites in the network, the so-called "black list", which is then given to “Internet Service Providers” in order to block the browsing through technical filtering.

LITHUANIA / LITUANIE

Question 14 of the TQ / du QT

a) “Article 721. Prohibition to approach the victim”.

1. 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.
2. 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.
3. 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 722. Participation in the programmes addressing violent behaviour

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.

CPC:

Article 132(1). Obligation to live separately from the victim.

1. The suspect may be obliged to live separately from the victim or there are reasonable grounds for considering that if the suspect lives together with the victim, he/she will

attempt at unlawfully influencing the victim or commit new criminal acts against the victim or persons living together. When imposing an obligation to live separately from the victim, the suspect may also be obliged not to communicate or seek contact with the victim and persons living together and not to visit specified places visited by the victim or persons living together. A victim stays in the housing which was the permanent place of residence for the suspect and the victim.

b) If criminal acts of sexual character as well as acts related to pornography and prostitution were committed in respect to a young child or a minor, a pre-trial investigation shall in all cases be initiated in accordance with the general procedure, i.e. the victim's complaint or a statement of his lawful representative or a prosecutor's request shall not be considered a prerequisite for initiating a pre-trial investigation (Article 166 of the CPC, Article 167 of the CPC, Article 407 of the CPC, Article 149 of the CC, Article 150 of the CC, Article 151 of the CC, Article 1511 of the CC, Article 153 of the CC, Article 157 of the CC, Article 162 of the CC, Article 307 of the CC, Article 308 of the CC, Article 309 of the CC).

On 15 December 2011, the Republic of Lithuania Law on Protection against Domestic Violence took effect. Its purpose is to protect persons against domestic violence, promptly respond to arising threats, undertake prevention measures and provide appropriate assistance. Pursuant to the law, domestic environment shall mean the environment comprising the persons currently or previously linked by marriage, partnership, affinity or other close relations, also the persons having a common domicile and a common household. Violence shall mean an intentional physical (causing physical pain, health impairment), mental (threatening to cause health impairment, murder, abduct a child, terrorisation), sexual, economic or another influence exerted on a person by an act or omission as a result whereof the person suffers physical, property or non-pecuniary damage. Pursuant to the law, domestic violence is attributable to the category of public prosecution. In this case criminal proceedings do not depend on the will of the victim of violence to initiate them or not. It means that having established the fact of domestic physical, mental, sexual, economic or another violence a pre-trial investigation shall be initiated, regardless of whether a complaint has been filed by the victim of domestic violence or not.

c) Public court hearing is one of the principles of the rule of law, stipulated in the Constitution of the Republic of Lithuania (Article 31(2), Article 117(1)) and the Criminal Procedure Code of the Republic of Lithuania (Article 9(1)).

However, Article 9(3) of the CPC lays down that the hearing of cases concerning crimes and misdemeanours against sexual independence and integrity may be private. The draft CPC provides for a possibility for cases to be heard in court *in camera*, if the victims are under eighteen years of age. The draft CPC also proposes stipulating an obligatory video and audio recording when carrying out the examination of a minor witness and 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 (see response to Question 13(a) of the first questionnaire).

RELEVANT TEXT

“Article 9. Public hearing

1. Cases shall in all courts be heard publicly, except for cases, where these contradict the interests of keeping the state, official, professional or commercial secret.

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.

4. A case may be heard in camera only under a court ruling. A ruling to hear the case in camera may be passed with regard to full case hearing at court or to its individual parts. Cases shall be heard in camera in accordance with all rules of proceedings⁵. Persons under sixteen years of age who are not accused persons, victims or witnesses shall not be allowed to the court hearing.”

Following the provisions of the abovementioned CPC article, the court hearing the case may, upon its own initiative or at the request of the parties of the proceedings, decide to hear the case in camera regardless of the mutual relations between the victim of a criminal act and the offender. In practice courts hear all cases where children are victims of criminal acts of sexual character in camera.

Seeking to reduce traumatising of a child victim of crime in criminal proceedings, the national law also provides for the organisation of criminal proceedings in such a way that a child is examined by a pre-trial judge during a pre-trial investigation not more than once and is not summoned to a court hearing. The same provisions apply to a minor witness.

“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 is usually questioned not more than once during the pre-trial investigation. 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 demonstrated 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.”

Furthermore, 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).

LUXEMBOURG

Question 14 of the TQ / du QT

a) Comme le parquet – protection de la jeunesse centralise tous ces dossiers, son rôle est double : 1) Il exerce les poursuites pénales contre l’auteur ; 2) Il veille à la protection de l’enfant.

Le parquet dirige dans un premier temps l’enquête réalisée par les enquêteurs de la Police Judiciaire – Section Protection de la Jeunesse qui traitent tous les cas d’abus sexuels sur mineurs (enquêteurs spécialisés, locaux adaptés etc.). Ensuite, le juge d’instruction est normalement chargé du dossier par le parquet. Même si à partir de ce moment le juge d’instruction dirige le dossier, le substitut du parquet en charge du dossier est normalement tenu informé par le juge d’instruction de l’évolution du dossier et s’il en a connaissance de l’état de l’enfant victime. Si le substitut en charge du dossier pénal estime à un moment de la procédure pénale que l’enfant a besoin d’une mesure de protection (par exemple placement, soutien psychologique etc.), il charge le juge de la jeunesse du dossier qui prend alors en charge tout le volet relatif à la protection de l’enfant.

b) L'article 16 du Code d'instruction criminelle dispose que « Le ministère public exerce l'action publique et requiert l'application de la loi ». Il en découle que l'action publique est exercée par le ministère public indépendamment de la volonté de la victime.

