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CONSEIL DE L'EUROPE

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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 1 of the General Overview Questionnaire**

### **Compilation des réponses à la Question 1 du questionnaire « Aperçu général »**

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

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

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

## Introduction

Since its 2<sup>nd</sup> meeting (see §5 of the meeting report)<sup>1</sup>, the Committee has considered that it should first acquire a general overview of the situation with regard to the protection of children against sexual exploitation and sexual abuse in terms of existing legislation, institutional framework and policies for the implementation of the Convention. Such an overview should serve as a basis for the thematic monitoring of the implementation of the Convention.

This approach was confirmed by the Committee during its subsequent meetings and is reflected in the indicative calendar for the 1<sup>st</sup> monitoring round as adopted by the Committee in December 2013 (see §13 of the 7<sup>th</sup> meeting report as well as its Appendix III)<sup>2</sup>. During this meeting, the Committee also decided that the Secretariat should compile the replies to the questionnaires following the indicative calendar and thus that for its 8<sup>th</sup> meeting, replies to questions 1, 3, 5 and 6 of the General Overview Questionnaire should be compiled.

This document is therefore aimed at responding to this request by compiling replies to question 1.

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Depuis sa 2<sup>e</sup> réunion (voir §5 du rapport de réunion)<sup>3</sup>, le Comité a estimé devoir acquérir d'abord une vue d'ensemble de la situation de la protection des enfants contre l'exploitation et les abus sexuels (législation en place, cadre institutionnel et politiques de mise en œuvre de la Convention). Une telle vue d'ensemble devrait servir de base au suivi thématique de la mise en œuvre de la Convention.

Cette approche a été confirmée lors des réunions suivantes du Comité et est reflétée dans le calendrier indicatif pour le 1<sup>er</sup> cycle de suivi tel qu'approuvé par le Comité en décembre 2013 (voir §13 du rapport de la 7<sup>e</sup> réunion ainsi que son annexe III).<sup>4</sup> Lors de cette réunion le Comité a également décidé que le Secrétariat devrait compiler les réponses aux questionnaires selon le calendrier indicatif et par conséquent, pour sa 8<sup>e</sup> réunion, que les réponses aux questions 1, 3, 5 et 6 du questionnaire « Aperçu général » devraient être compilées.

Le présent document vise donc à répondre à cette demande en compilant les réponses reçues à la question 1.

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<sup>1</sup> The 2<sup>nd</sup> meeting report is online at:

[http://www.coe.int/t/dghl/standardsetting/children/T\\_ES/T-ES\\_2012\\_004\\_report\\_2nd\\_mtg\\_07082012.pdf](http://www.coe.int/t/dghl/standardsetting/children/T_ES/T-ES_2012_004_report_2nd_mtg_07082012.pdf)

<sup>2</sup> The 7<sup>th</sup> meeting report is online at:

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

<sup>3</sup> Le rapport de la 2<sup>e</sup> réunion est en ligne ici :

[http://www.coe.int/t/dghl/standardsetting/children/T\\_ES/T-ES\\_2012\\_004\\_rapport\\_2e\\_reunion\\_07082012.pdf](http://www.coe.int/t/dghl/standardsetting/children/T_ES/T-ES_2012_004_rapport_2e_reunion_07082012.pdf)

<sup>4</sup> Le rapport de la 7<sup>e</sup> réunion est en ligne ici :

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

### **Question 1: Definition of “child”**

- a. Does the notion of “child” under your internal law correspond to that set out in Article 3, letter (a), i.e. “any person under the age of 18 years”?
- b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with Article 11, para. 2?
- c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

### **Question 1 : Définition d’« enfant »**

- a. La notion d’« enfant » retenue par le droit interne correspond-elle à celle de l’article 3, alinéa (a), à savoir « toute personne âgée de moins de 18 ans » ?
- b. Quelles mesures législatives ou autres ont été prises pour que, lorsque l’âge d’une victime est incertain et qu’il y a des raisons de croire qu’il s’agit d’un mineur, la victime bénéficie des mécanismes de protection et d’assistance prévus pour les enfants conformément à l’article 11, par. 2 ?
- c. Veuillez indiquer si l’âge légal pour entretenir des activités sexuelles est inférieur à 18 ans et, dans l’affirmative, veuillez préciser quel est l’âge établi par le droit interne.

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

### Lanzarote Convention, Article 3 – Definitions

For the purposes of this Convention:

- a “child” shall mean any person under the age of 18 years; (...)

### Explanatory report

46. The definition of a “child” is the same as provided in the Council of Europe Convention on Action against Trafficking in Human Beings, i.e. any person under the age of 18 years. It should be noted that in certain articles of the Convention relating to offences a different age is specified. For example, the solicitation of children for sexual purposes is a criminal offence only in relation to children below the legal age before which it is prohibited to engage in sexual activities with them.

### Lanzarote Convention, Article 11 – Principles

- 1 (...).
- 2 Each Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age.

### Explanatory report

88. The point of paragraph 2 is that, while children need special protection measures, it is sometimes difficult to determine whether someone is over or under 18. Paragraph 2 consequently requires Parties to presume that a victim is a child if there are reasons for believing that to be so and if there is uncertainty about their age. Until their age is verified, they must be given the special protection measures for children.

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

### Convention de Lanzarote, Article 3 – Définitions

Aux fins de la présente Convention:

- a le terme «enfant» désigne toute personne âgée de moins de 18 ans; (...)

### Rapport explicatif

46. La définition du mot « enfant » est la même que celle donnée par la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains, à savoir « toute personne âgée de moins de 18 ans ». Il convient de relever que, dans la Convention, certains articles relatifs aux infractions mentionnent un âge différent. Par exemple, la sollicitation d'enfants à des fins sexuelles est une infraction pénale seulement lorsqu'elle concerne des enfants n'ayant pas atteint l'âge légal en deçà duquel il n'est pas permis d'entretenir des activités sexuelles avec eux.

### Convention de Lanzarote, Article 11 – Principes

- 1 (...)
- 2 Chaque Partie prend les mesures législatives ou autres nécessaires pour que, en cas d'incertitude sur l'âge de la victime et lorsqu'il existe des raisons de croire qu'elle est un enfant, les mesures de protection et d'assistance prévues pour les enfants lui soient accordées, dans l'attente que son âge soit vérifié et établi.

### Rapport explicatif

88. L'idée qui sous-tend le paragraphe 2 est que, alors que les enfants nécessitent des mesures de protection spéciales, il est parfois difficile de déterminer si une personne a plus ou moins de 18 ans. Le paragraphe 2 exige par conséquent des Parties qu'elles considèrent qu'une victime est un enfant si, en cas d'incertitude sur son âge, il existe des raisons de croire qu'elle l'est. Dans ces cas, en attendant que leur âge soit vérifié, il faut accorder à ces victimes les mesures de protection spéciales prévues pour des enfants.

## COMPILATION of replies / des réponses<sup>5</sup>

### **ALBANIA / ALBANIE**<sup>6</sup>

#### **Question a.**

According to the Law No.10 347, dated 04.11.2010 "On the Protection of Child Rights", namely article 3/a "Child" refers to every individual born alive, up until 18 years of age."

#### **Question b.**

In instances in which the age of an individual is not entirely defined and there are reasons to believe that the individual is a child, this particular individual will be considered a child and will be subject to Law No.10 347, dated 04.11.2010 "On the Protection of Child Rights", until such time as his age is clearly established.

#### **Question c.**

In internal law, the legal age for sexual activities it is under the 18 years of age. According to Law no. 144/2013, dated "On some amendments to Law no. dated 27.1.1995 "Criminal Code of the Republic of Albania", as amended, namely article 100, paragraph 1, "Having sexual or homosexual relations with children that are less than 14 years old, or with a female child, who is not sexually matured, is punished by imprisonment from seven to fifteen years.

### **ANDORRA / ADORRE**

<sup>7</sup>

Did not reply. / N'a pas répondu.

### **ARMENIA / ARMENIE**

#### **Question a.**

According to Article 1 (2) of the Law of the Republic of Armenia "On the Rights of the Child" adopted on 29 May 1996, "Child shall mean any person under the age of eighteen, except for cases when the person acquires legal active capacity or is recognised as having legal capacity earlier in the manner prescribed by law. According to Article 24 (2) (3) of the Civil Code of the Republic of Armenia adopted on 5 May 1998, a minor having attained the age of sixteen may be declared as having full active legal capacity where he or she works under an employment contract or, with the consent of his or her parents, adopters or the curator, is engaged in entrepreneurial activity and in case where the law permits the entry into marriage before attaining the age of eighteen, a citizen shall acquire full active legal capacity from the moment of entry into marriage.

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<sup>5</sup> The replies are reproduced here in the language they were received. Les réponses sont reproduites ici dans la langue où elles ont été reçues.

<sup>6</sup> States which are underlined are Parties to the Convention, that are, therefore, under an obligation to reply to the questionnaire. / Les Etats dont le nom est souligné sont les Etats parties à la Convention qui doivent donc répondre au questionnaire.

<sup>7</sup> States which are not underlined have signed but not yet ratified the Convention. They have nevertheless been invited to reply to the general overview questionnaire. Les Etats dont le nom n'est pas souligné ont signé pas encore ratifié la Convention. Ils ont néanmoins été invités à répondre au questionnaire « Aperçu général ».

**Question b.**

According to the Criminal Procedure legislation of the Republic of Armenia, the age - in the absence of documents evidencing the age of the victim - is determined by comprehensive forensic medical and forensic psychological expert examinations. By virtue of the established practice, where the expert opinion mentions minimum and maximum age of the person undergoing expert examination, the minimum age is taken as a basis. Moreover, the day of birth of the person undergoing expert examination is considered the last day of the year mentioned in the expert examination. The issue for applying guarantees established by law against the minor victim in criminal proceedings is settled accordingly.

