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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 3  
of the Thematic Questionnaire  
(including Replies to Question 9 of the  
General Overview Questionnaire to which it refers)**

**Compilation des réponses à la Question 3  
du Questionnaire Thématique  
(y compris les réponses à la Question 9 du Questionnaire  
« Aperçu général » à laquelle elles se réfèrent)**

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

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

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

## Introduction

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

This document is aimed at responding to this request by compiling replies to question 3 of the thematic questionnaire (and replies to question 9 of the General Overview Questionnaire to which it refers).

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

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

Le présent document vise à répondre à cette demande en compilant les réponses reçues à la question 3 du questionnaire thématique (et à la question 9 du Questionnaire « Aperçu général » à laquelle elles se réfèrent).

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

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<sup>1</sup> The 7<sup>th</sup> 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).

<sup>2</sup> Le rapport de la 7<sup>e</sup> 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 3 of the TQ: Recruitment and screening**

The reply to question 9 of the GOQ will be examined by the Committee to assess the implementation of Article 5, para. 3 with respect to the theme of the monitoring round, paying particular attention to the recruitment and screening of persons whose professions involve regular contacts with children

### **Question 9 of the GOQ: Recruitment and screening**

a. Which legislative or other measures have been taken to ensure that the conditions for accessing those professions whose exercise implies regular contact with children, ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children? (Article 5, para. 3). Please specify to which professions such measures apply. Please also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country;

b. Does the screening of candidates apply to voluntary activities (Explanatory Report, para. 57)?

### **Question 3 du QT : Contrôle préalable et recrutement**

La réponse à la question 9 du QAG sera examinée par le Comité pour évaluer la mise en œuvre de l'article 5 par. 3 par rapport au thème du cycle de suivi, avec une attention particulière au recrutement et au contrôle préalable des personnes exerçant des professions comportant des contacts réguliers avec les enfants.

### **Question 9 du QAG : Contrôle préalable et recrutement**

a. Quelles mesures législatives ou autres ont été prises pour s'assurer que les conditions d'accès aux professions dont l'exercice comporte de manière habituelle des contacts avec des enfants garantissent que les candidats à ces professions n'ont pas été condamnés pour des actes d'exploitation ou d'abus sexuels concernant des enfants (article 5, par. 3) ? Veuillez préciser les professions auxquelles ces mesures s'appliquent. Veuillez également indiquer pendant combien de temps les condamnations pour ce type de crimes restent inscrites au casier judiciaire de la personne concernée

b. Le contrôle préalable des candidats s'applique-t-elle aux activités bénévoles (Rapport explicatif, par. 57)

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

### Lanzarote Convention, Article 5 – Recruitment, training and awareness raising of persons working in contact with children

1 Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.

2 Each Party shall take the necessary legislative or other measures to ensure that the persons referred to in paragraph 1 have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility mentioned in Article 12, paragraph 1.

3 Each Party shall take the necessary legislative or other measures, in conformity with its internal law, to ensure that the conditions to accede to those professions whose exercise implies regular contacts with children ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children.

### Explanatory report

(...)

178. Paragraph 3 sets an obligation for the Parties to ensure that candidates are screened prior to the exercise of professions involving regular contacts with children to ensure that they have not been convicted of acts of sexual exploitation or sexual abuse of children. In certain member States, this obligation can be applied also to voluntary activities. The addition of “in conformity with its internal law” permits States to implement the provision in a way which is compatible with internal rules, in particular the provisions on rehabilitation and reintegration of offenders. Moreover, this provision does not intend to interfere with specific legal provisions in those States which provide for the deletion of offenders’ criminal records after a certain period of time.

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

### Convention de Lanzarote, Article 5 – Recrutement, formation et sensibilisation des personnes travaillant au contact des enfants

1 Chaque Partie prend les mesures législatives ou autres nécessaires pour promouvoir la sensibilisation à la protection et aux droits de l'enfant des personnes amenées à avoir des contacts réguliers avec des enfants dans les secteurs de l'éducation, de la santé, de la protection sociale, de la justice, des forces de l'ordre ainsi que dans les secteurs relatifs aux activités sportives, culturelles et de loisirs.

2 Chaque Partie prend les mesures législatives ou autres nécessaires pour que les personnes visées au paragraphe 1 aient une connaissance adéquate de l'exploitation et des abus sexuels concernant des enfants, des moyens de les détecter et de la possibilité prévue à l'article 12, paragraphe 1.