En ce qui concerne les infractions commises à l'étranger, l'article 5 du Code d'instruction criminelle dispose que « Tout Luxembourgeois qui hors du territoire du Grand-Duché s'est rendu coupable d'un crime puni par la loi luxembourgeoise peut être poursuivi et jugé dans le Grand-Duché. Tout Luxembourgeois qui, hors du territoire du Grand-Duché s'est rendu coupable d'un fait qualifié délit par la loi luxembourgeoise peut être poursuivi et jugé dans le Grand-Duché de Luxembourg si le fait est puni par la législation du pays où il a été commis.

Toutefois, sauf en ce qui concerne les crimes et délits commis en temps de guerre, qu'il s'agisse d'un crime ou d'un délit, aucune poursuite n'aura lieu lorsque l'inculpé jugé en pays étranger du chef de la même infraction, aura été acquitté.

Il en sera de même lorsque, après y avoir été condamné, il aura subi ou prescrit sa peine ou qu'il aura été gracié.

Toute détention subie à l'étranger par suite de l'infraction qui donne lieu à la condamnation dans le Grand-Duché, sera imputée sur la durée des peines emportant privation de la liberté.

En cas de délit commis contre un particulier luxembourgeois ou étranger, la poursuite ne peut être intentée qu'à la requête du ministère public; elle doit être précédée d'une plainte soit de la partie offensée ou de sa famille, soit d'une dénonciation officielle à l'autorité luxembourgeoise par l'autorité du pays où le délit a été commis, soit, si l'infraction commise à l'étranger l'a été en temps de guerre contre un ressortissant d'un pays allié du Luxembourg, au sens de l'article 117, alinéa 2 du Code pénal (arrêté grand-ducal du 14 juillet 1943), par l'autorité du pays dont l'étranger lésé est ou était ressortissant.

L'étranger coauteur ou complice d'un crime commis hors du territoire du Grand-Duché par un Luxembourgeois pourra être poursuivi au Grand-Duché, conjointement avec le Luxembourgeois inculpé ou après la condamnation de celui-ci.

Sauf dans les cas prévus à l'article 7 ci-après et dans ceux d'un crime ou délit commis en temps de guerre, à l'étranger, par un Luxembourgeois contre un ressortissant luxembourgeois ou d'un pays allié, la poursuite des infractions prévues par le présent article n'aura lieu que si l'inculpé est trouvé, soit dans le Grand-Duché, soit en pays ennemi, ou si le Gouvernement obtient son extradition ».

L'article 5-1 du Code d'instruction criminelle pose une exception au principe prévu par l'article 5 du Code d'instruction criminelle en disposant que « Tout Luxembourgeois, toute personne qui a sa résidence habituelle au Grand-Duché de Luxembourg, de même que l'étranger trouvé au Grand-Duché de Luxembourg, qui aura commis à l'étranger une des infractions prévues aux articles 112-1, 135-1 à 135-6, 135-9 et 135- 11 à 135-13, 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis, 245 à 252, 310, 310-1, et 368 à 384 du Code pénal, pourra être poursuivi et jugé au Grand-Duché, bien que le fait ne soit pas puni par la législation du pays où il a été commis et que l'autorité luxembourgeoise n'ait pas reçu soit une plainte de la partie offensée, soit une dénonciation de l'autorité du pays où l'infraction a été commise ».

Pour les infractions faisant l'objet du présent rapport et qui sont commises à l'étranger, la plainte faite par la victime n'est donc pas une condition sine qua non à l'exercice de poursuites par le ministère public.

c) En principe, un enfant victime n'est pas auditionné devant le tribunal pour le procès pénal. C'est un des objectifs de l'enregistrement audiovisuel – cet enregistrement peut être visionné lors de l'audience, conformément aux dispositions de l'article 158-1 (4) du Code d'instruction criminelle. L'enfant ne peut être entendu une nouvelle fois devant le tribunal que sur décision expresse du tribunal. Dans un tel cas le parquet peut demander - et il le fait en pratique toujours - que cette audition se fasse à huis clos (article 190 (2) du Code d'instruction criminelle). L'Enfant ne peut pas être entendu à l'audience.

MALTA/MALTE

Question 14 of the TQ / du QT

a) If the person is arraigned in court such a framework is in place to limit the re-traumatisation of children through court proceedings. However, the situation is not an ideal one. In certain cases the police may use police bail limitedly.

The courts and the prosecuting police attempt to limit the amount of times children give their testimony (usually limited to one session) and offer the protections mentioned above. Psychological assistance is offered usually post testimony and social work and school support remains ongoing.

The police always ensure that the victim is protected during the investigation process as well as in the criminal proceedings. Generally once an alleged perpetrator is charged in court, the prosecution request an immediate protection order on the victim and the family. Social workers or/and members of victim support unit are also involved in order to support and assist the victim. It is worth noting that a protection order can be imposed at any stage during the court proceedings, even included in the court judgement. Breach of this protection order is a crime punishable by a fine or/and imprisonment.

b) Such a measure is already in place; however there are instances where the law provides otherwise for example in cases of defilement of minors.

