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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 9b of the Thematic Questionnaire

Compilation des réponses à la Question 9b du Questionnaire Thématique

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

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

www.coe.int/lanzarote

Introduction

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

This document is aimed at responding to this request by compiling replies to question 9b of the thematic questionnaire.

If when replying to this question, States referred to another of their answers in both the General Overview and Thematic questionnaires, their replies will where possible, also be included in this compilation.

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Lors de sa 7^e réunion (9 décembre 2013, voir §13 du rapport ainsi que son annexe III²), le Comité a décidé que le Secrétariat devait compiler les réponses au Questionnaire « Aperçu général » et au Questionnaire Thématique.

Le présent document vise à répondre à cette demande en compilant les réponses reçues à la question 9b du questionnaire thématique.

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

¹ The 7th meeting report is online at:

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

² Le rapport de la 7^e réunion est en ligne ici :

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

Question 9b of the TQ: Denial of exercise of the professional or voluntary activity.

Does internal law provide that sanctions for offences of child sexual abuse within the circle of trust include denying the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed? (Article 27 (3) (b), Explanatory Report, para. 187).

Question 9b du QT : Interdiction d'exercer une activité professionnelle ou bénévole.

Le droit interne prévoit-il, au titre des peines applicables aux faits d'abus sexuels commis sur un enfant dans son cercle de confiance, l'interdiction temporaire ou définitive, pour l'auteur des faits, d'exercer l'activité professionnelle ou bénévole impliquant un contact avec des enfants et à l'occasion de laquelle l'infraction a été commise ? (article 27, par. 3, Rapport explicatif, par. 187).

Relevant extracts from the Lanzarote Convention and its Explanatory report

Lanzarote Convention, Article 27 – Sanctions and measures

(...)

3 Each Party shall take the necessary legislative or other measures to:

b. enable the temporary or permanent closure of any establishment used to carry out any of the offences established in accordance with this Convention, without prejudice to the rights of *bona fide* third parties, or to deny the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed.

(...)

Explanatory report

(...)

187. Paragraph 3 b of Article 27 provides for closure of any establishment used to carry out any of the offences established in the Convention. This measure is identical to Article 23 paragraph 4 of the [Council of Europe Convention on Action against Trafficking in Human Beings](#). Alternatively, the provision also allows the perpetrator to be banned, temporarily or permanently, from carrying on the activity involving contact with children, whether professional or voluntary, in the course of which the offence was committed.

(...)

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

Convention de Lanzarote, Article 27 – Sanctions et mesures

(..)

3 Chaque Partie prend les mesures législatives ou autres nécessaires:

b. pour permettre la fermeture temporaire ou définitive de tout établissement utilisé pour commettre l'une des infractions établies conformément à la présente Convention, sans préjudice des droits des tiers de bonne foi, ou interdire à l'auteur de ces infractions, à titre temporaire ou définitif, l'exercice de l'activité, professionnelle ou bénévole, impliquant un contact avec des enfants, à l'occasion de laquelle celles-ci ont été commises.

(...)

Rapport explicatif

(...)

187. Le paragraphe 3 b) de l'article 27 prévoit la fermeture des établissements utilisés pour commettre l'une des infractions établies dans la Convention. Cette mesure est identique à celle de l'article 23 paragraphe 4 de la [Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains](#). Alternativement, le paragraphe prévoit également une mesure d'interdiction temporaire ou définitive, à l'encontre des auteurs d'exercer l'activité, professionnelle ou bénévole, impliquant un contact avec des enfants à l'occasion de laquelle ils ont commis cette infraction.

(...)

COMPILATION of replies / des réponses³

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

ALBANIA / ALBANIE

Question 9b of the TQ / du QT

Based on Law No. 9669, dated 18.12.2006 "On Measures Against Domestic Violence " in cases of sexual abuse against a person (child) in family relationships, is required from the court an „Emergency Protection Order“. After evaluating the case, one of the measures that can be undertaken by court, is the immediate establishment of victim/s (minor) in temporary shelters, by considering in any case the best interests, of the child (Article 10) In the meantime at the National Center for Rehabilitation of Domestic Violence, victims are provided with psychological, rehabilitation and educational services.

AUSTRIA / AUTRICHE

Question 9b of the TQ / du QT

According to Section 220b of the Criminal Code (Suspension from occupations - *Tätigkeitsverbot*) the court has to exclude the perpetrator of a criminal offence against the sexual integrity and self-determination of persons under age (including sexual abuse of children in the circle of trust), who at time when the offence was committed exercised or intended to exercise a gainful employment or a voluntary activity in an association or other institution which includes the education, schooling or supervision of persons under age or other intense contacts with persons under age, from exercising these or comparable activities for a duration of at least one year up to five years, if there is a danger that the perpetrator would otherwise, by exploiting an opportunity offered by this activity, commit further criminal offences of that kind entailing not only light consequences.

In certain cases the ban has to be pronounced for an indefinite period of time (e.g. recidivism of the perpetrator during the time of the ban). The person who exercises an activity knowing that he/she was banned from its exercise is to be sentenced to imprisonment of up to six months or a fine of up to 360 daily rates.