**Question c.**

It should be noted that any age for legal sexual activities is not defined by any legislative acts. According to the Family Code of the Republic of Armenia, voluntary mutual consent of the man and the woman getting married, as well as their attainment the age of eighteen is required for entering into marriage, except for cases prescribed by law. Thus, the mentioned Code permits getting married at the age of sixteen, where there exists the consent of his or her parents, adopters or curator, and the other person getting married is at least eighteen years of age. The person may also get married at the age of seventeen, where there exists the consent of his or her parents, adopters or curator.

Moreover, Articles 141 and 142 of the Criminal Code of the Republic of Armenia respectively impose liability for sexual intercourse or other sexual actions with a person obviously below the age of sixteen by a person having attained the age of eighteen and for committing lecherous actions against a person obviously below the age of sixteen by a person having attained the age of eighteen or against a person obviously below the age of fourteen by a person having attained the age of sixteen, which will be detailed below.

**AUSTRIA/AUTRICHE****Question a.**

With respect to the term “child” which, for the purposes of the Lanzarote Convention, is used in relation to persons under 18 years of age, several concepts used in Austrian law must be explained in more detail. According to Section 74 paragraph 1 subparagraphs 1 and 3 of the Austrian Criminal Code (Strafgesetzbuch - StGB), a minor (Unmündiger) is a person who did not yet complete the fourteenth year of one’s life; an underage person (Minderjähriger) is a person who did not yet complete the eighteenth year of one’s life. A juvenile (Jugendlicher) is a person who has completed the fourteenth year, but not yet the eighteenth year of one’ life (Section 1, subpar. 2 of the Juvenile Courts Act [Jugendgerichtsgesetz – JGG]). Pursuant to Section 4 par. 1 of the Juvenile Courts Act a person under the age of 14 cannot be held responsible under criminal law, i.e. such person cannot be arrested and juvenile criminal law is not applicable; if need be the youth welfare office may take measures. At the age between 14 and 18 a defendant is subject to juvenile criminal law and is deemed to be a juvenile under the Austrian penal system.”

Section 21 par. 2 of the Civil Code (Allgemeines Bürgerliches Gesetzbuch) provides for the same definitions of minor and under age person as Section 74 subpar. 1 and 3 of the Criminal Code.

According to Section 4 subpar. 1 of the Federal Child and Youth Services Act (Bundes-Kinder- und Jugendhilfegesetz 2013 – B-KJHG) “children and adolescents” are all persons who have not completed the eighteenth year of their lives.

**Question b.**

In general the rights provided to children in the Code of Criminal Procedure (CCP) are accorded to all persons who are not proven to be adults.

**Question c.**

Under Austrian criminal law the uniform protective age for self-determined, consensual sexual acts by minors is fourteen years. However, the law provides for a very extensive criminal protection of persons under the age of 18 years from sexual exploitation (see e.g. Sections 207b, 214, 215, 215a, 216, 217 of the CC).

## **AZERBAIJAN / AZERBAÏDJAN**

**Question a.**

The Article 1 of the Law on the Rights of the Child of Azerbaijan Republic provides that rights and obligations of children enshrined in this Law are referred to every person under the age of 18 (the age of maturity) and who are not fully able-bodied. So, in our national legislation a child is defined a person under the age of 18. According to the Convention on the Rights of the Child acceded by the Republic of Azerbaijan in 1992, every person under the age of 18 shall be considered a child. The Article 151 of the Constitution of the Republic of Azerbaijan provides that if discrepancy emerges between national legislative acts and international treaties which the State is a party, international treaties will prevail.

**Question b.**

In the event that the age of a crime victim is unknown and there is a likelihood that the injured person is a child, his/her protection will be carried out based on the statutory enactments of the legislation of the country relating to children and within the rules of practice of judicial agencies. At the same time the child's parents, legal representatives or other individuals and legal entities provided for by law have the commitment to discharge these duties. In any case rights and interests of children under 14 are ensured and protected by their legal representatives and other persons authorized by law. Children of 14 and over may apply to court for protection of their rights and children over 16, who has already obtained citizenship authorities, may apply to all power structures including the internal affairs.

**Question c.**

According to the Article 152 of Criminal Code of the Republic of Azerbaijan, adults having sexual activity with person below age of 16 are deprived from liberty till 3 years. It should be noted that as a result of amendments made to the Criminal Code in 2011, wording of “limitation of liberty” was excluded from this Code.

Thus, according to the classification given by Article 308 of the Administrative Offences Code of the Republic of Azerbaijan, women over 16 but under the age of 18 may be held



criminally liable for prostitution and fine sanctions. Collection and classification of the database relating to the above mentioned age category is provided by the relevant directorate of the Ministry of Internal Affairs according to reporting and current periods.

The State Committee on Family, Woman & Children Affairs of Azerbaijan Republic has given recommendation on making changes and amendments to the Family Code on increasing the age of marriage for females and males to 18. It should be noted that, as a result of amendments made to the Family Code on 15 November, 2011, age of marriage for women was increased to 18.

### **BELGIUM / BELGIQUE**

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

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

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

### **BULGARIA / BULGARIE**

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

### **CROATIA / CROATIE**

#### **Question a.**

The notion of "child" is defined in Article 87, point 7, of the Criminal Act<sup>8</sup> (hereinafter referred to as: the CA) as any person who has not attained the age of 18. Thus, the internal law of the Republic of Croatia is aligned with the Lanzarote Convention.

#### **Question b.**

The Criminal Procedure Act<sup>9</sup> (hereinafter referred to as: the CPA) lays down expressly that where the age of a child-victim is uncertain, it is to be assumed that the child-victim in question is under the age of eighteen.

#### **Question c.**

Article 158<sup>10</sup> of the CA makes it a criminal offence to have sexual intercourse with a person under the age of fifteen. However, the sexual abuse of a child over the age of 15 years is also a criminal offence if such offence has been committed by a person who has been entrusted with the upbringing, education, custody, spiritual guidance care of the child or by

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<sup>8</sup> Official Gazette 125/11 and 144/12.

<sup>9</sup> Article 44, paragraph 3, of the CPA (Official Gazette 152/08, 76/09, 80/11, 91/12, 143/12, 56/13, 145/13) reads as follows: "Where the age of the victim is unknown, it shall be assumed that the victim is a child if there is a possibility that the victim has not reached the age of eighteen years."

<sup>10</sup> Article 158, paragraph 1, reads as follows: "Whoever engages in sexual intercourse or an equivalent sexual act with a child under the age of fifteen, or induces a child under the age of fifteen to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself or herself a sexual act equated with sexual intercourse, ..."

a person who is a relative by blood or by adoption, in direct line, a step-father or a step-mother.<sup>11</sup>

The Act also provides that there shall be no criminal offence if the age difference between the persons engaging in sexual intercourse or an equivalent sexual act or a lewd act does not exceed three years.

## **CYPRUS / CHYPRE**

### **Question a.**

According to Cyprus Law, a child is considered “any person under the age of 18 years”.

Under the Law for the Combating of Trafficking and Exploitation of Persons and for the Protection of Victims 87(I)/2007, ‘child’ is considered any person under the age of 18 years.

### **Question b.**

When the age of a victim is uncertain and there are reasons to believe that the victim is a child, or if that person states that she/he is a minor, all services, such as protection and assistance, health care and psychological support, are provided as if that person were a child.

For example, in cases of undocumented unaccompanied minors, when a person enters the Republic of Cyprus stating that is a minor all necessary services for the protection and welfare of unaccompanied minors are provided.

### **Question c.**

There is no specific provision on the permissible age for sexual activities. However, under the Penal Code (Cap.154), any person who has sexual intercourse with a person who is under the age of 17 years, commits a crime and is liable to imprisonment.

## **DENMARK / DANEMARK**

### **Question a.**

No generally applicable definition of “child” exist.

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<sup>11</sup> Article 159 reads as follows: “(1) Whoever engages in sexual intercourse or an equivalent sexual act with a child over the age of fifteen with whose upbringing, education, custody, spiritual guidance or care he/she has been entrusted, or whoever induces a child over the age of fifteen with whose upbringing, education, custody, spiritual guidance or care he/she has been entrusted to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself/herself a sexual act equated with sexual intercourse, shall be punished by imprisonment from six months to five years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on a direct-line relative by blood or by adoption, a step-father or step-mother who engages in sexual intercourse or an equivalent sexual act with a child over the age of fifteen or who induces a child over the age of fifteen to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself/herself a sexual act equated with sexual intercourse.”

**Question b.**

When there are reasons to believe that the victim is a child, the victim will be accorded protection and assistance as a child, unless and until it has been established that the victim is not a child.

**Question c.**

The generally applicable age for legal sexual activities is 15 years of age.

**ESTONIA / ESTONIE****Question a.**

Under the Republic of Estonia Child Protection Act § 2 (1) a child is a human being below the age of eighteen years.

**Question b.**

Under the Republic of Estonia Child Protection Act § 2 (2) a person must be treated as a minor, when their age is not known and there is reason to believe that this person is under the age of 18, until proven otherwise (entered into force on 28.12.2013).

**Question c.**

Under the Penal Code § 145 (1) a person under the age of fourteen is a child, and sexual intercourse or other acts of sexual nature with children are prohibited.

**FINLAND / FINLANDE****Question a.**

In general a child in Finland is considered a person under 18 years of age (Child Welfare Act). However there are some differences in age limits in different legislation (sexual consent, criminal proceedings).