It can be safely said that nearly all cases of child abuse are initiated ex-officio, that is, without the need of the complaint of the injured party. Therefore if there is a third party report, the police must verify the report and investigation without any victim statement or accusation. Furthermore the law provides for instances where the case can be stayed before a court of law.

Article 543 of the Criminal Code states that:

It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases:

(e) in the case of any offence involving domestic violence: Provided that for the purposes of this paragraph "domestic violence" shall have the same meaning assigned to it by article 2 of the Domestic Violence Act⁵

Provided further that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim of an offence involving domestic violence to request the court to stay proceedings against the alleged perpetrator, and when such a request is made the court may decide and direct the continuation of proceedings against the alleged perpetrator, giving particular consideration to the best interests of any minors involved, and shall cause such request and decision to be registered in the records of the case.

Criminal proceedings may be instituted ex officio and may continue if the victim has withdrawn his or her statement in those circumstances where the law specifically provides for this, namely when the offence is committed with abuse of parental authority or tutorship, or when the crime is accompanied with public violence, domestic violence, or with any other offence affecting public order. Domestic violence is defined as any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other. The term "household member" includes persons living in the same household as the offender or who had lived with the offender within a period of one year preceding the offence, parents and their children, persons who are related to each other either by consanguinity or affinity up to the third degree inclusively.

c) Please refer to question 13 regarding video conferencing – a child is allowed to give testimony in the presence of the magistrate/judge alone, while the alleged perpetrator, prosecution and lawyers watch this testimony over a video recording. Lawyers are not allowed to ask questions directly to the child and these questions are asked to the magistrate/judge and then asked to the child in a more child friendly manner. However, the physical layout of the court does not allow for the best use of this system as the child must pass through the court room in front of the alleged perpetrator before entering the judge's chambers. Most (if not all) cases involving child sexual abuse are heard without the public being allowed access.

Q13 of the General Questionnaire:

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.

⁵ domestic violence" means any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other

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.

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Question 14 of the TQ / du QT

a) In any case, no matter who the perpetrator is, the Criminal Procedure Code of the Republic of Moldova provides hearing children in special circumstances, outstanding general procedure to protect them from the risk of secondary victimization.

According to art. No 109 line 5 of CCP, if the witness minor is aged under 14 years will be heard in criminal cases concerning sexual offenses, concerning child trafficking or domestic violence, and in other cases where the interests of justice or the juvenile prosecutor requires, in terms of Article 110¹.

Special hearing conditions are stipulated by Article 110¹ Criminal Procedure Code, and consist of hearing the minor witness by the judge in special places, equipped with audiovisual recording media and with the presence of a psycho-pedagogue (psychologist).

According to a draft law amending on the Criminal Procedure Code, the Article No 371 of the Criminal Procedure Code will be supplemented by paragraph (1) with the following content:

“(1) In the case when a minor, under the age of 14, has given statements in accordance with the provisions of article 110 from the present Code, the reading of these statements, audiovisual recording will replace the minor hearing in person, in order to reduce the possible trauma, unless, given the circumstances, the court will consider that the child should give evidence in the court. The repeated hearings should be avoided wherever possible.”

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

- a) an order to temporarily leave the joint dwelling or stay away from the victim's home without deciding on the ownership of the goods;
- b) an order to stay away from the victim;
- c) the obligation not to contact with the victim, children or other dependents to the victim;

- d) prohibition of visiting the place of work and living of the victim;
- e) an order, until the case is resolved, to contribute to the maintenance of children which he/she has in common with the victim;
- f) an order to pay costs and damages caused by acts of violence, including medical expenses and the replacement or repair of destroyed or damaged property;
- g) limiting unilateral disposal of common goods;
- h) order to participate in a special program of treatment or counselling if such action is determined by the court to be necessary to reduce or eliminate violence;
- i) establishment of a temporary visitation of children;
- j) prohibition to keep and wear arms.

b) The cases related to the procedure of submitting a report or accusation is stipulated in the article 276 of the Criminal Procedure Code of the Republic of Moldova.

Article 276. Initiating of criminal investigation based on the complaint of victim

(1) prosecution is started only upon the preliminary complaint of the victim for the offenses provided to in Articles 152 para. (1), 153, 155, 157, 161, 173, 177, 179 para. (1) and (2), 193, 194, 197 para. (1), paragraph 198. (1), 200, 202, 203, 204 para. (1), 2461, 274 of the Criminal Code, as well as of the thefts committed by juveniles, by spouse, relatives, in the damage of custodian, or the person who lives with the victim or is housed by it. At the reconciliation of the victim with the suspect, culprit or defendant, in the cases mentioned in this paragraph, the prosecution process is terminated. Procedure, in such processes, is general.

1₁) By derogation from the provisions of paragraphs. (1) where the prosecution authority directly detects or is notified about commission of or preparation for the commission of offenses referred to in art. 1852, exception for offenses in para. (23), and art. 1853 of the Criminal Code, it shall notify the holder of rights or empowered authority under the law on the protection of geographical indications, designations of origins and traditional specialties guaranteed about them. If the holder of rights or empowered authority under the law on the protection of geographical indications, designations of origins and guaranteed traditional specialties, within 15 working days of reception of notice, do not make the preliminary complaint, the prosecution authority do not start the prosecution, according with the provisions of this Code.