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

BELGIUM / BELGIQUE

Question 9b of the TQ / du QT

Oui, voir l'article 382bis du Code pénal.

« Art. 382bis. Sans préjudice de l'application de l'article 382, toute condamnation pour des faits visés aux articles 372 à 377, 379 à 380ter, 381 et 383 à 387, accomplis sur un mineur ou impliquant sa participation, peut comporter, pour une durée d'un an à vingt ans, l'interdiction du droit :

1° de participer, à quelque titre que ce soit, à un enseignement donné dans un établissement public ou privé qui accueille des mineurs ;

2° de faire partie, comme membre bénévole, membre du personnel statutaire ou contractuel, ou comme membre des organes d'administration et de gestion, de toute personne morale ou association de fait dont l'activité concerne à titre principal les mineurs ;

3° d'être affecté à une activité qui place le condamné en relation de confiance ou d'autorité vis-à-vis de mineurs, comme membre bénévole, membre du personnel statutaire ou contractuel ou comme membre des organes d'administration et de gestion, de toute personne morale ou association de fait ;

4° d'habiter, de résider ou de se tenir dans la zone déterminée désignée par le juge compétent. L'imposition de cette mesure doit être spécialement motivée et tenir compte de la gravité des faits et de la capacité de réinsertion du condamné.

L'article 389 est applicable à la présente disposition. »

En outre, l'article 382quater du Code pénal prévoit la possibilité pour le juge d'ordonner la transmission de la partie pénale du dispositif judiciaire à un employeur :

« Art. 382quater. Lorsqu'un auteur qui est condamné pour des faits visés aux articles 372 à 377, 379 à 380ter et 381 est en contact, en raison de son état ou de sa profession, avec des mineurs et qu'un employeur, une personne morale ou une autorité qui exerce le pouvoir disciplinaire est connu, le juge peut ordonner la transmission de la partie pénale du dispositif de la décision judiciaire à cet employeur, cette personne morale ou ce pouvoir disciplinaire. Cette mesure est prise soit d'office, soit à la demande de la partie civile ou du ministère public dans une décision judiciaire spécialement motivée en raison de la gravité des faits, de la capacité de réinsertion ou du risque de récidive. »

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Question 9b of the TQ / du QT

When it comes to the types of assistance, "Medica" from Zenica provides short-term and long-term accommodation in the Safe House and other services to the victims of sexual exploitation and children who are victims of sexual abuse. As part of their stay in the Safe House, in addition to safe accommodation, food, basic clothing items and footwear and toiletries etc. on the basis of their individual needs and the developed individual plan, clients also receive continued individual and group psychological assistance and support, counselling and therapy suited to the clients' age, medical assistance, educational work,

economic strengthening, occupational therapy, mediation in dealing with institutions, work with family and other services in accordance with the needs of each individual client. Individual plan of work for each client is developed in cooperation with the client and other professionals and on the basis of individual needs. Duration of female clients in the Safe House also depends on individual needs of every victim/child. During the children's stay in the Safe House, the whole treatment is tailored to suit their age and individual needs and to various kinds of help. During individual work with children, treatment is given depending on the children's age, the gravity of the traumatic experience and the degree of the consequences developed after the violence experienced, and various counselling, therapeutic and educational approaches are aimed at the child's recovery and reintegration. "Medica" Zenica also has services intended for children only, such as the Children's Day Care Centre "Medica" Zenica, where children staying in the Safe House spend their free time. It helps them in developing life habits, skills, and through various educational, supportive and creative workshops, children learn about non-violent communication, violence and protection from violence and various forms of exploitation, child rights and duties and other topics suited to their interests and in accordance with the assessment of the expert team on the need to cover certain topics. Children who attend regular schools receive support in learning, mastering the lessons and carrying out other school assignments, whereas children who do not attend regular schools are taught to read and write and in cooperation with other institutions, the Centre facilitates inclusion of children in the educational process. The whole treatment is provided with active participation of the clients, and tailored to suit individual needs, age, development period, physical and intellectual capacity etc.

During the stay of children clients in the Safe House, "Medica" Zenica, in cooperation with other institutions involved in caring for the clients, works with the parents and other family members, if there are no obstacles to it, such as that the parents and/or other family members participated in the child exploitation/abuse. Also, when it comes to clients who are of age, "Medica" Zenica also works with the family on developing mutual understanding and support between the family and the client, on reducing the stigma and rejection by the family, but also on fixing the symptoms that family members developed when learning about what the child had been through.

BULGARIA / BULGARIE

Question 9b of the TQ / du QT

"Deprivation of the right to practice a profession or occupation" is regulated in Art. 37, Paragraph 1, Item 7 of the Penal Code. Article 50, paragraph 1 of the same normative act stipulates that such penalty shall be imposed in cases provided by law, if the occupation of the office or the exercise of the profession or activity is incompatible with the nature of the offense. Lack of indication of sex offenders among those listed in Article 160 of the Penal Code leads to the conclusion that among the legal penalties for committing sexual crimes is not settled "deprivation of the right to practice a profession or occupation." On the other hand, this outcome is an obstacle towards exercising the profession or occupation due to the incompatibility with the requirements/terms for/of its implementation, which are usually regulated by the requirements for occupying the vacancy or in other regulation.