**Question b.**

There is no general legislation about this but the Child Welfare Act applies to certain extent to young people aged 18-20 as well. This ensures that the authorities can pay attention also to the wellbeing of young people that might be over the age of 18.

**Question c.**

The age for sexual activities is 16 and in some cases 18 (Criminal Code, Chapter 20, Sections 5-7 a, 8 a-8c).

**FRANCE**

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

**GEORGIA / GEORGIE**

Pursuant to Article 12 of Civil Code of Georgia adult is a person who has attained age of 18. Early childhood shall be defined as the period below the age of 7 years. Child under the age of 7 is considered to have no active legal capacity. Person from the age of 7 to

18 years has limited active legal capacity. According to Article 1108 of the Code the age of marriage shall be defined as eighteen years. In exceptional cases marriage is allowed from the age of sixteen years, subject to the preliminary consent of the parents or other statutory representatives.

Criminal Procedure Code of Georgia (CPCG) defines the notion of “juvenile” for its purposes - according to Article 3, paragraph 1, juvenile is a person who has not reached the age of 18.

## **GERMANY / ALLEMAGNE**

### **Question a.**

Under German criminal law (relating to young offenders) a distinction is drawn between a “child” (*Kind*), “juvenile” (*Jugendlicher*) and “young adult” (*Heranwachsender*): A “child” is defined as any person under the age of 14 years (sections 19 and 176 (1) of the Criminal Code (*Strafgesetzbuch, StGB*)), a “juvenile” as any person between the age of 14 and 18 years (section 1 (2), first clause, of the Youth Courts Act (*Jugendgerichtsgesetz, JGG*)), and a “young adult” as any person between the age of 18 and 21 years (section 1 (2), second clause, JGG).

Hence, the notion of “child” as defined in the Convention corresponds to the aggregate of “child” and “juvenile” under the German system of criminal law.

### **Question b.**

The German law of criminal procedure provides for various measures to protect vulnerable victims. The points of reference for these protective measures are certain offences as well as the fact that the victims are minors. Protection is not only afforded to victims who are minors at the time the investigations or criminal proceedings are conducted, but in some cases also to the underage victims of sexual offences who only decide to address the matter and initiate criminal proceedings once they are adults. In order to be able to decide whether specific investigations need to be conducted giving due consideration to the victim’s vulnerability, it must first be established that the victim is in fact in need of special protection. If necessary, the police authorities will, therefore, involve staff in the youth welfare office (*Jugendamt*) in their investigations as early as possible.

In accordance with no. 222a para. 2 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (*Richtlinien für das Straf- und Bußgeldverfahren, RiStBV*; “the Guidelines”), the victims of sexual offences should be given the opportunity to make a statement, through legal counsel, regarding their specific need for protection.

### **Question c.**

The German law of criminal procedure provides for various measures to protect vulnerable victims. The points of reference for these protective measures are certain offences as well as the fact that the victims are minors. Protection is not only afforded to victims who are minors at the time the investigations or criminal proceedings are conducted, but in some cases also to the underage victims of sexual offences who only decide to address the matter and initiate criminal proceedings once they are adults. In order to be able to decide whether specific investigations need to be conducted giving due consideration to the victim’s

vulnerability, it must first be established that the victim is in fact in need of special protection. If necessary, the police authorities will, therefore, involve staff in the youth welfare office (*Jugendamt*) in their investigations as early as possible.

In accordance with no. 222a para. 2 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (*Richtlinien für das Straf- und Bußgeldverfahren*, RiStBV; “the Guidelines”), the victims of sexual offences should be given the opportunity to make a statement, through legal counsel, regarding their specific need for protection.

### **GREECE / GRÈCE**

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

### **HUNGARY / HONGRIE**

Did not reply. / N’a pas répondu.

### **ICELAND / ISLANDE**

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

### **IRELAND / IRELANDE**

Did not reply. / N’a pas répondu.

### **ITALY / ITALIE**

#### **Question a.**

Under Italian law, anyone under 18 is a child. This is specified in the Civil Code at Article 2. This is in line with the UN Convention on the Rights of the Child, which Italy ratified on 27 May 1991 with Law no. 176. Moreover, under Italian law, the mere fact of being born grants an individual the status of a “person subject to the law”, with rights and duties (legal capacity). Minors gain the right to exercise their own rights independently – and legally – and are subject to certain duties upon turning 18 (art. 2 of the Italian Civil Code), which is the age when they acquire the so-called “capacity to act”. Until this point, the protection of minors’ rights is entrusted to the parents, legal guardians or a guardian appointed by a judge. However, it is possible to acquire a limited capacity to act before reaching 18, provided the minor is at least 16. This leads to empowered minor status, which can only be acquired following approval of the Juvenile Court – which assesses the minor’s physical and psychological maturity – for someone who is married. Empowered status means the minor is no longer under his/her parents’ control, thus being allowed to perform routine administrative tasks. However, the minor still needs the assistance of another party, called the curator, to make any asset-related decision.

In specific situations, the legal system might also bestow on minors greater power in exercising consent, for example (and especially), as regards healthcare treatment.

Criminal responsibility. The minor is not legally responsible for crimes committed up to the age of 14, presuming that until that age, for whatever crime, he or she is not sufficiently capable of forming the necessary criminal intent (art. 97, Criminal Code). Between the ages

of 14 and 18, each case must be decided individually as to whether the minor, at the time of committing the crime, had the capacity to understand or the intention and therefore whether he or she was legally responsible for his or her actions (art. 98, Criminal Code). He or she cannot be subjected to administrative sanctions, unless, at the moment in which he or she committed an indictable administrative offence, he or she had reached the age of 18 (art. 2, Law no. 689 of 24 November 1981). Children under the age of 14 who commit serious crimes or who are considered to be dangerous can be placed in a judicial reformatory (art. 224, Criminal Code). There is no minimum age limit for this.

#### **Question b.**

According to the Italian legislation when the age of the victim is uncertain there is a presumption about the victim being a child. (Art. 602-c. of the Penal Code)

Moreover, the law of ratification of the Lanzarote Convention foresees the fact that not knowing the age of the person, minor of 18 years, cannot be considered an excuse in the crimes of reduction or maintenance in slavery or servitude, child prostitution, child pornography, possession of child pornography, tourism initiatives aimed at the exploitation of child prostitution, use of children begging, trafficking in persons, purchase and sale of slaves, sexual violence, sexual acts with a minor, gang rape, solicitation of a minor and corruption of minors.

As regards the Ministry of Justice, pursuant to Art.11 of Law no. 66/96, the necessary measures are adopted by the Offices of Youth Social Services of the Juvenile Justice Department pending the victim's age assessment.

Moreover, as regards the police force (Arma dei Carabinieri) in order to ensure protection and assistance provided for children, even when the age of a victim is uncertain, in accordance with Article 11 par 2, Italy established technical assessments by NMR (Nuclear magnetic resonance) and psychological evaluation of the victim age.

#### **Question c.**

Both girls and boys have the right to consent to sexual activity at the age of 14. This age comes from criminal law (art. 609, par. 4; Criminal Code), which prohibits sexual acts committed with minors of less than 14 years. This age limit is reduced to 13 years in the case in which consent has been given for a sexual encounter with a minor who is not more than 3 years older. A minor can never give valid consent to incest (punished within the limits set down by art. 564 of the Criminal Code) and, until the age of 18, the minor cannot consent to sexual acts with his or her guardian or with a person who has been in a position of care and control over him or her, whether it be for reasons of education, supervision or custody. Moreover, pursuant to Art. 609-bis criminal code, perpetrators of sexual activities with children under 14 are punished; the age limit rises to 16 when the perpetrator is an ascendant, a parent – also adoptive – or the parent's partner, the guardian or other person to whom the child is entrusted for reasons of care, education, surveillance or custody or a person cohabiting with the child. Beyond the cases set forth in Art. 609-bis, the ascendant, the parent, also adoptive, or the person cohabiting with the latter, or the guardian who – by abusing the powers related to his/her status – engages in sexual activities with a child over 16 shall be punished by a 3 to 6 years' term of imprisonment. Yet, a minor who engages in sexual activities with a child over 13 shall not be punished where the age difference

between them is not over 3 years. Law no. 172/12 was amended by Law 15 October 2013 n.119 "Urgent measures on security and fight against gender violence" <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2013-10-15;119>

## **LATVIA / LETTONIE**

### **Question a.**

The notion of "child" (or "minor") under the legislature of Latvia has the same meaning as for the purpose of the Article 3 of the Convention.

As stated by Article 3 of the Protection of the Rights of the Child Law, "a child is a person who has not attained 18 years of age, excepting such persons who have been declared to be of legal age in accordance with the law or have entered into marriage before attaining 18 years of age."

Entering into marriage before attaining eighteen years of age is permissible in exceptional cases only. In line with Article 33 of the Civil Law, "by way of exception, a person who has attained sixteen years of age may marry with the consent of his or her parents or guardians if he or she marries a person of age of majority. If the parents or guardians, without good cause, refuse to give permission, then permission may be given by an Orphan's court for the place where the parents or appointed guardians reside.

A child can be declared as a person of age of majority also only in exceptional circumstance. As stated by the Article 220 of the Civil Law, "in exceptional circumstances and for especially good cause, when the guardians and closest kin of a minor attest that the behaviour of the minor is irreproachable, and he or she are able to independently protect and defend his or her rights and perform his or her duties, the minor may be declared as being of age of majority even before he or she have attained the age of eighteen, but not earlier than before he or she fully attain the age of sixteen." The granting of majority before term is executed by the appropriate Orphan's court, and its decision is subject to being confirmed by a court.