(2) If, after the crime, have suffered more people, the start of prosecution is made even preliminary complaint is submitted only by one of the victims.

(3) If the commission of an offense was attended by several offenders, even if only preliminary complaint was filed only against one of the offenders, prosecution is carried out on all offenders.

(4) If the victim listed in a lawsuit, concerning of an offense under par. (1), because of the inability or limited exercise capacity, state of helplessness and dependence on suspicion or, otherwise, is not able to defend their rights and interests, the prosecutor starts prosecution even if the victim did not file a complaint.

(5) At the reconciliation of the victim with the suspect, culprit or defendant, in the cases referred to in para. (1) the prosecution process is terminated. Reconciliation is personal and do effect only if it taken until the final court decision. In cases of domestic violence, the prosecutor or the court will examine if the victim reconciliation is freely expressed, ensuring that the victim had real access to assistance and protection.

6) For incapable persons, the reconciliation can be done only by their legal representatives. People with limited exercise capacity can reconcile with the consent of their legal representatives. The reconciliation can take place if the prosecution was initiated by the prosecutor from office.

(7) Reconciliation of parties can take place through mediation.”

In any other case, not stipulated in Art. 276 of the CPC, the prosecutor has the right to continue the criminal proceedings against the perpetrator, cases of sexual abuse against children being also included in the serious offences and the prosecutor have the necessary competences in this regard. The Law on Preventing and Combating Domestic Violence stipulates that domestic violence is any intentional act or omission, except the self-defence or defence of others verbally or physically manifested through physical, sexual, psychological, spiritual or by causing economic or material or moral, committed by a family member against other family members, including against children, and against common or personal property.

The state law mentions that government authorities cooperation with civil society and international organizations on the basic principles of preventing and combating domestic violence in Moldova with legality, equality, privacy, access to justice and the protection and security of the victim.

Also art. 1101 of the Criminal Procedure Code provides special hearing of all cases of juvenile witness. Art. 18 para.(2) of the Criminal Procedure Code provides that a minor is the victim or witness, the court will hear his statements in a closed meeting

c) In accordance with Article No 18 para. 21 of the Criminal Procedure Code, in the process in which a minor is a victim or a witness, the court will hear his/her statements in a closed meeting.

The minor's statements heard in the terms of Article 110 of the Criminal Procedure Code will be recorded by audiovisual means and will be also recorded in a written report. The court seals the information support that was recorded with the witness and keeps the original with the report.

The purpose of the child victim - witness hearing, according to the Article 110 is to get the child testimony in a non – intrusive way, as precise as possible, taking into account the specific age. Thus helping in the taking decision process in criminal justice and assuring the supreme interest of the child.

An important aspect is the communication between the hearing and the view room, the circumstances under which the child and the abuser can meet in a corridor or common space are excluded.

MONTENEGRO

Question 14 of the TQ / du QT

a) Article 1 of Law on Treatment of Juveniles in Criminal Proceedings provides that the Law governs the treatment of the juvenile as a perpetrator of the criminal offence, children and juveniles as participants in the proceedings, which is based on respect for human rights and fundamental freedoms while respecting the best interests of juveniles, taking into account their maturity, level of development, abilities and personal characteristics, as well as the severity of the criminal offence, with the aim of their rehabilitation and social reintegration.

Title IV of the Law on the Treatment of Juveniles in Criminal Proceedings contains separate provisions on the protection of juveniles as participants in criminal proceedings, and these provisions apply to juveniles injured by the criminal offence and juveniles heard as witnesses in criminal proceedings. In criminal proceedings in which the participant is a juvenile injured by the criminal offence or where the juvenile is questioned as a witness, actions are, as a rule, taken by people who have acquired special knowledge in the field of children's rights and about the rules of treatment of juvenile offenders and juveniles as participants in criminal proceedings, taking into account the age, personal characteristics, education and living circumstances of the juvenile

b) All criminal offences prescribed by the Convention and which are incorporated in the criminal legislation of Montenegro are prosecuted ex officio, which means that the criminal prosecution or criminal proceedings for any of these criminal offences does not depend on the victim's statement.

c) Article 314 of the Criminal Procedure Code provides that from the opening of the session until the conclusion of the main hearing, the Panel may at any time, ex officio or upon the motion of the parties but always after hearing their statements, exclude the public from the entire main hearing or one part of it, if that is necessary for keeping information secret, protecting public order, protecting morality, protecting the interests of a juvenile or protecting the personal or family life of the accused or the injured party. As regards the hearing of the victim, Article 93, paragraph 6 of the Law on the Treatment of Juveniles in Criminal Proceedings prescribes that, if there are justified reasons, juveniles can be heard as victims, or injured parties, in their apartment or another room, or the office or institution in which they reside, regardless of the technical equipment thereof.