1. Ordinance for criteria and standards for social services for children:

Criterion 8, Standard 15, Annex 2 under art. 29:

„8. Annually, every employee is inspected whether or not he/she was a subject of a pre-court proceeding.“

Criterion 5, Standard 21, Annex 3 under art. 48:

„5. For every employee an inspection has been done to investigate whether or not he or she was a subject of pre-court proceeding, and the data is updated annually.“

2. Ordinance №4/11.05.1993 r. for documents required for labour agreement

Article. 1. For signing a labour agreement the following documents are required:

1. Passport or other identity document that is returned immediately;
2. Documents for graduated education, qualification, competences, academic title or degree, when required for office or vacancy for which the person is applying;
3. Documents for experience, when office or vacancy for which the person is applying to possess such;
4. Document for medical examination for initial entry into work after suspension of work under an employment agreement for a period exceeding three months;
5. Certificate of conviction when a law or regulation require clear criminal record;
6. Permission from the labour inspection if the person is under 16 years of age or aged 16 to 18 years.

3. Ordinance for the documents required for becoming a state employee

Art. 2.

- (1) Written request is submitted ...
- (2) Enclosed with the request also are provided:
5. Certificate of conviction.....

4. Implementing Regulation on Public Education Act

Art. 125. Positions of art. 124, para. * 1 and 2 cannot be occupied by persons who:

1. are sentenced to imprisonment for an intentional crime;
2. are deprived of the right to practice their profession;
3. suffer from diseases and abnormalities that endanger the life or health of children and students identified with an ordinance by the Minister of Education and Science agreed with the Minister of Health.

* Art. 124.

(1) Teachers positions are:

1. "junior teacher";
2. "teacher";
3. "senior teacher";
4. "master teacher";
5. "teacher-methodologist";

(2) Counsellors' positions are:

1. "junior counsellor";
2. "counsellor";
3. "senior counsellor";
4. "master counsellor";

5. "counsellor -methodologist."

5. Criminal Procedure Code

Removal of defendant from office

Art. 69.

(1) Where the charge is for a malicious crime of general nature committed in connection with the office and there are sufficient grounds to deem that the official position of the defendant will put obstructions to objective, thorough and complete clarification of the circumstances under the case, the Court may remove the defendant from office.

6. Draft Law on amendment and supplement of the Penal Code

It foresees a new provision which applies a punishment referred to art 37, items 6 and 7 for persons from a circle of trust who committed a sexual offense.

§14 new art. 158b is created:

„Art. 158b For crimes under art. 149-157 or art. 158a the court can court impose a disqualification under Art. 37, paragraph 1, item 6 or 7."

Paragraph 15 of the Amendment and Supplement of the Penal Code provides the possibility to impose the punishment for crimes under Article 159, paragraph 1-7.

Paragraph 16 of the Draft Law on Amendment and Supplement of the Penal Code provides the possibility of imposing sanctions under Article 37, items 6 and 7 of an offense under Article 188, paragraph 1-4.

At present the proposed amendment to the Penal Code which will allow child sex offenders to be deprived of rights through criminal law penalty is to be discussed and adopted at second reading by the Parliament in short terms.

CROATIA / CROATIE

Question 9b of the TQ / du QT

The acts regulating the exercise of certain professions, for instance, the Social Welfare Act⁴, the Sports Act⁵, the Primary and Secondary Education Act⁶, the Act on Volunteering⁷, and the Nanny Act⁸, prohibit perpetrators of certain criminal offences committed against children from exercising any of these professions.

DENMARK / DANEMARK

Question 9b of the TQ / du QT

According to section 79(1) and (2) of the Criminal Code, "(1) A person carrying on any activities as mentioned in section 78(2) [i.e., activities under a special public licence or permit] may be deprived by judgment in criminal proceedings of the right to continue such activities or to carry on such activities in certain circumstances if the act committed implies

⁴ Official Gazette 33/12.

⁵ Official Gazette 71/06, 150/08, 124/10, 124/11, 86/12 and 94/13.

⁶ Official Gazette 87/08, 86/09, 92/10, 105/10, 90/11, 5/12, 16/12, 86/12, 126/12 and 94/13.

⁷ Official Gazette 58/07 and 22/13.

⁸ Official Gazette 37/13.

an imminent risk of abuse of his position. (2) The same applies to other activities if justified by special circumstances.” (unofficial translation). “other activities” under section 79(2) would include, *inter alia*, professional or voluntary activities involving contact with children.

FINLAND / FINLANDE

Question 9b of the TQ / du QT

See general questionnaire, question 9 for information on the legislation on checking the backgrounds of persons working with children. The measure is however not considered to be a sanction as such.

Question 9 of the General Questionnaire:

In 2003 an Act on checking the criminal background of persons working with children (504/2002) became into force. According to the act all employers have a duty to ask a person to produce an extract from the criminal record when the person is employed to a position which includes work relating to raising, teaching or caring for or looking after a minor or other work performed in personal contact with a minor. The act applies to all professions (public or private) where the worker is in close contact with children (see section 2 of the Act).