### **Question b.**

In line with the Law On Social Services and Social Assistance Section 13 Paragraph 12, "the State shall ensure social rehabilitation services for children who have suffered from violence. Until clarifying of the age of the person, social rehabilitation shall be ensured also to those victims of violence whose minority is doubtful."

At the same time please be informed that the Saeima (Parliament) is currently viewing a draft law, which provides to supplement the Protection of the Rights of the Child Law with a general principle that, in such situations, when the certain age of the possible of the child, he or she is ensured with all the assistance (and not just social rehabilitation), which is provided for children:

*"All entities involved in protection of a child's rights are obliged to provide assistance in any case to a child who needs it, considering specific needs of the particular child and circumstances of the particular situation. If there is any doubt about a person's minority, such a person, until clarification of his or her age, shall be considered as a minor and this person shall be ensured with appropriate assistance."*

### Question c.

In Latvia, age of puberty at which children are allowed to engage in sexual activities, is 16 years of age. Adult persons performing sexual acts with a child who has not attained the age of 16, is criminally liable:

The Criminal Law Section 161. Sexual Connection, Pederasty and Lesbianism with a Person who has not Attained the Age of Sixteen Years

*For a person who commits an act of sexual connection, or pederastic, lesbian or other unnatural sexual acts of gratification, with a person who has not attained the age of sixteen years and who is in financial or other dependence on the offender, or if such offence has been committed by a person who has attained the age of majority the applicable punishment is deprivation of liberty for a term not exceeding four years or custodial arrest or community service or a fine with or without probation supervision for a period not exceeding three years.*

## LIECHTENSTEIN

Did not reply. / N'a pas répondu.

## LITHUANIA / LITUANIE

### Question a.

Para a of Article 3 of the Convention stipulates that "child" shall mean any person under the age of 18 years, i.e. the end of childhood is related to the person's age (the age of majority) without any other possible criteria for defining the end of childhood. Bearing in mind the aforementioned provisions of the Convention, it should be noted that Article 2 of the Republic of Lithuania Law on Fundamentals of Protection of the Rights of the Child stipulates that a child is a human being below the age of 18 years, unless otherwise established by laws, i.e. the end of childhood is related to the age of the child as well as other circumstances under which the child acquires full legal capacity.

#### **"Article 2. Concept of the child**

A child is a human being below the age of 18 years, unless otherwise established by laws."

Provisions of the Civil Code of the Republic of Lithuania (hereinafter referred to as the CC) (Articles 2.5 – 2.9) relate the acquisition of civil capacity and accordingly the end of parents' rights and obligations with regard to their minor children to the age of majority of a person and his capacity (marriage, emancipation).

It is generally stipulated that a person acquires civil capacity at the age of majority (eighteen years of age), except for cases when the law provides for the possibility of a person to enter into marriage before he is eighteen and when a person has been declared capable (emancipation). It should be noted that a person having entered into marriage acquires full civil capacity at the moment of entering into marriage and does not lose it, if at a later date this marriage is dissolved or nullity of marriage is declared for reasons not related to the age of the parties to marriage. As far as declaration of capacity of a person (emancipation) is concerned, the court may annul the declaration of full capacity of a person.

#### **„Article 2.5. Active civil capacity of natural persons**

1. On attaining full age, i.e. when a natural person is eighteen years of age, he, by his acts, shall have full exercise of all his civil rights and shall assume civil obligations.



2. Where the law provides for the possibility of a natural person to enter into marriage before he is eighteen, the person, who has not yet come of the given age, shall acquire full active civil capacity at the moment of entering into marriage. If at a later date this marriage is dissolved or nullity of marriage is declared for reasons not related to the age of the parties to marriage a minor shall not lose his full active civil capacity.

Article 2.6. Prohibition to impose restrictions on the passive or active civil capacity of Natural Persons on the Grounds which are not Prescribed by Law.

1. Restrictions on the passive or active civil capacity may not be imposed on anyone in any other manner except by express provision of law.

2. Transactions, acts of public or municipality institutions or officials, which impose restrictions on the passive or active civil capacity, are deemed to be null and void except in cases where the said transactions and acts are prescribed by law.

Article 2.7. Active civil capacity of minors under fourteen years of age

1. Contracts on behalf and in the name of minor's under fourteen years of age shall be concluded by their parents or guardians.

2. Upon entering into contracts and enforcing them parents and guardians shall have to act exceptionally in the interest of minors. Rights and obligations of parents and guardians in administering the property of minors are laid down in the provisions of Book three of the given Code.

3. Minors under fourteen years of age shall enjoy the right to enter alone into contracts to meet their ordinary and usual needs, conclude contracts aiming at gratuitous personal gain, as well as conclude contracts related to the use of their own earnings or money provided by their legal representatives or other persons if the said contracts fail to have a prescribed notarial or any other specific form.

4. Liability of legal representatives for contractual obligations of minors, who are under fourteen years of age, shall be prescribed by law if they fail to prove that they are not at fault for the breach of the said obligations.

5. Where a contract concluded by a minor under fourteen years of age is not recognised to be null and void and where the said person becomes legally capable, the other party to the contract may apply in writing to the party to the contract, who has become legally capable, and request the approval of the contract within the time limits, which may not be shorter than one month, determined in the application. Where the person fails to notify about his refusal to approve the contract within the proposed time limits, he shall be deemed to have approved the contract.

Article 2.8. Active civil capacity of minors over fourteen and under eighteen years of age

1. Minors over fourteen and under eighteen years of age shall enter into contracts with the consent of parents or guardians. The form of consent shall have to correspond to the form of the contract concluded. Contracts concluded without the consent of legal representatives shall be deemed valid if the consent of the legal representative is given after the contract has been concluded.

2. Minors over fourteen but under eighteen years of age, apart from the rights laid down in paragraph 3 of Article 2.7, shall have the right to dispose of their income and property acquired for that income, implement copyright to their works, inventions, industrial design as well as the right to enter into contracts alone to meet their ordinary and usual needs.

3. Where there are sufficient grounds, the court may be called upon to rule on an application filed by child care institutions or other interested persons to impose restrictions on or divest minors, who are over fourteen but under eighteen years of age, of the right to dispose independently of their income and property.

4. The right of minors over fourteen but under eighteen years of age to make deposits in credit institutions and dispose of them shall be prescribed by law.

5. Minors over fourteen but under eighteen years of age shall alone be liable for their contractual obligations.

Article 2.9. Emancipation of minors

1. Where a minor is sixteen years of age the court may emancipate him after he or his guardian, parents, institutions of guardianship or he himself has filed a declaration to that effect with the court if there are sufficient grounds to believe that he may exercise all civil rights and discharge his obligations alone. In all cases a minor has to give his consent to be emancipated.

2. The court may annul minor's emancipation on the request of parents or child care institutions in the event that exercising his rights and discharging his obligations a minor causes damage to his own or other persons' rights or lawful interests."

Child-related authorisations, rights and obligations of divisions of the child rights protection of municipalities – institutions closest to the child and directly representing and protecting child rights and lawful interests, are related to the age of the child (the age of majority) and his capacity.

**Question b.**

“Article 23. Protection of the Child from Sexual Exploitation  
(...)”

3. Where the age of the child is not established and there are grounds to believe that he is a minor until his age is confirmed, the child shall be provided with protection measures as a victim subject to sexual exploitation or sexual abuse.”

**Question c.**

Pursuant to the provisions of Paragraph 1 of Article 151<sup>1</sup> of the Criminal Code, sexual activities shall be considered unlawful if a person has not attained the age of 16 years:

“Article 151<sup>1</sup>. Satisfaction of Sexual Desires by Violating a Minor’s Freedom of Sexual Self-Determination and/or Inviolability

1. A person who has sexual intercourse or otherwise satisfied his sexual desires with a person under sixteen years of age in the absence of characteristics of a rape, sexual assault or sexual abuse  
(...)”

The provisions of Paragraph 5 of this article specify the following:

“5. The actions specified in Paragraph 1 herein shall not constitute a crime, if there is no considerable difference between the age, spiritual and physical maturity of the parties to these actions.

**LUXEMBOURG**

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

**MALTA/MALTE**

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

**REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA**

**Question a.**

Specialized legal doctrine qualifies as a minor child under the age of 18. In support of this argument, we invoke provisions of par. (2) Article 1 of Law no. 338 of 15 December 1994 on the Rights of the Child, according to which a person is considered a child from birth until the age of 18. We find the same definition in paragraph content. (1), art. 51 of the Family Code of the RM, that the person who has not attained the age of 18 years (of age) is considered child.

**Question b.**

This measure is provided by the Government Decision No 948 of August 7, 2008, point 10 that approves the Regulation on the procedure for repatriation of children and adults - victims of human trafficking, illegal trafficking of migrants and unaccompanied children, which states that "in case the age of the person identified abroad is not known for sure, but there are reasons to believe that it is a child, the person will be treated as a child, and

offered all the special protection measures stipulated by the Regulation and the instruments on the rights and protection of children up to establishment of the exact age."

**Question c.**

The Republic of Moldova Criminal Code provides criminal legal liability in cases of sexual intercourse with a person under the age of 16 years old.

**MONACO**

**Question a.**

La loi n°1.261 en date du 23 décembre 2002 et l'Ordonnance Souveraine n° 15.973 du 25 septembre 2003 portant application de ladite loi, ont abaissé l'âge de la majorité civile à 18 ans.