NETHERLANDS / PAYS BAS

Question 14 of the TQ / du QT

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

PORTUGAL

Question 14 of the TQ / du QT

a) Yes. The attempt to prevent the aggravation of the trauma of child victims of sexual abuse, during the investigation and trial phases takes place by means of several procedural mechanisms:

- The early examination of child victims in order to avoid the re-victimising effect of repeated inquiries (Article 271 (2) of the Code of Criminal Procedure);
- The setting up of an informal and private environment where the taking of statements in case of crimes against sexual freedom and self-determination is facilitated and assistance by qualified technician in the taking of statements is provided (Article 271 (4) of the Code of Criminal Procedure);
- In court proceedings, the inquiry of the victim under 16 years of age is conducted exclusively by the presiding judge (Article 349 of the Code of Criminal Procedure);
- The protection of the child's privacy is ensured by restricting the publicity of the proceedings and the dissemination of the personal data of the victim whenever a sexual crime, and including sexual abuse within the circle of trust, is at stake (Article 87 (3) and Article 321 (1) and (2) of the Code of Criminal Procedure);
- The judge may order the withdrawal of the defendant from the courtroom in the case where the witness is under 16 years of age and there are reasons to believe that the conduction of the hearing in the presence of the defendant might be detrimental to him/her (Article 352 (1) a) and b) of the Code of Criminal Procedure).
- Confrontation between the victim and the perpetrator at the court's premises is avoided by having recourse to *pro memoria* statements or to the taking of testimony by videoconference.

b) With the exception of the crime of sexual activities with teenagers (Article 173 of the Criminal Code), all crimes against sexual self-determination and sexual freedom in the case where the victim is a child entail public prosecution, regardless of a report or accusation made by the victim and irrespective of a possible withdrawal of the victims' statements.

In addition, when the prosecution depends on the existence of a report by the victim, and always upon consideration of the interests of the victim, the public prosecutor may initiate criminal proceedings in a maximum delay of 6 months counting from the date where it had knowledge of the facts and identity of the perpetrator if the victim is a minor or does not understand the significance of the act of reporting the crime or the right to report may not be exercised because it pertains to the perpetrator (Articles 178 (1) and (2) and Article 113 (5) of the Criminal Code).

c) Yes. Please refer to third paragraph of the first part of this answer.

ROMANIA / ROUMANIE

Question 14 of the TQ / du QT

a) In these cases, the general provisions presented under questions 21, 23 and others of the General Questionnaire.

Question 22a of the General Questionnaire:

Except the protection measures detailed in the previous questions, we would also like to mention the provisions of the new Code of criminal procedure concerning special cases for the hearing of the witness. The hearing of the child witness who has not reached the age of 14 has to be done in the presence of one of the parents, of the legal guardian or the representative of the institution which was entrusted the care and education of the child. If the persons mentioned in para. (1) cannot be present or are the suspect, defendant, injured person, civil party, person liable in civil law or witness in the case or if there is the reasonable suspicion that they can influence the child's statement, the hearing will be performed in the presence of a representative of the guardianship authority or of a relative with full capacity of exercise, designated by the judicial authority (art. 124 of the new Code of criminal procedure). If deemed necessary, upon request or ex officio, the criminal prosecution body or the court can order the hearing of the child to be performed in the presence of a psychologist.

The same article also provides for the hearing of the child to avoid any negative effect on the child's mental health.

There are also special provisions concerning the hearing of the children in cases of trafficking in human beings and exploitation of vulnerable persons (among them trafficking in children, procuring, use of services of an exploited person) and in cases of facilitation of illegal stay in Romania and child pornography. The hearing of the child who has not reached the age of 14 shall also be performed in the presence of at least one parent or of the legal representative, whereas it is also mandatory to also call a psychologist and a representative of the General Direction for Social Assistance and Child Protection.

b) The detailed answer for this question is given under question no. 22b) of the General Questionnaire

Question 22b of the General Questionnaire:

The criminal prosecution in relation to any offence can be initiated both as a result of a complaint filed by the injured person, as a result of a report from any person who has an information about an offence having been committed, and ex officio⁶.

⁶ The New Code of Penal Procedures – Law no. 135/2010

CHAPTER II
Notifying the prosecution services
SECTION 1
General provisions
ARTICLE 288

Notification types

(4) The prosecution services are notified by complaint or denunciation, according to the documents drawn by other investigation authorities provisioned by the law or shall be notified *ex officio*.

(5) *When, according to the law, the commencement of the penal action is made only upon the prior complaint of the injured party, upon the notification made by the person provisioned by the law or upon the authorization of the institution provisioned by the law, the penal action cannot be started in their absence.*

(6) In respect of the offences committed by militaries, the notification of the commanding officer is required only in what concerns the offences provisioned in Article 413-417 of the Penal Code.

ARTICLE 289

Complaint

(1) The complaint is the notification made by an individual or legal entity, in respect of a prejudice which it incurred as a result of the offence.

(2) The complaint shall contain: the name, first name, personal identification number, the capacity and domicile of the applicant or, for legal entities, the name, headquarters, sole registration code, fiscal identification code, registration number with the trade registry or with the registry of legal entities and the bank account, indication of the legal or conventional representative, the description of the act forming the object of the complaint, as well as the indication of the perpetrator and the means of evidence, if known.

(3) The complaint may be submitted in person or by proxy. The assignment shall be of a limited nature, and the power of attorney shall remain attached to the complaint.

(4) If made in writing, the complaint shall be signed by the damaged person or by their attorney in fact.

(5) The electronic complaint shall fulfil the conditions of form only if it is certified by electronic signature, in accordance with the legal provisions.