In 2013 the Parliament accepted legislation that extends this measure to cover also volunteer workers (148/2014, translation not available). However in voluntary activities the checking of criminal background is not compulsory for the organizers of the voluntary work as it is for employers.

How long the criminal record of the person is kept in Finland depends on the type and level of the penalty given. This time vary from 5 years to 20 years if the penalty given is less than 5 years of imprisonment. A penalty that is more severe than this will stay in the records until the person has died or reached the age of 90 years (see Criminal Records Act 770/1993, section 10).

FRANCE

Question 9b of the TQ / du QT

Oui, l'interdiction d'exercer, à titre définitif ou pour une durée de 10 ans au plus, une activité professionnelle ou bénévole impliquant un contact habituel avec des mineurs, est prévu en répression de l'ensemble des faits d'abus sexuels, quelles que soient les circonstances de commission de l'infraction.

GREECE / GRÈCE

Question 9b of the TQ / du QT

Under a newly passed Law 4267/2014 on the fight against sexual abuse and exploitation of children, there can be a complementary sanction imposed on the perpetrator which forbids the exercise of any profession involving contact with children for up to five years (amending art. 67 par.1 of Penal Code). Voluntary activities are not mentioned.

ICELAND / ISLANDE

Question 9b of the TQ / du QT

A reference is made to the answer to question 9 in the GOQ. The general legislative provisions concerning children, such as pre-schools, primary and secondary schools, leisure activities etc. as well as special services, including residential or foster care, denies anyone sentenced for sex offenses against a child the exercise of professional or voluntary activity involving contact with children.

With regard to other professional activities, Art. 68 para. 2 of the General Penal Code can be relevant in this respect. The Art. stipulates that a person convicted of an offence may, in criminal litigation against him/her, be deprived of authority he/she has acquired to pursue an occupation for which an official licence, authorization, appointment or examination is required, provided the offence indicates that there is considerable danger that the guilty person will commit an offence in his/her position or occupation. In case of a grave offence a person can also be deprived of the aforementioned right if he/she is no longer considered worthy of pursuing the occupation or enjoying the rights.

A person may be deprived of the rights referred to in para. 2 for a specified period of up to five years or for life.

ITALY / ITALIE

Question 9b of the TQ / du QT

(...) It should be added sentencing for the most serious child abuse and child exploitation offences provided for in the Italian Criminal Code (see under question 16) entails not only the main penalties, but also the application of a number of accessory sanctions, provided for in particular by Art. 609 nonies Criminal Code.

These include, among others, the loss of parental authority if this has been an element of the offence; permanent disqualification from offices pertaining to guardianship; permanent disqualification from holding a post in educational institutions or other institution which minors habitually attend; as well as, after serving a custodial sentence, temporary

interdiction from approaching any place attended by minors and disqualification from any job which may entail contacts with minors.

Relevant text:

Article 609-nonies. Collateral penalties and other criminal-law consequences.

The conviction or application of sentence upon request by the parties under Article 444 of the Code of Criminal Procedure for any of the offences laid down in Articles 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies and 609-undecies implies:

- 1) the loss of parental authority, when the capacity as a parent is a constitutive element or an aggravating circumstance of the offence;
- 2) a permanent disqualification from exercising the functions of a guardian, curator or court-appointed administrator;
- 3) the loss of the right to alimony and the exclusion from the victim's succession;
- 4) a temporary disqualification from holding public offices; a disqualification from holding public offices for five years following a conviction to imprisonment from three to five years, without prejudice to the application of Article 29, first paragraph, as to the permanent disqualification;
- 5) the suspension from the exercise of a profession or trade.

The conviction or application of sentence upon request by the parties in terms of Article 444 of the Code of Criminal Procedure for any of the offences laid down in Articles 609-bis, 609-ter, 609-octies e 609-undecies, if committed against a person under eighteen years of age, 609-quater and 609-quinquies, implies at any rate a permanent disqualification from any assignment in schools of any type and level as well as any office or service in institutions or other public facilities prevalingly attended by minors.

The conviction for the offences as per Article 600-bis, second paragraph, Article 609-bis, in the aggravated cases specified in Article 609-ter, and as per Articles 609-quater, 609-quinquies and 609-octies, in the aggravated cases specified in the third paragraph of the same article, implies the application of the following personal security measures after sentence enforcement and for at least one year:

- 1) an order, if any, limiting movements and the free circulation, as well as a prohibition to get close to places usually attended by minors;
- 2) a prohibition to perform jobs that involve habitual contacts with minors;
- 3) an obligation to keep law enforcement authorities informed on one's residence and transfers, if any.

Whoever violates the law provisions of the third paragraph shall be punished by imprisonment up to three years.

LITHUANIA / LITUANIE

Question 9b of the TQ / du QT

Article 68² of the CC stipulates a penal sanction – deprivation of the right to be employed in a certain position or to engage in a certain type of activities, i.e. the court shall award

deprivation of the right to be employed in a certain position or to engage in a certain type of activities in the cases where the offender commits a criminal act in the field of his occupational and professional activities or where, considering the nature of the criminal act committed, the court comes to the conclusion that the convicted person may not preserve the right to be employed in a certain position or to engage in a certain type of activities.