Ainsi, la définition de l'enfant retenue par l'article 3 de la Convention de Lanzarote correspond à celle du droit civil monégasque dans la mesure où l'article 410-1° du Code civil dispose que : « *La majorité est fixée à dix-huit ans ; à cet âge, on est capable de tous les actes de la vie civile* ».

Par ailleurs, il peut également être relevé que l'âge du mariage a été modifié par la loi n° 1.382 du 20 juillet 2011 et l'article 116 du Code civil dispose désormais que :

*« L'homme et la femme ne peuvent se marier avant dix-huit ans.*

*Néanmoins, il est loisible au Prince d'accorder les dispenses d'âge pour motifs graves si le mineur a au moins seize ans. »*

**Question b.**

No reply / Pas de réponse.

**Question c.**

Depuis l'adoption de la loi n°1.344 en date du 26 décembre 2007 relative au renforcement de la répression des crimes et délits contre l'enfant, le seuil pertinent de majorité sexuelle – appréhendé comme le seuil de vulnérabilité particulière de l'enfant – est établi à seize ans et ce au bénéfice de plusieurs incriminations : article 261 du Code pénal (attentat à la pudeur sans violence sur enfant de moins de seize ans), cinquième alinéa de l'article 262 du Code pénal (viol sur enfant de moins de seize ans) et deuxième alinéa de l'article 263 du Code pénal (attentat à la pudeur avec violence sur enfant de moins de seize ans).

Cependant, il peut être précisé qu'au terme de l'article 261, l'attentat à la pudeur est également caractérisé lorsqu'il est commis par tout ascendant sur un mineur, même âgé de plus de 16 ans, mais non émancipé par le mariage.

## **MONTENEGRO**

### **Question a.**

The Law on Social and Child Protection defines the notion of a child as a person under the age of 18 (Article 19, item 6).

The Family Law (Article 13, paragraph 1) provides that the age of majority is gained by reaching the age of 18, so a child is a person who did not reach the age of 18.

Article 142, paragraph 7 of the Criminal Code stipulates that a child is a person who has not reached fourteen years of age; paragraphs 8 and 9 of the same Article provide that a juvenile is deemed to be a person who have reached the age of fourteen, but not the age of eighteen, while underage persons are deemed to be persons who have not reached the age of eighteen.

From the point of view of criminal liability of children, or juveniles, according to the Law on the Treatment of Juveniles in Criminal Proceedings: a juvenile is a person who at the time of commission of the criminal offence reached the age of 14 but not the age of 18 (Article 3, paragraph 1); a younger juvenile is a person who at the time of commission of the criminal offence reached the age of 14 but not the age of 16 (Article 3, paragraph 1); while older juvenile is a person who at the time of commission of the criminal offence reached the age of 16 but not the age of 18 (Article 3, paragraph 3). A young adult is a person who at the time of commission of the criminal offence reached the age of 18 but not the age of 21 (Article 3, paragraph 4).

This terminological division in the system of criminal justice is done on the basis of criminal liability and sanctions that may be imposed on persons under the age of majority. However, following the adoption of the Law on the Treatment of Juveniles in Criminal Proceedings, the system of juvenile judiciary of restorative justice came to be used, which treats persons under the age of 18, or children, in a special way.

### **Question b.**

The age of the child is determined on the basis of personal documents. If in the process it is impossible to determine the age, or there is no such document, a statement of the child is taken as proof of age.

### **Question c.**

In terms of the criminal legislation, anyone who performs sexual intercourse with a child under the age of 14 shall be subject to criminal liability, except when no larger difference between the offender and the child in respect to their mental and physical development exists (Article 206 of the Criminal Code). The relations between an adult and a child in which the adult has a special position of responsibility, trust and power in relation to the child (parents, guardians, foster parents, teachers, educators, health and other public staff) also do not allow sexual activity with a minor older than 14 years of age, regardless of the fact that there is an understanding and agreement for the activity by the child (Article 207 of the Criminal Code).

Article 24 of the Family Law stipulates that persons under the age of 18 cannot marry. Exceptionally, the court may permit a minor older than the age of 16 to get married.

## **NETHERLANDS / PAYS BAS**

### **Question a.**

Yes

### **Question b.**

Child pornography is punishable by Dutch Law. The law penalizes the person who distributes, offers, openly displays, produces, imports, forwards, exports, acquires, has in his possession or gains access by means of an automated work or by making use of a communication service, an image – or a data carrier containing an image – of a sexual act, in which someone who evidently has not reached the age of eighteen is involved or appears to be involved. Age is not an objective criterion. Also people who seem to be younger than 18 years, may fall within the description of the law.

### **Question c.**

Dutch law does not use the term sexual abuse as such. The law uses the terms “indecent behaviour”. This term does not equal the more neutral term “sexual acts”. Indecent behaviour is understood as behaviour contrary to the general accepted social and ethical accepted standards. This means that the understanding of indecent behaviour evolves over time as it is subject to the prevailing sexual morality. As a consequence sexual relations with a minor are not punishable if the sexual relationship is voluntary and according to normal sexual behaviour of peers of the minor and thus in accordance with the generally accepted sexual morality. Dutch legislation stipulates that minors who are at least 16 years of age are to be seen as “sexual adults”. Voluntary sexual relations with a minor over 16 are as a rule not punishable. Voluntary sexual relations with minors under 16 are punishable, when the sexual relations entail indecent behaviour.

## **NORWAY / NORVEGE**

Did not reply. / N’a pas répondu.

## **POLAND / POLOGNE**

Did not reply. / N’a pas répondu.

## **PORTUGAL**

### **Question a.**

Yes. In the Portuguese legal system, child is any person under 18 years of age (Article 122 of the Civil Code).

### **Question b.**

The general practice of authorities that deal with children, in particular those with competences as regards childhood and youth matters, the commissions for the protection of children and juveniles at risk as well as the judicial authorities responsible for the

execution of the Law for the promotion of children and young people at risk, is to afford protection to all presumed children. This protection only ceases when the confirmation that the victim is not a minor is received.

Measures to disseminate best practices within public administration were adopted and a project to facilitate birth registration was developed. Provisions were taken to facilitate contacts, in particular of persons with disabilities and migrants, with public administration and other services, including inspection visits, signing of protocols, enforcement of rules on priority reception, setting up of civil registry desks at National Immigrant Support Centers, and the simplification of registration procedures, including by using online tools, concentrating services and creating a support hotline.

The Project "To be born a Citizen", which is available in all the public maternity units and in large private maternities (through the celebration of protocols between the Ministry of Justice, Health departments and Hospital units) has promoted access to the birth register and to the protection of the identity of the child.

Through this project new-borns can now directly be registered in the hospital or maternity by representatives from the civil register, facilitating parents' access to the service of birth register of birth and thus improving the control on the identity of the child.

#### **Question c.**

There is no specific provision on the general age of consent for sexual activities. The age of consent should result from the conjugation of provisions of the Criminal Code and from the Civil Code.

Nevertheless, children under 18 and 16 years benefit from special protection in the case of certain sexual activities such as participation in pornography (children below 18) or consenting sexual activities where the partner takes advantage of the inexperience of the minor (children between 14 and 16).

## **ROMANIA / ROUMANIE**

#### **Question a.**

In the sense of the Civil Code and of Law No. 272/2004 concerning the protection and fostering of children's rights:

Domestic legislation uses for the definition of the person who has not reached the age of 18 two concepts: the concept of „minor” and the concept of „child”.

According to the Civil Code and to Law No. 272/2004 concerning the protection and fostering of children's rights, a child is a person who has not reached the age of 18 and has not acquired, according to the legal provisions, full capacity to act<sup>12</sup>. The minor is the person who has not reached the age of 18<sup>13</sup>.

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<sup>12</sup>**Law No. 272/2004 concerning the protection and fostering of children's rights:**

#### **ART. 4**

In the sense of the present law, the following terms and expressions shall have the following meanings:

a) child - person who has not reached the age of 18 and has not acquired, according to the legal provisions, full capacity to act;

This means that the child is the minor who has not reached full capacity to act.

As a general rule, full capacity to act is acquired at the age of 18 which means that the concept of minor is synonymous to the concept of child and designates the person who has not reached the age of 18 yet. There are, however, some exceptions, namely the two cases when, according to the Civil Code, the minor can acquire anticipated full capacity to act before reaching the age of 18:

- Anticipated acquiring full capacity to act after reaching 16 years of age with hearing of the parents and of the minor, as well as of the family council<sup>14</sup>, whenever necessary.

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(...)”

- **Civil code (Law No. 287/2009 concerning the Civil Code):**

ART. 263

**The principle of the best interests of the child**

- (1) Every decision concerning a child, no matter its author, shall be taken in light of the child's interests.
- (2) Competent authorities shall, in every application brought before them, affecting the interest of a child give any necessary guidance for the parties to make use of methods of amicable resolution of conflicts.
- (3) Procedures concerning the relationships between parents and children shall ensure that the wishes and interests of the parents concerning the children can be brought to the knowledge of the authorities and that the authorities take them into consideration in the decisions they make.
- (4) Procedures concerning children shall be carried out within a reasonable time so that the best interests of the child and the family relationships are not affected.
- (5) In the sense of the legal provisions concerning child protection, a child shall be the person who has not reached the age of 18 and has not acquired full capacity to act, according to the legal provisions.

<sup>13</sup> **Civil Code (Law No. 287/2009 concerning the Civil Code):**

„ART. 38

**Beginning of the capacity to act**

- (1) Full capacity to act shall begin on the date when the person attains full age.
- (2) The person attains full age when reaching the age of 18.”