3 Chaque Partie prend les mesures législatives ou autres nécessaires, conformément à son droit interne, pour que les conditions d'accès aux professions dont l'exercice comporte de manière habituelle des contacts avec les enfants permettent de s'assurer que les candidats à ces professions n'ont pas été condamnés pour des actes d'exploitation ou d'abus sexuels concernant des enfants.

### Rapport explicatif

(...)

178. Le paragraphe 3 prévoit l'obligation pour les Parties de veiller à ce que les candidats aux professions dont l'exercice comporte de manière habituelle des contacts avec les enfants fassent, avant tout recrutement, l'objet d'un contrôle visant à établir qu'ils n'ont pas été condamnés pour des actes d'exploitation ou d'abus sexuels concernant des enfants. Dans certains Etats membres, cette obligation s'applique également aux activités bénévoles. La mention « conformément à son droit interne » permet aux Etats de mettre en œuvre cette disposition d'une manière qui soit compatible avec leur législation, en particulier les dispositions concernant la réadaptation et la réinsertion des délinquants. En outre, cette disposition ne vise pas à porter atteinte aux dispositions spécifiques de la législation des Etats dont le droit prévoit l'effacement des condamnations du casier judiciaire après un certain temps

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

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

**ALBANIA / ALBANIE**

**Question 3 of the TQ / du QT**

In employment procedures of professionals who work with children, in all cases is required the document "criminal record"

**Question 9 of the GOQ / du QAG**

- a)  
In employment procedures of professionals who work with children, in all cases is required the document "criminal record".
- b)  
Did not respond

**AUSTRIA / AUTRICHE**

**Question 3 of the TQ / du QT**

See answer to question 9 of the GOQ

**Question 9 of the GOQ / du QAG**

- a)  
1. According to Section 220b of the CC (suspension from occupations) the court has to exclude the perpetrator of a criminal offence against the sexual integrity and self-determination of persons under age, 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.

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

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.

2. In the course of any recruiting procedure for positions in the federal service and the state service (e.g. teaching staff) the personnel administration has to check the applicant's criminal record information. If recruitment is for positions in institutions providing care for children or young people or education or teaching of children or young people it is mandatory to seek additional information on sex offenders (Section 9a Code of Penal Records *Strafregistergesetz 1968*) which would include notice of specific orders of the court to refrain from certain activities (Section 3 par. 4 to 6 *Vertragsbedienstetengesetz 1948 idF des Bundesgesetzes Federal Law Gazette.vol. I no. 120/2012*).

3. According to Section 8 par. 3 of the Federal Child and Youth Services Act the child and youth services authority is allowed to obtain information about convictions for sexual crimes and coherent suspensions from occupations related to the intended engagement of individuals who should look after children and adolescents.

4. Starting with the beginning of 2014 each employer in the field of supervision, care, training and schooling of persons under age has the right to request a criminal record including these data from every future employee. Persons in search of work therefore have the duty to cooperate to get salaried (Section 10 para 1a and 1b of the Code of Penal Records).

5. The provisions concerning the expungement of convictions can be found in the *Tilgungsgesetz 1972 (TilgG 1972)*.

If someone has been convicted only once, according to Section 3 *TilgG 1972* the period of expungement amounts to five years, if he was sentenced to a maximum of one year imprisonment or only to a fine, ten years if he was sentenced to a term of imprisonment of more than one but not more than three years and fifteen years if he was sentenced to more than three years in prison.

According to Section 4 *TilgG 1972* the period of expungement extends if someone is finally convicted before one or more prior convictions have been expunged. In these cases the expungement of all convictions only occurs together.

According to Section 4a *TilgG 1972* the period of expungement doubles in case of a conviction for an offense under Section 201, 202, 205, 206, 207, 207a or 207b of the Criminal Code (*Strafgesetzbuch*) to an unconditional imprisonment. In case of a conviction for another sexually motivated crime according to the 10. clause of the Criminal Code the period of expungement extends by half.

Sentences to life imprisonment cannot be expunged and also eliminate the expungement of all other convictions (Section 5 *TilgG 1972*). In equal measure any sentence for a sexually

motivated crime according to the 10. clause of the Criminal Code to a term of imprisonment of more than five years principally cannot be expunged.

b)

1. As above-mentioned, the ban according to Section 220b of the CC applies not only to gainful employment but also to voluntary activities that are exercised in an association or other institution.