LUXEMBOURG

Question 9b of the TQ / du QT

Oui, le droit luxembourgeois prévoit la possibilité pour le juge de prononcer une telle interdiction qui peut être temporaire ou à vie. Pour les infractions d'attentat à la pudeur et de viol, cette possibilité est prévue par l'article 378, aliéna 2 du Code pénal, pour les infractions de proxénétisme par l'article 381, alinéa 3 du Code pénal et pour les infractions liées à la pédopornographie par l'article 386, alinéa 2 du Code pénal.

MALTA / MALTE

Question 9b of the TQ / du QT

Yes, a conviction for an offence of prostitution of a descendant under age by an ascendant, or of a spouse under age by another spouse or of a minor by a tutor, or of defilement of minors, entails the forfeiture of parental authority, or of every right over the property of the spouse and in the case of a tutor perpetual disability from holding the office of tutor. The same applies for offences relating to the producing, offering, distributing of pornography depicting minors, where the offences are committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under age. The Court may also order that the offender be temporarily or permanently prevented from exercising activities related to the supervision of children. This also applies in the case of convictions for offences of inducing or instigating with violence persons under age into prostitution, participating in sexual acts with a minor and other unlawful sexual activities and solicitation of persons under age.

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Question 9b of the TQ / du QT

Law/Criminal Code provides penalties for offenses against minors:

The criminal order:

- Custodial
- Deprivation of the right to occupy certain positions or engage in certain activities

MONTENEGRO

Question 9b of the TQ / du QT

One of the sanctions or penalties that may be imposed on the legal person for a criminal offence is the termination of a legal entity status. The court may impose this sentence if the activity of a legal entity as a whole or in substantial part served the function of commission of a criminal offence (Law on the Liability of Legal Entities for Criminal Offences). Article 73 of the Criminal Code prescribes that the court may prohibit an offender from performing a certain profession, activity, all or some of duties related to the disposition, utilisation, management or handling of someone else's property or taking care of that property, if it is reasonably deemed that her/his further performance of that activity would be dangerous. The duration of this measure may not be shorter than one year nor longer than ten years.

NETHERLANDS / PAYS-BAS

Yes, in the Netherlands we have a certificate of good conduct ("verklaring omtrent het gedrag", VOG), which is explained in question 9A of the GOQ. A person receives the certificate after it has been established that he or she has no criminal record. However, if they do have a criminal record, the authorities decide whether the offences in question are relevant to the application. Offences considering child sexual abuse will lead to a withdrawal of the VOG for any relevant voluntary or professional activity. If the certificate has already been issued before committing the relevant offence, the VOG is withdrawn.

PORTUGAL

Question 9b of the TQ / du QT

Yes.

The Criminal Code (Article 179) allows for the imposition of an accessory penalty of temporary prohibition of the exercise of professional or voluntary activities involving contact with children as well as an inhibition on the exercise of the parental powers, tutorship or curatorship for a period ranging between 2 and 15 years to individuals convicted for criminal offences against sexual self-determination.

ROMANIA / ROUMANIE

Question 9b of the TQ / du QT

Once with the main sentence, the court may also apply the complementary punishment of prohibition on the exercise of certain rights for a period which can vary between 1 and 5 years, including parental rights.

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

For some of the offences provisioned by this convention, imposing this complementary penalty is even mandatory (see the content of the offences presented in the general questionnaire). Among the rights which may be prohibited, there are the rights to fill in the position, to practice a profession or to develop an activity which has the nature of the one by means of which the offender committed the crime.

The service of the penalty of prohibition on the exercise of certain rights runs from the execution of the imprisonment sentence, or if parole was ordered, from the release date.

Please refer to the footnotes related to the answer given to the question 9a) for the content of the legal provisions.

As well, Article 97 of Law no. 272/2004 provides that "It is forbidden to employ a person against whom a final and irreversible court decree has been issued for intentionally committing a crime, in the public or private institutions, as well as in the public or private residential services, which provide the protection, upbringing, care or education of children."

SAN MARINO / SAINT-MARIN

Question 9b of the TQ / du QT

Did not provide an answer. / N'a pas répondu à cette question.

SERBIA / SERBIE

Question 9b of the TQ / du QT

Ministry of Justice:

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

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

4) prohibition of entering employment and/or practicing profession or occupation related work with minors;

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

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

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

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

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

Under Article 13 of the Law

A special register shall be kept on persons convicted for the criminal offence referred to in Article 3.

The special register referred to in paragraph 1 thereof shall include:

- 1) Full name of the convict;
- 2) Individual identification number of the convict;
- 3) convict's address;
- 4) data on the convict's employment;
- 5) data of relevance for physical recognition of the convict and his/her photograph;
- 6) convict's DNA profile;
- 7) data on the criminal offence and type of penalty;
- 8) data on legal effects of the conviction;
- 9) data on the enforcement of special measures under the law.

Under Article 14, the Criminal Sanctions Enforcement shall maintain the special register referred to in Article 13 thereof Authority of the Ministry of Justice and Public Administration.