(6) A complaint submitted verbally shall be recorded in minutes by the services receiving it.

(7) The complaint may also be submitted by a spouse for the other spouse or by the major child for the parents. The damaged person may declare that they do not acknowledge the complaint.

(8) In relation to a person without legal capacity, the complaint shall be submitted by the legal representative thereof. The person with restricted legal capacity may submit a complaint subject to the approval of the persons provided for in the civil law. In the case where the perpetrator is the person legally representing or approving the actions of the damaged person, notification of the prosecution services shall be made *ex officio*.

(9) The complaint is wrongfully sent to the prosecution services or to the court of law shall be referred, by administrative means, to the competent judiciary authorities.

(10) Where the complaint is drawn up by a person residing in the territory of Romania, a Romanian, foreign citizen, or a person without citizenship, and it is used to notify that an offence was committed in the territory of another Member State of the European Union, the judiciary authority shall have the obligation of receiving the complaint and forward it to the competent services in the country in whose territory the offence was committed. The rules governing judicial cooperation in criminal matters shall apply accordingly.

ARTICLE 290

Denunciation

(3) Denunciation is the information made by a natural or legal entity concerning the commission of an offence.

(4) Denunciation can only be made in person, as provisions of Article 289 (2), (4) - (6) and (8) - (10) shall apply accordingly.

ARTICLE 291

Notifications made by persons in leading positions and by other persons

(3) Any person holding a leading position within a public administration authority or other public authorities, public institutions or other legal entities of public law, as well as any person having control duties, who during the exercise of such duties, found out the commission of an offence for which the penal action starts *ex officio* are compelled to notify the prosecution services at once and to take measures to prevent the consequences of the offence, the corpus delicti and any other means of evidence from disappearance.

(4) Any person holding a public office who was appointed by the public authorities or is submitted to the control or supervision of the public authorities in respect of compliance with that public service, who during the exercise of the duties, found out the commission of an offence for which the penal action starts *ex officio*

The exercise of the criminal proceedings is a procedural stage distinct from the initiation of the criminal prosecution and can be, as a general rule, conditioned for specific offences by the victim having filed a request to this effect – called previous complaint.

For offences which are referred to in this report, however, the initiation of the criminal proceedings is also performed ex officio and there is no condition as to a previous complaint of the victim.

One exception is the rape when the victim has reached the age of 16, in which situation the initiation of the criminal proceedings is performed upon previous complaint of the victim. In spite of this, even in case of a rape where the victim has reached the age of 16 there is the possibility for the initiation of the criminal proceedings ex officio. The criminal code provides as a general rule (art. 157) that in case the victim is a person without capacity of exercise or with limited capacity of exercise, the criminal proceedings can also be initiated ex officio.

Moreover, in case the offender is the person who legally represents the victim or approves the documents of the victim, the previous complaint shall be necessarily done ex officio (art. 295 and art. 289 para. (8) of the new Code of criminal procedure).

This means that the initiation of the criminal prosecution or the initiation of the criminal proceedings is not conditioned, in respect to any of the offences in the Convention, by a complaint or claim having been filed by the victim.

c) See the answer given under question no. 21d) of the General Questionnaire.

In respect of the trial stage of the penal process (which is a public stage, as a general rule), if the trial held in public session may infringe upon the morals, dignity or private life of the individual or the best interests of the minors, the court, upon the request of the prosecutor, the parties or ex officio, may declare a closed hearing during the entire or partial judgment of the case.

The court can also declare a closed hearing upon the request of a witness, if the hearing held publicly could prejudice the safety or dignity or his private life or his family or upon the request of the prosecutor, the injured party or parties if a public hearing would jeopardize the confidentiality of certain information.

Law no. 678/2001 on preventing and fighting the trafficking in human beings also requires that hearings in cases of trafficking in minors and child pornography are nonpublic (Article 24). The court sessions may be attended by the parties, their representatives, lawyers, representatives of the National Agency against Trafficking in Persons and other persons whose presence is deemed necessary by the court.

Regarding the hearing of the victim without being present in the courtroom, this is one of the measures that the court may take into account, given the status of vulnerable witness of the minor, which also applies to the minor victim through assimilation. For details and related law provisions, see the answer to the question no. 21 e) of the GOQ.

are compelled to notify the prosecution services at once and to take measures to prevent the consequences of the offence, the corpus delicti and any other means of evidence from disappearance.

(...)

SAN MARINO / SAINT-MARIN

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

SERBIA / SERBIE

Question 14 of the TQ / du QT

a) Ministry of Justice:

See answer to question 12 of the Thematic Questionnaire:

Question 12 of the Thematic Questionnaire:

Ministry of Justice:

Criminal Code proscribes both extenuating and aggravating circumstances the court takes into account when sentencing. If a criminal offence is committed from hate or on grounds of race, religion, nationality or ethnic association, sex, sexual orientation or gender identity of other person, such circumstance shall be taken into account by the court, unless it is proscribed as a characteristic of a criminal offence. Under the Criminal Code, a set of security measures is proscribed that may be pronounced in addition to penalty to the offender.

(...)