2. There is no obligatory screening of candidates to voluntary activities as voluntary activities should not be handicapped by formalities. Organizations occupying voluntary workers rather take care of the awareness, education and personality of their voluntary staff. These organizations have also got the opportunity to ask candidates to show them a criminal record including additional information about convictions for sexual crimes and coherent suspensions from occupations, if their work will primarily concern supervision, care, education, training and schooling of persons under age (Section 10 para 1a and 1b of the Code of Criminal Records).

## **BELGIUM / BELGIQUE**

### **Question 3 of the TQ / du QT**

#### Au niveau de la Communauté flamande

Au sein de Kind & Gezin (Enfance et Famille): un plan échelonné pour la gestion de situations d'éducation inquiétantes et du soutien familial préventif en matière de maltraitance d'enfants (service interne). Le fil conducteur prend son origine dans les définitions de la maltraitance d'enfants données par les centres de confiance pour enfants maltraités, l'OMS, le décret relatif à l'aide intégrale à la jeunesse (Decreet « Intégrale jeugdhulpverlening ») ainsi que dans la définition des "situations inquiétantes". Le fil conducteur englobe donc davantage d'éléments que le seul abus sexuel.

Il décrit le processus depuis le moment où le signal est cartographié jusqu'à la prise de décision dans des situations complexes. Il contient à la fois des informations de fond et des informations juridiques. Le fil conducteur est destiné, d'une part, aux infirmiers régionaux, aux responsables d'équipe régionaux, aux aides familiales et aux médecins des bureaux de consultation et, d'autre part, aux coordinateurs de Preventieve Gezinsondersteuning (soutien familial préventif) et chefs de section provinciaux.

Au niveau de la mission de Kind & Gezin (Enfance et Famille), l'objectif a été formulé comme suit : Kind & Gezin (Enfance et Famille) entend, par le biais d'une offre de soins préventive ou d'un appui en matière d'orientation en collaboration avec d'autres services et assistants sociaux, déceler/soutenir à temps les familles au sein desquelles la cohabitation quotidienne entre parents et enfant risque d'échouer ou a complètement échoué entraînant ainsi des risques pour le développement et le bien-être de l'enfant.

Un certificat de bonnes vie et mœurs modèle 2 est obligatoire pour les personnes qui travaillent dans des organismes s'occupant d'enfants et de jeunes (placement familial, centres d'aide aux enfants et d'assistance aux familles (cf. arrêté du Gouvernement flamand

relatif à l'agrément et au subventionnement des centres d'aide aux enfants et d'assistance des familles, article 20)).

#### Au niveau de la Fédération Wallonie-Bruxelles

Tous les professionnels en contact avec les enfants ainsi que les membres de la famille de ses professionnels (accueillante à domicile) et les parents d'accueil doivent fournir un extrait de casier judiciaires de type 2. L'extrait mentionne toutes les condamnations et décisions d'internement pour des faits d'exposition et de délaissement d'enfant, d'enlèvement de mineur, d'attentat à la pudeur, de viol, de corruption de la jeunesse, de prostitution, d'outrage public aux bonnes mœurs, d'homicide volontaire, de lésions corporelles volontaires, d'abstention coupable, lorsqu'ils sont commis à l'égard d'un mineur. Ces condamnations et décisions d'internement ne peuvent pas être effacées de l'extrait.

### **Question 9 of the GOQ / du QAG**

a)

Pour rappel, les interdictions de profession sont déterminées par l'article 382bis du Code pénal, qui prévoit également la possibilité pour le juge de prononcer une interdiction de résidence.

*« 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. »*

Les condamnations à des interdictions sont inscrites au casier judiciaire de l'intéressé. S'il existe un régime d'effacement des antécédents judiciaires, visé par ailleurs à l'article 619 du Code d'instruction criminelle, celui-ci ne concerne que les seules peines de police qui sont effacées automatiquement après un délai de trois ans. Toutefois les infractions visées dans la convention ne peuvent faire l'objet d'une condamnation à une peine de police:

*« Art. 619. Les condamnations à des peines de police sont effacées après un délai de trois ans à compter de la décision judiciaire définitive qui les prononce. L'effacement n'empêche toutefois pas le recouvrement de l'amende prononcée par cette décision judiciaire définitive.*