All the authorities of the state and other bodies, as well as legal persons or entrepreneurs shall, submit to an authorised officer of the Criminal Sanctions Enforcement Authority the data which under the law are entered into the special register maintained by the Authority, no later than within 3 days from the date of their receipt.

The special register data shall be maintained permanently and may not be deleted.

Minister responsible for judiciary shall proscribe the method of maintenance of the special register in further detail.

Under Article 15 thereof, the data kept in the special register may be provided to the court, public prosecutor or police in connection to the criminal proceedings conducted against the person entered in the special register, and / or competent organisational police unit, as well as organisational unit of the Criminal Sanctions Enforcement Authority responsible for the

treatment and alternative sanctions, when it is required for the purpose of the activity falling under their competences. The data kept in the special register may be communicated upon reasonable request to an authority of the state, other organisation or entrepreneur, and if legal consequences of the conviction are still in effect and if there is reasonable interest grounded in the law. The state authorities and other bodies, as well as legal persons or entrepreneurs whose activities involve work with minors are bound to request the data on whether the person who is supposed to enter employment relation with them, i.e. to perform duties of a job that involves work with the minor, is entered into the special register. The data in the special register may also be communicated to foreign state authorities, under international agreements. To the data contained in the special register, unless otherwise provided for under the provision of this Law, legal provisions of the Law regulating protection of the personal data and data confidentiality shall apply.

NVO Astra answer:

Please see the answers to the questions 15b and 15c of the GOQ.

Question 15b of the General Questionnaire:

NGO Astra:

According to the article 60 paragraph 3 of the Family Act the court can make a decision to separate the child from its parents if there are reasons to completely or partially deprive the parents of their parental rights or in case of domestic violence. General Protocol for the Prevention of Child Abuse and Neglect, in the framework of the Emergency intervention predicts that if the case requires that the right of custody is taken from the parents, pending a court decision, the Social welfare centre will provide a temporary guardian to the child. By providing a temporary guardian the child's identity, rights and interests are protected in accordance with the law. In this process a decision can be taken on relocation of the child i.e. taking the child out of the endangering environment (Article 332 paragraph 2 of the Family Act). This decision is taken in emergency procedure, at the most within 24 hours from determining the need for the child's relocation from the family.

NGO Centre for Child Rights:

Under the Family Code the issuance of a warrant for eviction from a family apartment or house, regardless of a right to property or a lease to immovable property is proscribed among the measures against domestic violence (Family Code, Art. 198). Security measures are pronounced for the period of one year, but may be extended until the reasons for which they had been ordered cease to exist.

Question 15c of the General Questionnaire:

NGO Astra:

In the General Protocol for the Prevention of Child Abuse and Neglect it is predicted that, if during the emergency intervention the decision of institutionalizing the child is taken, it is necessary to, as soon as possible, preferably within a period of seven working days, find a durable solution for the child in the family or outside it.

Long-term satisfaction of the child's needs should be discussed on the case conference, scheduled by the Social welfare centre. Along with the experts from the centre in charge, the experts from other services that had provided help to the child and/or the family before, should discuss and evaluate the circumstances of the case, the needs and the characteristics of the child, parents and the family as a whole.

In ASTRA's experience children in these cases are not participating in the process of finding a durable solution.

SPAIN / ESPAGNE

Question 9b of the TQ / du QT

Article 192 of the Spanish Criminal Code reads as follows:

“The ascendants, tutors, carers, minders, teachers or any other person in charge *de facto* or *de jure* of the minor or incapacitated person, who acted as principals or accomplices of commit the felonies included in this Title, shall be punished with the relevant punishment, in its upper half.

This rule shall not be applied when the circumstance it contains is specifically included in the definition of the crime concerned.

The Judge or Court of Law may also hand down a reasoned punishment of special barring from the exercise of parental rights, guardianship, care, safekeeping, public employment and office or practice of the profession or trade, for the term of six months to six years, or permanent deprivation of parental rights”.

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / « L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE »

Question 9b of the TQ / du QT

See the reply to question 18 of the GOQ.

Question 18a of the General Questionnaire:

Ministry of Justice:

For crimes of sexual abuse to children can be sentenced the following penalties under the Criminal code of the Republic of Macedonia: imprisonment and a prohibition on performing profession, activity or duty. Imprisonment can be only imposed as a main penalty. The penalty prohibition on performing profession, activity or duty may be imposed only as a minor penalty together with imprisonment or probation that is determined imprisonment.

The prison cannot be shorter than 30 days, nor more than 20 years. For crimes that entail a punishment of life imprisonment, may be imposed as long-term imprisonment of 40 years. If for the crime with intent is prescribed prison sentence of 20 years, for severe forms of this crime may be prescribed penalty of life imprisonment.

To the perpetrators of crimes may be imposed following security measures:

- 1) Compulsory psychiatric treatment and keeping in a health institution
- 2) Compulsory psychiatric treatment in liberty,
- 3) Compulsory treatment of alcoholics and drug addicts and
- 4) Medical-pharmacological treatment of perpetrators of sexual assault of a child under 14.