<sup>14</sup> **Civil code (Law No. 287/2009 concerning the Civil Code):**

**Family council**

ART. 124

**The role of the family council**

- (1) The family council can be established with the purpose of supervising how the tutor exercises his rights and fulfills the obligations of tutorship in relation to the minor and his property.
- (2) In case of fostering of the minor through parents, through adoption or, as case may be, through other measures of social protection provided for by law, the family council shall not be established.

ART. 125

**Members of the family council**

- (1) The guardianship court can establish a family council formed of 3 relatives or in-laws, considering the kinship and the personal relationships to the minor's family. In default of relatives or in-laws other persons who had friendship relations with the minor's parents or who take a particular interest in the latter's situation can also be appointed.
- (2) The spouses cannot be together members of the same family council.
- (3) Under the same conditions, the guardianship court shall also appoint two substitutes.
- (4) The guardian cannot be a member in the family council.

(...)

ART. 130

**Duties**

- (1) The family council gives advisory notices, upon the request of the guardian or of the guardianship court, and makes decisions in the cases provided for by law. Advisory notices and decisions shall be made with the majority of the family council's members, the council being headed by its eldest member.
- (2) When making decision the minor who has not reached the age of 10 shall be heard, the provisions of art. 264 being applicable accordingly.

- The minor's marriage after reaching the age of 16, based on a medical opinion, with the consent of his/her parents or, as case be, of the guardian and with the authorization of the guardianship court<sup>15</sup>.

Furthermore, art. 1 of Law No. 18/1990 concerning the ratification of the Convention concerning the children's rights defines the child as any human being under the age of 18, excepting cases in which the law applicable to the child sets the limit of full age under this age.

We would like to mention that according to domestic legislation treaties and conventions ratified by Romania belong to domestic legislation and are directly applicable.

In the sense of the criminal law:

Criminal law generally operates with the concept of „minor” without making distinction depending on acquiring the full capacity to act of the minor, so that the provisions concerning the minor's protection in the field of the criminal law are applicable to all persons who have not reached the age of 18.

Hence, the minor who has not reached the age of 14 is not held criminally liable, as there is a legal absolute presumption of his/her mental incompetence, whereas the minor aged between 14 and 16 years is held criminally liable only if it is proven that he/she committed the offence as mentally competent; the minor who has reached the age of 16 is held criminally liable, except the case in which it is established, based on a medical-forensic report that at the moment he/she committed the offence the person was mentally incompetent<sup>16</sup>. Also, the person who has not reached the age of 18 is considered to be a

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(3) The decisions of the family council shall be motivated and registered in an especially designated registry which shall be kept by one of the members of the council, appointed to this effect by the guardianship court.

(4) Acts closed by the guardian in default of the advisory notice can be annulled. Closing the act in disregard of the notice only engages the guardian's responsibility. The provisions of art. 155 are applicable accordingly.

<sup>15</sup> **Civil code (Law No. 287/2009 concerning the Civil Code):**

ART. 107\*)

#### **The guardianship court**

(1) The procedures herein provided on the protection of the individual fall under the competence of guardianship and family court established in accordance with the law, hereinafter called the guardianship court.

(2) In all cases the guardianship court shall immediately solve these requests.

- **Law No. 76/2012 concerning the implementation of Law No. 134/2010 concerning the Code of civil procedure:**

ART. 76

Until the organization of the guardianship and family courts, local courts or, as case be, regional courts or specialized regional courts for minors and family shall act as guardianship and family courts, having the competence established according with the Civil Code, Code of Civil Procedure, the present Law, as well as the applicable special regulations.

<sup>16</sup> **Civil code (Law No. 287/2009 concerning the Civil Code):**

ART. 113

Limits of the criminal liability

(1) The minor who has not reached the age of 14 shall not be held criminally liable.

(2) The minor aged between 14 and 16 years is held criminally liable only if it is proven that he/she committed the offence as mentally competent.

(3) The minor who has reached the age of 16 is held criminally liable according to the law.



vulnerable witness, without taking into consideration whether he/she has acquired full capacity of act or not.

Other special laws concerning victim protection:

The provisions concerning the protection of minor victims contained in other special laws (for example Law No. 211/2004 concerning some measures for ensuring the protection of victims of offences, Law No. 678/2001 concerning the prevention and fight of trafficking in human beings), which will be referred to within the answers to the next questions, are also applicable to all persons who have not reached the age of 18.

**Question b.**

Romanian legislation has no clear provision on this situation.

However, most of the responds from the main public service provider for children victims of sexual abuse and exploitation, namely the General Departments for Social Assistance and Child Protection (which will be abbreviated GDSACP, in the following answers), organized at the level of the counties and sectors of Bucharest, mention that practice is based on this presumption and if the age is not known, the child receives the necessary services meanwhile the procedures for identity and age determination are initiated.

**Question c.**

In criminal matters, there is no definition of the age for legal sexual activities, but the new Criminal Code sanctions the sexual intercourse with a minor beginning with the age of 15.

This means that the age for sexual activities can be considered the age of 15. If the minor has not reached 13 years, the penalty threshold is higher. The sexual intercourse with the consent of the persons involved between whom the difference of age is less than 3 years is not sanctioned in relation to any of the persons involved<sup>17</sup>.

As regards legislation in civil matters, there is the provision according to which the marriage can be closed if the future spouses have reached the age of 18 and, for grounded reasons,

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<sup>17</sup> ART. 220

Sexual intercourse with a minor

(1) Sexual intercourse, oral or anal sexual intercourse, as well as any other acts of vaginal or anal penetration committed against a minor aged between 13 and 15 years shall be punished by imprisonment from one to 5 years.

(2) The act provided in para. (1), committed against a minor who has not reached the age of 13, shall be punished by imprisonment from 2 years to 7 years and the interdiction of the exercise of some rights.

(3) The act provided in para. (1), committed by an adult against a minor aged between 13 and 18 years, when the adult abused his authority or influence on the victim, shall be punished by imprisonment from 2 years to 7 years and the interdiction of the exercise of some rights.

(4) The act provided in para. (1) - (3) shall be punished by imprisonment from 3 years to 10 years and the interdiction of the exercise of some rights when:

- a) the minor is a relative in direct line, brother or sister;
- b) the minor is in a relationship of care, fostering, education, guarding or treatment with the offender;
- c) the offence was committed with the aim of producing pornographic materials.

(5) The acts provided in para. (1) and para. (2) shall not be sanctioned if the difference of age does not exceed 3 years.

the minor who has reached the age of 16 can get married based on a medical opinion – art. 272 Civil Code<sup>18</sup>.

## **RUSSIAN FEDERATION / FEDERATION DE RUSSIE**<sup>19</sup>

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

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

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

## **SERBIA / SERBIE**

### **Question a.**

Ministry of Labour, Employment and Social Policy:

The national law of the Republic of Serbia does not include any statutory act containing generally applicable definition of the term 'child'; rather it is derived indirectly on the basis of the term of full legal capacity. Under the Constitution and provisions of Family Code, a child shall come of age after reaching 18 years of age. Consequently, any person under this age limit may be regarded of as 'a child'. By coming of age, the person shall acquire legal capacity (Art. 11. 11 of the Family Code). Prior to reaching 18 years of age, a minor may acquire full legal capacity by marriage or parenthood. In the first case, such decision shall be issued by the court upon compliance with terms of the law (Article 11, paragraphs 2 and 3 of the Family Code). Under the Family code "Everyone is under the obligation to act in the best interest of the child in all activities related to the child", Paragraph 1 Article 6 of the Family Code).

Ministry of Health:

Under the Healthcare Law (Official Gazette of RS, 107/75, 72/09-st.law, 88/10, 99/10, 57/11, 119/12, 45/13-st.law), social care for health at the level of the Republic is addressed by provision of healthcare to groups of population exposed to increased risk from becoming ill, and among others, include children before their 18<sup>th</sup> birthday, school pupils and students

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<sup>18</sup> ART. 272

Marriageable age

(1) The marriage can be contracted if the future spouses have reached the age of 18.

(2) For grounded reasons, the minor who has reached the age of 16, can get married based on a medical opinion, with the consent of his/her parents or, as case may be, of the guardian and with the authorization of the guardianship court having jurisdiction over the minor's domicile. If one of the parents refuses to render his/her consent concerning the marriage, the guardianship court shall also rule in connection with this dispute, under consideration of the child's best interests.

(3) If one of the parents is deceased or cannot express his/her will, the consent of the other parent shall be enough.

(4) Furthermore, according to art. 398, the consent of the parent who exerts the parental responsibility shall be enough.

(5) If there are no parents and no guardian who can consent to the marriage, the consent of the person shall be necessary who has been entrusted to exercise the parental rights.

<sup>19</sup> The Russian Federation became a State party after the 1<sup>st</sup> monitoring round was launched. As all Parties it has to reply to the General Overview Questionnaire. Its reply should be received by 31 July 2014 at the latest. / La Fédération de Russie est devenue Etat Partie après le lancement du 1<sup>er</sup> cycle de suivi. Comme toutes les Parties, elle doit répondre au Questionnaire « Aperçu Général ». Ses réponses doivent être reçues au plus tard le 31 juillet 2014.

by the end of the statutory schooling, and at the latest before they reach 26 years of age, as well as to victims of domestic violence.