*L'alinéa précédent n'est pas applicable aux condamnations qui comportent une déchéance ou une interdiction prononcée lors du jugement dont les effets dépassent une durée de trois ans, sauf s'il s'agit d'une déchéance du droit de conduire prononcée pour incapacité physique du conducteur en vertu des dispositions de l'arrêté royal du 16 mars 1968 portant coordination des lois relatives à la police de la circulation routière. »*

En complément à la règle de l'effacement (avec ses effets juridiques visés à l'art.634 du Code d'instruction criminelle),visée à l'article 619 du Code d'instruction criminelle, il existe en outre des règles de non-mention, selon lesquelles la condamnation reste inscrite au casier judiciaire et continue d'exister en soi (elle peut donc encore éventuellement entrer en ligne de compte comme base de récidive), mais n'est plus mentionnée sur l'extrait du casier judiciaire délivré aux administrations ou aux particuliers. Les règles relatives à la non-mention sont d'ailleurs énoncées aux articles 594, 595, alinéa 2, et 596, alinéas 1er et 2, du Code d'instruction criminelle. Ces règles ne s'appliquent néanmoins pas aux interdictions d'accéder à certaines professions ou activités réglementées. L'article 596 dispose à cet égard :

*« Art. 596. Lorsque la demande d'extrait est effectuée en vue d'accéder à une activité dont les conditions d'accès ou d'exercice ont été définies par des dispositions légales ou réglementaires, l'extrait mentionne les décisions visées à l'article 595 alinéa 2 lorsqu'elles comportent des déchéances ou des interdictions dont les effets dépassent une durée de trois ans, ayant pour effet d'interdire à la personne concernée d'exercer cette activité.*

*Lorsque la demande d'extrait est effectuée en vue d'accéder à une activité qui relève de l'éducation, de la guidance psycho-médico-sociale, de l'aide à la jeunesse, de la protection infantile, de l'animation ou de l'encadrement de mineurs, l'extrait mentionne, outre les décisions visées à l'alinéa 1er, aussi les condamnations visées à l'article 590, alinéa 1er, 1° et 17°, et les décisions visées à l'article 590, alinéa 1er, 2°, 4°, 5° et 16°, pour des faits commis à l'égard d'un mineur, et pour autant que cet élément soit constitutif de l'infraction ou qu'il en aggrave la peine. L'administration communale mentionne en outre, si l'intéressé fait l'objet d'une interdiction d'exercer une activité qui la mettrait en contact avec des mineurs, décidée par un juge ou une juridiction d'instruction en application de l'article 35, § 1er, alinéa 2, de la loi du 20 juillet 1990 relative à la détention préventive. L'interdiction doit être mentionnée sur l'extrait jusqu'au moment où le jugement qui s'ensuit acquiert force de chose jugée. Afin d'obtenir cette information, l'administration communale s'adresse au service de police locale.*

*Ces extraits sont délivrés, selon les modalités fixées par le Roi, par l'intermédiaire de l'administration de la commune où la personne à son domicile ou sa résidence. Si elle n'a pas*

*de domicile ou de résidence en Belgique, ces extraits sont délivrés par le service du Casier judiciaire du Ministère de la Justice.*

*L'extrait visé à l'alinéa 2 ne peut être délivré à une personne qui se trouve en détention préventive. »*

Pour les condamnations qui ne peuvent pas être effacées automatiquement, la personne concernée a la possibilité d'introduire une demande de réhabilitation. Les conditions et la procédure en matière de réhabilitation sont définies aux articles 621 et suivants du CIC. Ainsi, pour pouvoir bénéficier de la réhabilitation, il faut avoir subi les peines prononcées et avoir respecté les autres obligations prononcées dans le jugement. L'intéressé devra également subir un délai d'épreuve. La réhabilitation est organisée au niveau des parquets et c'est in fine la chambre des mises en accusation qui statue sur la demande en réhabilitation. Lorsque la réhabilitation est prononcée, il en est tenu compte dans le casier judiciaire de l'intéressé et les condamnations qui ont fait l'objet de la réhabilitation ne sont plus mentionnées sur un extrait de casier judiciaire (article 632 du Code d'instruction criminelle). D'un point de vue juridique, la réhabilitation a les mêmes effets que l'effacement d'une condamnation (article 620 du Code d'instruction criminelle).