Article 65 regulates the conditions under which is imposed the measure of medical-pharmacological treatment:

- (1) To the perpetrator of the crime of sexual assault on a child under 14 when there is a danger of continuing to perform such crimes, the court may impose a measure of medical-pharmacological treatment.
- (2) If for the act is prescribed life imprisonment, the court may impose a sentence of 40 years if he agreed to the medical-pharmacological treatment that will last the rest of his life or the time at which according to the court's assessment is necessary to last the treatment.
- (3) If for the crime is prescribed long-term imprisonment of 40 years, the court may impose to the perpetrator sentence of 20 years if he agreed to medical-pharmacological treatment that will last the rest of his life or at time based on the court evaluation is necessary to last the treatment.
- (4) If for the crime is prescribed imprisonment of 20 years, the court may impose to the perpetrator minimum sentence prescribed for the crime if he agreed to the medical-pharmacological treatment that will last the rest of his life or the time at which according to the assessment of the court is required to last the treatment.
- (5) The measure under paragraph (1) of this article shall be performed on freedom in specialized medical institutions after serving his imprisonment punishment, and the supervisor of the execution of the measure is implemented by the Directorate for Execution of Sanctions. The Directorate for Execution of Sanctions at least once in six months informs the court for the enforcement of the measure under paragraph (1) of this article and for the need for its continuation or termination.
- (6) If the perpetrator in cases under paragraph (2), (3) and (4) of this article shall not be subjected to medical-pharmacological treatment or voluntarily leave the treatment, the court may determine the forced measure to perform in a health or other specialized institution.
- (7) An exception from paragraphs (2), (3) and (4) of this article, the court without the consent of the perpetrator necessarily will impose the measure under paragraph (1) of this article if the perpetrator commits the crime in return. The measure of medical-pharmacological treatment will last until the end of the life of the perpetrator or the time at which according to the assessment of the court is required to last the treatment.
- (8) The manner of execution of the measure of medical-pharmacological treatment closely is regulated by the Law on Execution of Sanctions.

For crimes of legal entities as a main penalty is imposed fine. Secondary sanctions are imposed under foreseeable in Article 96-A and B: See answer to question no.17.

Question 17 of the General Questionnaire:

Ministry of Justice:

The criminal liability of legal persons in the Criminal Code of the Republic of Macedonia was introduced in 2004 and is regulated in Articles 28 a, b and c. It is based on the principle of presumed liability for legal entities, whose basis is the act or omission of proper supervision by the authorities of the management, the responsible or other person authorized to act on behalf of the legal person. The responsibility of the legal person does not exclude criminal responsibility of the individual as the perpetrator of the crime. (Article 28 paragraph 1 b) .The legal person respond for the crime committed under the following conditions: First, in the specific part for the committed crime to be prescribed the responsibility of the legal entity. Second, the crime to be done by a responsible person of the entity and third the offense is committed in the name, for the account or benefit of a legal person.

The legal entity is also responsible for a crime committed by his employee or agent of the legal entity which has achieved significant benefits or other inflicted considerable damage under the conditions regulated with the article 28-a.

According to Article 96-a and b of the Criminal Code of the Republic of Macedonia:

"For the crimes of legal entities as a penalty is imposed fine.

Under the conditions established by this Code the court, when will evaluate that the legal person has abused his position and there is a danger in the future to repeat the rime, may impose one or more of the following secondary sanctions:

- 1) Prohibition of getting license, license, concession, authorization or other right established by a special law;
- 2) Prohibition on participation in procedures for public tender, the award of public contracts and contracts for public - private partnership;
- 3) Prohibition on the establishment of new legal entities;
- 4) Prohibition to use subsidies and other favorable loans;
- 5) Prohibition on the use of funding for political parties from the Budget of the Republic of Macedonia;
- 6) Revocation of a license, license, concession, authorization or other right established by a special law;
- 7) Temporary prohibition of professional activity;
- 8) Permanent prohibition of performing of certain activities and
- 9) Termination of the legal entity. "

The concept of a legal person is regulated in article 122 paragraph 6 of the Criminal Code, as "A legal entity shall mean: the Republic of Macedonia, units of the local governments, political parties, public enterprises, trade companies, institutions and other organizations,

funds, financial organizations and other legally certain organizations registered as legal entities and other communities and organizations to whom is recognized the status of a legal person.

Question 18b of the General Questionnaire:

Ministry of Justice:

See answer to question no. 20.

Question 20 of the General Questionnaire:

Ministry of Justice:

Article 39 of the Criminal Code contains general rules for measurement of punishment. General provision for measurement of punishment under paragraph 2 of this article obliges the court to take into consideration all the circumstances that effects the penalty to be less than or greater (mitigating and aggravating circumstances), and in particular: the level of criminal responsibility, the motives of which the crime was committed, the strength of the threat or violation of protected goods, the circumstances under which the crime was committed, the contribution of the victim in the performing of crime, the former life of the perpetrator, his personal situation and his conduct after the crime is committed, and other circumstances relating to the personality of perpetrator.

In this law does not differentiate the mitigating from the aggravating circumstances, but leaves to the court such assessment that does not preclude the possibility the court to take into account the circumstances of which is referred article 28 of the Convention.