Under the Law, patients are entitled, without discrimination, to independently decide and give consent to the treatment, which thus implies that they shall not, without their consent be subject to any healthcare measure, whereas the consent may be withdrawn orally prior to initiation of the measure and at any moment during the treatment. A child who reached 15 years of age and is capable of understanding may give consent to the recommended healthcare measure. Patients without legal capacity should participate in deciding on whether to give the consent to a proposed healthcare measure, in accordance to their maturity and capacity to understand. If a patient is a minor, or deprived of his legal capacity, he may be subject of a medical measure after his legal representative (parent, adoptive parent or guardian) has been notified and has given his consent, whereas in case a responsible health professional deems that the patient's legal representative do not acts in the best interest of the child or person deprived of legal capacity, he shall without delay notify the guardianship authority.

Law on the Rights of the Patient ('Official Gazette of RS 45/13) regulating rights of the patients, under Article 2, paragraph 3 defines a child as a person before reaching 18 years of age, whereas under paragraph 4 thereof, the capacity of a 15-year old child to understand is defined as the child's capacity to understand the nature of its health condition, purpose of the recommended medical measure, risks and consequences of undertaking or failure to undertake the measure, as well as the capacity to review information in the process of decision-making. Under Article 19, paragraph 4, a child who reached 15 years of age and is capable to understand may independently give its consent to a recommended medical measure. Under paragraph 5 thereof, if the child rejects the recommended medical measure, a responsible healthcare professional shall seek the consent from the child's legal representative. Under Article 20, paragraph 3, a child who reached 15 years of age shall be entitled to examine medical documents, and under Article 24, paragraph 1, the child shall have a guaranteed right to confidentiality of the data in its medical documents.

Under the penal provisions of the Law, inter alia, healthcare institutions, and/or other legal persons providing healthcare services may be fined if they fail to provide the child who reached 15 years of age insight into its medical documents or if they violate the right of the child to confidentiality of the data contained in its medical documents.

Ministry of Interior:

Under the Constitution of the Republic of Serbia (Official Gazette of RS, 98/06), a child is a person before reaching 18 years of age, which is in line with the definition contained in the Convention on the Right of the Child.

Under Article 112 of the Criminal Code (Official Gazette of RS, 85/05, 88/05-corrigendum, 107/05-corrigendum, 72/09, 111/09 and 121/12) a child is a person who has not yet reached 14 years of age. A minor is a person who reached 14 years of age, and has not yet reached 18 years of age. A juvenile is a person who has not yet reached 18 years of age.

The Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles A juvenile is a person who in a moment of criminal offence has reached 14 years of age, and has not

reached 18 years of age. The younger juvenile is a person who in a moment of criminal offence has reached 14 years of age, and has not reached 16 years of age. A young adult is a person who in a moment of criminal offence has reached 16 years of age, and has not reached 18 years of age.

The referred to categorisation is included also in the Instruction for follow-up of police officers with juveniles and younger juveniles, and Special protocol on follow-up of police officers in protection of minors from abuse and neglect.

Ministry of Science and Education:

The Constitution of the Republic of Serbia defines a child as a person below the age of eighteen years, which is in line with the definition provided by UN Convention on the Rights of the Child.

The Family Law, Law on Basics of Education System, Labour Law, Law on Health Protection and Law on Prevention of Discrimination against Persons with Disabilities also apply this definition.

Ministry of Justice:

Under Article 112, paragraph (8) of the Criminal Code (Official Gazette of RS, 85/05, 88/05 – corrigendum, 107/05, 72/09, 111/09, 121/12 and 104/13) a child is a person under fourteen years of age. Under paragraph (9) thereof, a minor is a person over fourteen years of age but less than eighteen years of age. Under paragraph (10) thereof a juvenile is a person who has not reached eighteen years of age.

Also, under Article 3 of the Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles, a juvenile is a person who at the time of commission of the criminal offence has reached fourteen years of age and has not reached eighteen years of age. A younger juvenile is a person who at the time of commission of the criminal offence has reached fourteen and is under sixteen years of age. An elder juvenile is a person who at the time of commission of the criminal offence has reached sixteen and is under eighteen years of age. A young adult is a person who at the time of commission of the criminal offence has reached eighteen but has not reached twenty one years of age at the time of the trial, and who meets other conditions set forth by Article 41 of this Act.

NGO Astra:

In the Criminal code (*"Official Gazette of RS"*, No. 85/2005, 88/2005 - corr, 107/2005 -corr, 72/2009, 111/2009, 121/2012 and 104/2013) a juvenile is "a person who has not attained eighteen years of age". Other than the term juvenile (article 112. paragraph 10), as a unique, generic term, the criminal code defines a "child" (a person under fourteen years of age, article 112. paragraph 8), and a "minor" (a person over fourteen years of age but who has not attained eighteen years of age, article 112. paragraph 9).

The same definitions are found in the Law on Juvenile Offenders and Criminal Protection of Juveniles (article 2. and 3).

The Family Act uses the terms "minor" and „young adult“ not defining these terms. However, according to the article 11 of the Family Act, majority is obtained by reaching

18 years of age, so every person under that age can be considered a child. Full legal capacity is obtained by reaching the age of majority (article 11. of the Family Act). Full legal capacity can be obtained, before the age of majority, by concluding a marriage with court permission or through becoming a parent. In these cases the court decides upon majority when the sufficient requirements are met. (Article 11. paragraphs 2. and 3. Family Act). In neither of these cases can the child be under 16 years of age. On the other hand, a person who has reached majority at the age of eighteen years retains the status as "a minor child" if he/she is unable to care for himself/herself and protect his/her rights and interests due to an illness or disturbances in mental and physical development. In this case, with the decision of the court, parental rights do not cease with age of 18.

NGO Centre for Children Rights:

Internal legislation of the Republic of Serbia does not have one precise and full definition of term "child" that would be generally binding. Such a definition may be indirectly derived on the basis of Article 37 of the Constitution of the Republic of Serbia (Official Gazette of RS 98/2006) and Article 11 of the Family Code (Official Gazette of RS 18/2005 and 72/2011) under which that coming of age commences with 18 years of age, and thus it may be concluded that child is any human being under such an age.

However, criminal law does not follow the definition of child in full, but rather under the term "child" it recognizes a person under 14 years of age, while the term "juvenile" includes a person under 18 years of age.

The Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles (Official Gazette of RS 85/2002) a juvenile is a person who at the time of commission of the criminal offence has attained fourteen years of age and has not attained eighteen years of age. Also it differentiates the term „younger juvenile“ who is a person who at the time of commission of the criminal offence has attained fourteen and is under sixteen years of age and the term „elder juvenile“ who is a person at the time of commission of the criminal offence has attained sixteen and is under eighteen years of age.

#### **Question b.**

Ministry of Science and Education:

The provisions of Article 64, paragraphs 1, 3 and 5 of the Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia", No. 98/06) provide that children may exercise human rights as suitable to their age and mental maturity. The children are to be protected from any psychological, physical, economic or any other exploitation or abuse.

#### **Question c.**

NGO Atina:

In Serbian law, the legal age of consent for sexual activities is 14 years of age.

NGO Astra:

Age for legal sexual activities is 14. *In* the Criminal Code of the Republic of Serbia, article 180 refers to sexual intercourse with a child and foresees a prison sentence of three to 12 years for a person who has sexual intercourse or a similar act with a child (According to CC RS Article 112, paragraph 8 a child is a person younger than 14 years age).

NGO Centre for Children Rights:

Regarding sexual relations, the Criminal Code of the Republic of Serbia (Official Gazette of RS, 85/2005, 88/2005, 107/2005, 72/2009, 121/2012 and 104/2013) under Article 180 (criminal offence sexual intercourse with a child) criminalizes sexual intercourse with a child (a person under 14 years of age) or equal act regardless of whether the child gave its consent or not. The basic form of such a criminal act is sentenced by imprisonment from three to twelve years, whereas for so called qualified form of such a criminal act (grave consequence or death) the prison sentence from 5 to 15 years (if due to intercourse with a child a grave corporal injury occurred or the offence is committed by several persons or has pregnancy as a result) i.e. imprisonment of minimum 10 if it resulted in death of the child. Under the Law, offenders shall not be punished for the offence if there is no significant difference between the offender and the child in respect of their mental and physical level of development.

If the victim is a child who reached 14 years of age, and has not reached 18 years of age, the criminal liability exists if intercourse was forced, is a result of a threat or abuse of a position.

## **SLOVAK REPUBLIC / REPUBLIQUE**

Did not reply. / N'a pas répondu.

## **SLOVENIA / SLOVENIE**<sup>20</sup>

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

## **SPAIN / ESPAGNE**

### **Question a.**

Article 315 of the Civil Code in line with article 12 of the Constitution<sup>21</sup> provides that legal age begins upon turning 18. Similarly, the Organic Act 1/1996 on the Legal Protection of Minors applies to all children (defined as persons below 18 years of age) living on Spanish territory.

### **Question b.**

On the occasion of presenting to the Parliament the monographic report "Children or Adults? Age Assessment Practices", the Ombudsman specifically raised important warnings about the special vulnerability of trafficking victims whose age cannot be determined with certainty at the moment they are detected.

Article 35.3 of Organic Act 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration reads as follows: "In the event that the State Security Forces locate an undocumented foreigner for whom it cannot be firmly established that they are a minor, they will give them, by way of social services trained in the protection of minors, the

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<sup>20</sup> Slovenia became a State party after the 1<sup>st</sup> monitoring round was launched. As all Parties it has to reply to the General Overview Questionnaire. Its reply should be received by 31 August at the latest. / La Slovénie est devenue Etat Partie après le lancement du premier cycle de suivi. Comme toutes les Parties, elle doit répondre au Questionnaire "Aperçu Général". Ses réponses doivent être reçues au plus tard le 31 août 2014.