Under Article 1 of the Law on Special Measures for the Prevention of Sexual Offences Against Minors, special measures are laid down which shall be undertaken against offenders committing sexual offences against minors and regulates introduction of a special register of persons sentenced for such crimes. Under Article 6 of this Law, the sentence pronounced for a criminal offence referred to in Article 3 thereof shall have the following legal effects:

- 1) termination of office;
- 2) termination of employment and/or practicing profession or occupation related to work with minors;
- 3) prohibition of appointment to office;
- 4) prohibition of entering employment and/or practicing profession or occupation related work with minors;

Legal effects of the conviction referred to in paragraph 1 thereof shall come into force as of the day when the judgement becomes final.

Legal consequences of the conviction referred to in paragraph 1, points 3) and 4) thereof shall last 20 years.

Time spent serving a penalty shall not be credited to duration of legal consequences of conviction.

The final judgement referred to in paragraph 2 thereof shall also be communicated to the employer of the convicted person.

Abovementioned provisions regarding Article 6, paragraph 1, point 4 shall include all professions.

Under Article 13 of the Law

(...)

State Prosecutor:

As already answered to question 13 a, 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.

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

NVO Astra answer:

The Criminal Procedure Code, Article 102 stipulates that the questioning of a minor, especially if it is affected by a criminal offense, should be done carefully so the questioning does not have an adverse effect on the mental condition of the child. If necessary, the questioning of the minor should be done with the help of teachers or other professional. According to our knowledge this code has been selectively conducted. NGO ASTRA had a chance to witness situations when a child was questioned several times during the process, and the treatment of the victim depended on individual sensitivity of a judge.

b) Ministry of Justice:

Persecution of the perpetrators of criminal offences fall under the competence of the public prosecutor's office in compliance with the Law on Public Prosecutor's Office, Criminal Proceedings Code, and other relevant legislation.

State Prosecutor:

Under Article 6 of the Criminal Procedure Code, the public prosecutor is required to conduct criminal prosecution where there are grounds for suspicion that a criminal offence has been committed or that a certain person has committed a criminal offence prosecutable ex officio.

Given that criminal offence is prosecuted ex officio, the conduct of procedure is not conditioned by the submission of criminal complaint by the victim or is his withdrawal of the complaint or statement relevant for conducting the procedure.

NVO Astra answer:

According to Article 223 Paragraph 1 of the Criminal Procedure Code: If there are in the acts or omissions that endangered the life or health of the child, elements of the offense that is prosecuted ex officio, anyone who has any knowledge about it, whether they are citizens, expert in the institution or other organization.

c) Ministry of Justice:

Under Article 94, paragraph 2 of the Criminal Proceedings Law juveniles who are in view of their age and mental development not capable of understanding the significance of the right not to have to testify may not be questioned as witnesses, except if the defendant so demands. Every person capable of presenting his knowledge and impressions in connection with the subject matter of the testimony has capacity to give evidence (Art. 92. Paragraph 1 Criminal Proceedings Code).

Under Article 103 of the CPC The authority conducting proceedings may *ex officio*, at the request of parties or the witness himself, designate as an especially vulnerable witness a witness who is especially vulnerable in view of his age, experience, lifestyle, gender, state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances. The public prosecutor, president of the committee or individual judge issues the ruling determining a status of an especially vulnerable witness. If it deems it necessary for the purpose of protecting the interests of an especially vulnerable witness, the authority conducting proceedings referred to in paragraph 2 of this Article may issue a ruling appointing a proxy for the witness, and the public prosecutor or the president of the court will appoint a proxy according to the order on the roster of attorneys submitted to the court by the bar association competent for designating court appointed defence counsels (Article 76). No special appeal is allowed against a ruling approving or denying a request.

Under Article 104 of the CPC rules on examining an especially vulnerable witness are proscribed. Thus, an especially vulnerable witness may be examined only through the authority conducting the proceedings, which will treat the witness with particular care, endeavouring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which shall be decided by the authority conducting proceedings.

If the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination shall be conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located. An especially vulnerable witness may also be examined in his dwelling or other premises or in an authorised institution professionally qualified for examining especially vulnerable persons. In such a case the authority conducting proceedings may order application of the measures referred to in paragraph 2 of this Article. An especially vulnerable witness may not be confronted with the defendant, unless the defendant himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defence. No special appeal is allowed against a ruling referred to in paragraphs 1 to 3 of this Article.

(...)

The public prosecutor and the court shall inform the injured party of the rights referred to in paragraph 1 thereof. Under Article 58 of the Criminal Proceedings Code An injured party as a subsidiary prosecutor is entitled to: 1) represent the prosecution in accordance with the provisions of this Code; 2) submit a motion and evidence for execution of a restitution claim

and a motion for interim measures to secure it; 3) retain a proxy from amongst attorneys; 4) request the appointment of a proxy; 5) perform other actions provided for by this Code.

Besides the rights referred to in paragraph 1 of this Article, a subsidiary prosecutor also exercises the rights of the public prosecutor, except those that the public prosecutor has in his capacity as a public authority. Also, under the Criminal Proceedings Code, protecting the interests of a juvenile, the court may exclude the public from the proceedings partially or in full.

State Prosecutor:

As already replied to question 13a, 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 Under the Criminal Procedure Code, from the commencement of the hearing until the conclusion of the trial, the panel may ex officio or upon a motion by a party or the defence counsel, but always after they had stated their positions, exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting:

- 1) the interests of national security;
- 2) public order and morality;
- 3) the interests of minors;
- 4) private lives of the participants in the proceedings;
- 5) other justified interests in a democratic society.