Also, paragraph 5 of this article of the Criminal Code refers to the following: "During measurement of the punishment, court shall consider separately whether a crime is committed against a person or group of persons or property, directly or indirectly, because of their membership of a particular sex, race, colour, gender, belonging to a marginalized group, ethnicity, language, nationality, ethnic origin, religion or belief, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, economic status, health status, or any other grounds provided by law or by international agreement. "

TURKEY / TURQUIE

Question 9b of the TQ / du QT

The answer to Question 9/a of the General Overview Questionnaire includes an explanation regarding this matter.

Question 9a of the General Questionnaire:

The majority of persons employed in positions that require regular contact with children such as teachers, social service experts, child development and education experts, pre-school and dormitory staff are civil servants.

In order to be a civil servant within the Turkish public personnel regime, it is necessary to hold the general and special provisions set out in the Code for Civil Servants. To be taken into employee status; as well as specific provisions provided for institutions' own law or private legislation, there exists general provisions like citizenship, education, age, military service, health conditions, not to be banned from public rights, not to be sentenced imprisonment more than any limited period and not to be convicted for some certain crimes. Without carrying these qualifications being a civil servant is not possible besides losing any of these qualifications during the time terminates the status. In Turkish law system the capability of being a civil servant may be lost because of imprisonment. Especially every kind of convection for the crimes listed by the article 48 / A-5 of Code for Civil Servants terminates the employee status. Even the institutions such as amnesty and postponement can't omit this incapability situation.

The qualifications sought in the employment procedure and arranged under Paragraph 48/A of the Code for Civil Servants, are “not be to deprived of public rights” (48/A-4) and “not to be convicted of an offence, against the security of the state, against the Constitutional order and the operation of such order, against national defence, against state secrets, or of espionage, embezzlement, malversation, bribery, theft, fraud, forgery, abuse of trust, fraudulent bankruptcy, bid rigging, involvement in fraudulent act during fulfilment of obligations, laundering of assets acquired as a result of offense or smuggling even if a pardon or a sentence to one year or more in prison due to an intentional offence has been rendered, regardless of the fact that the time periods specified under Article 53 of the Turkish Penal Code have been exceeded” (48/A-5 as amended by Article 5728/317, dated 23.1.2008). Therefore, those who are banned from public rights or those who do not possess the requirements stated under Sub-Paragraph 5 cannot become civil servants. The status of those who no longer hold the qualifications listed under Article 48, Paragraph 1, Subparagraph A during their service as civil servants, or those who commit an offence listed under Indent 5 of Subparagraph A, is terminated (Art. 98/b of the Code for Civil Servants).

Another professional group who are required to be in direct contact with children is school bus drivers that provide transportation of children to schools. Regarding this matter, the “Regulation on School Bus Services,” which entered into force after its publication in the Official Gazette no. 26627, dated 28.08.2007, includes direct references to persons who have committed the offences of sexual abuse of children, substance abuse and procurement. It is stated under Paragraph c), Article 8, entitled “Persons working in transportation” of the law that the person cannot “have been convicted of offences listed under Articles 103,104, 109, 188, 190, 191, 227 of the Turkish Penal Code and Article 35 of the Law no. 5326 of Misdemeanours, even if previously pardoned.”

UKRAINE

Question 9b of the TQ / du QT

Sanction of Paragraph two, Article 155 of the Criminal Code of Ukraine (hereinafter referred to as CCU) foresees liability for sexual intercourse with an individual who has not reached puberty (sexual maturity). If the offense is committed by a guardian, trustee or other individual entrusted with obligations of bringing up the victim or caring for him or her, the core sanction foresees, in addition, deprivation of the rights to occupy certain positions or engage in certain types of activities up to three years.

Additional sanctions are foreseen for corruption of individuals under 16 years of age or minors if committed by the same category of individuals (Paragraph two, Article 156 of the CCU).

Circulation of child pornography or coercion of individuals under the age of majority or of minors to participate in creation of artefacts, images or film- or video-products, computer programmes of pornographic character (Paragraphs four and five, Article 301 of the CCU) also foresees – in addition to the core sanction – deprivation of the rights to occupy certain positions or engage in certain types of activities.

Sanctions of other Articles of the CCU, which describe liability for those actions that shall be criminalized under the present Convention, do not directly foresee deprivation of the rights to occupy certain positions or engage in certain types of activities.

At the same time, provisions of Article 55 of the CCU allow to impose this type of additional punishment without reference to a specific sanction of an article (paragraph of an article) of the CCU. This may take place if a court, having regard to the nature of the offense committed by an individual in office or in connection with a certain activity, the character of the individual convicted and other circumstances of the case, decides that such individual should be deprived of the right to occupy certain positions or engage in certain activities.

* * *

III – Other stakeholders / Autres parties prenantes

UNICEF (ICELAND / ISLANDE)

Question 9 of the TQ / du QT

Articles 26-31 of the Child Protection Act deal with custody removal and all measures that can be taken without the consent of parents; they also deal with placement of children out

of their homes. There is no mention of a possibility to remove the perpetrator, only the child⁹.

⁹ English version of the Child Protection Act:
http://eng.velferdarraduneyti.is/media/acrobat-enskar_sidur/Child-Protection-Act-as-amended-2013.pdf