<sup>21</sup> "Spaniards come legally of age at eighteen years".

immediate attention they need, in accordance with the established legislation on the legal protection of minors. They will immediately alert the Public Prosecutor's Office, who will provide age assessment, for which appropriate health institutions will conduct any necessary tests with priority."

Royal Decree 557/2011, which established a new regulation implementing Organic Act 4/2000, sets forth the obligation to put under the guardianship of the protection services unaccompanied foreigners located by the State Security Forces for whom it cannot be determined with certainty if they are a minor. The Public Prosecutor's Office will be alerted about the incident too.

The December 2010 enactment of the Criminal Code reform, approved by Organic Act 5/2010 of June 22nd, refers to the detection of a foreign person who is carrying a passport or other identity document that declares she/he is underage, but in which the authenticity or ownership of the document is uncertain. The administrative measures provided for in article 35 of Organic Act 4/2000 cannot be applied in these cases because there is evidence that the person concerned has committed a criminal offence. Consequently, it is the judicial authority, within the framework of the criminal procedure, who orders the necessary exams to determine whether or not the alleged perpetrator is a minor or if they have committed a crime.

#### **Question c.**

The age of consent in Spain is thirteen, as specified by article 183 of the Spanish Criminal Code<sup>22</sup>. Adults who have sexual relations with underage children face from two to six years in prison and up to twelve years if they have performed oral or penetrative sex. Moreover, when deceit is used in gaining the consent of a minor under sixteen years, an individual can be charged with up to two years in prison.

To bring Spain into line with other European countries, the draft organic law amending the Spanish Criminal Code raises the age of sexual consent to sixteen. To engage in sexual activities with a child below this age will be considered a criminal offence thus. However, an exception is made in the case of consensual sex when the other party is of similar age or stage of development or maturity. This change was recommended by the UN's Committee on the Rights of the Child to provide greater protection against sexual exploitation according to the Convention on the Rights of the Child.

## **SWEDEN / SUEDE**

#### **Question a.**

Persons under 18 in Sweden are children/minors. A minor comes under the rules of the Code of Parenthood and Guardianship concerning custody, access and maintenance obligations. Under this code, a person under 18 does not have full powers of determination over his personal or economic affairs. Parallel to the child's increasing age and development, however, the custodian must show increasing consideration for the child's viewpoints and wishes. The protection and rights which the rules of the Code of Parenthood and

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<sup>22</sup> "Whoever perpetrates acts against the sexual indemnity of a child under the age of thirteen years shall be convicted of sexual abuse of the child, with a sentence of imprisonment from two to six years".

Guardianship imply in personal and economic matters are supplemented by special rules for children and young persons in other fields where they are affected.

**Question b.**

According to the Swedish Social Services Act ((1980:620), municipalities are responsible for providing support and assistance to people in vulnerable situations through the Social Service Welfare Committee. This can cover children and young people, people with substance abuse problems, elderly people and people with disabilities. Any such support or assistance is to be based on the needs of the individual. The support of victims offered by the Social Service Welfare Committee and other authorities are pending of the concrete needs of the victims as a result of the offence, not necessarily of the age of the victims. But, of course, in case there is no other information about the age of the victim, if there are reasons to believe that the victim is a child then the rights of this child will be determining the measures of the authorities.

In 2010 the Riksdag approved the Government's strategy to strengthen the rights of the child. The strategy consists of principles expressing the fundamental conditions for strengthening the rights of the child. Some of these principles have to be applied even in the activity of the authorities dealing with cases of children victims of any kind of abuse:

- The child's physical and mental integrity must be respected in all circumstances.
- Children must have the right to express their views in all matters that concern them.
- Children must receive information about their rights and what they mean in practice.
- Parents must receive information about the rights of the child and be offered parenting support.
- Decision-makers and relevant professional groups must have knowledge of child rights and put this knowledge into practice in their relevant professional activities.
- Actors involved in activities concerning children must strengthen child rights by working in partnership.
- Current knowledge of children's living conditions must form the basis of decisions and priorities affecting children.
- Decisions and measures affecting children must be monitored and evaluated based on a child rights perspective.

**Question c.**

According to the internal law, the age of consent for sexual activity is fifteen years.

**SWITZERLAND / SUISSE**

Did not reply. / N'a pas répondu.

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

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



## **TURKEY / TURQUIE**

### **Question a.**

Yes. Under Indent (b), Article 6, Paragraph 1 of the “Definitions” section of the Turkish Penal Code, within the scope of the application of penal law, it is stated that “a child is any person who has not attained the age of eighteen.” Additionally, Article 3, Paragraph 1, Indent (a) of the Law no. 5395 on the Child Protection Law defines any person who has not attained the age of eighteen, regardless of the fact that he/she has reached adulthood at an earlier age, as a child.

In parallel to this, a similar regulation is in order with regard to private law. Article 11 of the “Lawful Age” heading of the Turkish Civil Code no. 4721, rules that the age of majority is eighteen.

### **Question b.**

Without a doubt, in the event of confusion regarding the age of the victim as well as reasons to believe that the victim, who has been subject to a sexual offence, is a child-throughout the process of determining the real age of the victim-there is not any legal obstacle preventing resort to protective measures regulated under the Child Protection Law, Turkish Penal Code and Code of Criminal Procedure, as well as other laws that provide for the protection of the child.

It should be indicated that with regard to the definition of child mentioned in the answer to Question 1/a, Turkish legislation does not make a distinction between the child as a victim and as an offender. Our approach is that the child as an offender, which we commonly refer to as the child drawn into crime both in theory and in practice, is in a way also a victim. Therefore, legislative or other measures shall be implemented for the protection of the children drawn into crime.

### **Question c.**

In general terms, our legislation specifies the age limit for sexual activities as eighteen. Besides that, in terms of penal law, under Article 104 of Turkish Penal Code, attaining fifteen years of age is sufficient to declare one’s will to engage in sexual activities. That is to say that any person of fifteen years of age may by his/her own will engage in sexual activities. However, even though lawmakers accept the consent of a child of fifteen years of age with regard to sexual activities, they do not accord an absolute validity to such consent, because it is stated under Article 104 of the Turkish Penal Code that any person who engages in sexual activities with another person, who has attained fifteen years of age, upon his/her consent may be sentenced to six months to two years in prison if a complaint is lodged.

In terms of civil law, Article 124 of the Turkish Civil Code rules that men and women may not get married unless they attain seventeen years of age. As for extraordinary circumstances and highly significant reasons, it is stated that men and women, who have attained sixteen years of age, may get married only by permission of a judge.

## **UKRAINE**

### **Question a.**

Yes, it does.

*Article 6 of the Family Code of Ukraine stipulates:*

- 1. An individual is considered a child before reaching the age of majority.*
- 2. Children under the age of fourteen are considered minors.*

*Individuals between ages of fourteen and eighteen are considered under the age of majority.*

*Article 1 of the Law of Ukraine "On Protection of Childhood" stipulates that:*

*A child – is a person under the age of 18 (the age of majority), provided that under law applied to this person, he or she does not acquire the rights of a full-age individual earlier.*

*Article 1 of the Law of Ukraine "On Prevention of Human Trafficking" stipulates that:*

*A child – is any natural person under the age of eighteen.*

### **Question b.**

Joint Decree № 903/1464/711 was issued by the Ministry of Healthcare of Ukraine, Ministry of Education and Science of Ukraine, and Ministry of Social Policy of Ukraine as of 23.10.2013 to comply with the state Regulation stipulating relevant checking procedures to be performed for determining the age of a child deprived of parental care and requiring social protection.

### **Question c.**

The norm is lacking.

(For reference: Articles 152 and 153 of the Criminal Code of Ukraine [hereinafter referred to as CCU] envisage criminal liability for rape and forceful satisfaction of sexual passion by unnatural means committed against an individual under the age of majority or a minor.

Moreover, Article 156 of the CCU envisages liability for corruption of individuals who have not reached the age of majority, which is interpreted as actions aimed at corrupting an individual who has not reached the age of 16 or a minor.

Article 155 of the CCU foresees criminal liability for having a sexual intercourse with an individual who has not reached puberty.

The Plenum of the Supreme Court of Ukraine in item 16 of its resolution as of 30 May 2008 #5 "On court practice regarding cases dealing with crimes against sexual freedom and inviolability of person" gave an explanation that the latter article of the CCU foresees liability for consensual (performed without physical coercion, threat of such coercion or use of a vulnerable state of the victim) sexual intercourse with an individual, who has not reached puberty in case the perpetrator realized (knew for sure or could presume) that the victim had not reached puberty, as well as in cases the perpetrator should have known or realized that.

At the same time, the Plenum of the Supreme Court of Ukraine determined that puberty is such a physiological state of a human body, which is characterized by full ability to perform reproductive functions. In accordance with the Rules of conducting forensic medical investigations (tests) as to the status relating to sex within the forensic medicine bureau (approved by the Order #6 of the Ministry of Health of Ukraine as of 17 January 1995), individuals under the age of 14 are automatically considered to be under the age of puberty. The determination of puberty is conducted vis-à-vis individuals between the ages between 14 and 18.

It needs to be noted that only an individual who has reached the age of 16 can be considered perpetrator for actions envisaged by Articles 155 or 156 of the CCU, judging from what is stipulated by Paragraph one, Article 22 of the CCU.

In accordance with Item 5, Paragraph two, Article 242 of the Criminal Procedure Code of Ukraine [hereinafter referred to as CPCU], investigator or public prosecutor shall be required to commit an expertise to conduct examination as to ascertaining puberty of a victim in criminal proceedings in offences provided for by Article 155 of the CCU.

#### **UNITED KINGDOM / GRANDE BRETAGNE**

Did not reply. / N'a pas répondu.