NVO Astra answer:

In criminal proceedings for offenses that are considered to involve the sexual abuse of a child within the circle of trust, the judge may decide that the trial is closed to the public. This practice is regulated in the Criminal Procedure Code Article 109v and in the Family Act Article 206, paragraph 1.

SPAIN / ESPAGNE

Question 14 of the TQ / du QT

a) & b) & c) : See answer to question 23c of the General Questionnaire.

Question 23c of the General Questionnaire:

The Spanish Procedure Act sets forth that the Judge may order the hearing to take place without the presence of the public for reasons of morality, public order or consideration of the offended or his family.

Furthermore, Act 35/1995 on aid and assistance for victims of violent crime and sexual offences entitles the public prosecutor to request the hearing to take place without the presence of the public.

As regards videoconference, article 731.bis of the Criminal Procedure Act states that the court, ex officio or ex-parte, may agree on appearance by videoconference to protect the party, especially if he is a minor, or for public order reasons.

Lastly, article 229(3) of the Judiciary Act establishes that statements, interviews, evidence, confrontation of witnesses, questioning, reports, ratification of expert opinions and proceedings can be conducted by videoconference, but this must be in the presence of the judge or court and in the presence of or with the intervention of, where appropriate, the parties. It can take the form of public proceedings, apart from exceptional cases. The restrictions on the type of evidence that can be obtained by videoconference concern fundamental rights or minors

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

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

TURKEY / TURQUIE

Question 14 of the TQ / du QT

a) In the event that the person claimed to be the perpetrator is someone from the victim's family or someone that the child trusts or someone who has authority over the child, certain protective approaches are adopted and are in place as part of the CMC's activities in operation. These approaches ensure that investigation and prosecution proceedings are conducted in a way that does not aggravate the trauma that the child is going through and, if appropriate, in a way that will allow for support to the child after the proceedings have been concluded.

b) As indicated in the answers to the General Overview Questionnaire, the investigation and prosecution of the offences indicated in the Convention are not dependent upon the statement or complaint of the victim. The principle of ex-officio investigation and prosecution is in place. In this respect, if the perpetrator turns out to be a member of the child's family, someone that the child trusts or someone who has authority over the child, and if, as a result, the victim revokes his/her statement, the proceedings continue to be in place. Moreover, as indicated in the answer to Question 12, Turkish Penal Code regards the

commission of the offence by persons who are within the child's circle of trust, as an aggravating circumstance.

c) Under Article 187, Paragraph 3 of the Code of Criminal Procedures, the court may decide to hold the trial closed to the public and may obtain the statement of the child from outside of the courthouse via visual equipment.

Besides, as there is no obligation to hear child victims a second time, the court may find the statement obtained in the investigation phase via audio-visual recording equipment to be sufficient, in order not to victimise the child victim twice, especially in the prosecution of sexual offences committed against children. Taking into consideration especially the Lanzarote Convention, which is part of our domestic laws, and the international practice on this matter, our courthouses has adopted and started to apply the principle of obtaining the child victim's statement via visual equipment in a single session, as indicated in the answer to Question 22 of the General Overview Questionnaire.

UKRAINE

Question 14 of the TQ / du QT

a) Relevant information is contained in response to the general overview questionnaire in item "a" of its question 22.

Q22a of the General Questionnaire:

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

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

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

b) Relevant information is contained in response to the general overview questionnaire in item "b" of its question 22.

Q22b of the General Questionnaire:

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

At the same time, it needs to be noted that Article 25 of the CPC of Ukraine stipulates that a public prosecutor / investigator shall be required, within the scope of their respective

competencies, to initiate pre-trial investigation based on the report (information) on a criminal offence and take all statutory measures to establish the occurrence of crime and perpetrator thereof

c) Relevant information is contained in response to the general overview questionnaire in item “d” of its question 22.

Q22d of the General Questionnaire:

In accordance with Paragraph four, Article 44 and Paragraph two, Article 56 of the CPCU, 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.

* * *

II – Other stakeholders / Autres parties prenantes

UNICEF (ICELAND / ISLANDE)

Question 14 of the TQ / du QT

a. The child protection agency operates the Children’s house. The Children’s House is a child-friendly, interdisciplinary and multiagency centre whereby different professionals work under one roof in the investigation of child sexual abuse cases. It is a result of a partnership, among others between the State Police, the State Prosecution, the University Hospital and the Government Agency for Child Protection⁷.

b. The district attorney is responsible for prosecutions dealing with sexual violence offences. According to article 52 of the Law on Criminal Procedure no. 88/2008 the police can investigate crimes even if they have not received a complaint or a charge regarding the offence. Article 144 of the same law states that criminal legal proceedings can only be started by the plaintiff or someone related to him or her.

c. Hearings in sexual abuse or exploitations cases where children are involved are never public and all relevant information to identify the child is supposed to be deleted from court proceedings and all relevant public documents so that the child can never be identified. The videotapes are used as evidence so the child does not have to testify during court proceedings as that can re-traumatise the child.

⁷ More information on the Children’s House and the services available to children can be found here: <http://www.bvs.is/english>