L'article 626 CIC prévoit une durée du temps d'épreuve plus longue pour certains condamnations, notamment en cas de récidive, ou si la personne était condamnée à une peine complémentaire dite de « mise à disposition du tribunal de l'application des peines » et déterminée par les articles 34bis à 34quater du Code pénal. Cette peine complémentaire à la peine principale doit, dans certains cas, être prononcée par le juge de fond, ce qui est notamment le cas pour certains délits sexuels.

*« Art. 626. La durée minimum du temps d'épreuve est de trois années pour les condamnations à des peines de police ou à des peines correctionnelles n'excédant pas un emprisonnement de cinq ans. Toutefois, ce délai est porté à six ans au minimum si le requérant a été condamné en état de récidive légale, conformément aux articles 54 à 57 du code pénal ou s'il a été mis à la disposition du tribunal de l'application des peines par application des articles 34bis, 34ter ou 34quater du Code pénal.*

*La durée minimum du temps d'épreuve est de cinq années pour les condamnations à des peines criminelles ou à des peines correctionnelles excédant un emprisonnement de cinq ans. Toutefois, ce délai est porté à dix ans au minimum si le requérant a été condamné en état de récidive légale, conformément aux articles 54 à 57 du Code pénal, ou s'il a été mis à la disposition du tribunal de l'application des peines par application des articles 34bis, 34ter ou 34quater du Code pénal. En ce qui concerne les condamnations conditionnelles, la durée du temps d'épreuve ne peut être inférieure à la durée du sursis sauf si celle-ci a été réduite par voie de grâce. »*

**b)**

Ce sera toujours le cas lorsque l'activité bénévole répond aux critères de l'article 596, alinéa 2 du code d'instruction criminelle, à savoir lorsqu'elle relève de l'éducation, de la guidance psycho-médico-sociale, de l'aide à la jeunesse, de la protection infantile, de l'animation ou de l'encadrement des mineurs et que la réglementation qui la vise requiert que le candidat bénévole produise un extrait de casier judiciaire.

L'extrait mentionnera dès lors toutes les décisions et les condamnations visées à l'article 596, al. 2 précité ainsi que l'interdiction d'exercer une activité qui la mettrait en contact avec des mineurs, décidée par un juge ou une juridiction d'instruction préalablement à toute condamnation.

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

### **Question 3 of the TQ / du QT**

See answer to question 9 of GOQ.

### **Question 9 of the GOQ / du QAG**

a)

The Law on primary and the Law on secondary education in RS stipulate „sexual harassment and abuse“ as a hard violence of working duties.<sup>4</sup>

The Law on secondary education in RS stipulates that profession of a teacher and an expert assistant may be performed by a person who, *inter alias*, has not been convicted by any final decision for criminal offences against dignity of personality, moral, official duty, human trade, child abuse, sexual and other violence on child or juvenile.<sup>5</sup> The Law on preschool education of RS<sup>6</sup> stipulates that a duty in a preschool institution may not be performed by a person who has been convicted by final decision for criminal offences that makes him worthless for performance of duties and tasks related to preschool education: dignity of personality, moral, official duty, human trade, sexual integrity, child abuse, sexual and other violence of a child and juvenile person, abuse of children and juvenile persons for pornography and making child pornography available, production and presentation of child pornography, kidnapping of juveniles, child neglect and abuse of child in family or family community and other criminal offences.<sup>7</sup>

The Law on primary education introduced, *inter alias*, expert assistant in schools to the following positions: pedagogues, psychologist and social worker.<sup>8</sup> Apart from other activities, a pedagogue performs counselling, instructive and pedagogical corrective work with pupils, parents and teachers; while a psychologist performs psychological advisory work, instructive, diagnosis and psychological corrective work with pupils, parents and teachers; and social worker performs counselling and instructive work with pupils, parents and teachers aiming at improvement of social position of pupils in school and family environment, including resolution of social problems of pupils.<sup>9</sup>

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<sup>4</sup> Law on Primary Education („Official Gazette of Republic of Srpska“ nos. 74/08, 71/09 and 104/11)

<sup>5</sup> Law on Secondary Education („Official Gazette of Republic of Srpska“ nos. 74/08, 106/09 and 104/11)

<sup>6</sup> Law on Secondary Education, Article 75

<sup>7</sup> Law on Preschool Education, Article 55

Law on Primary Education, Article 107

<sup>9</sup> Law on Primary Education, Article 109

*The Law on education in primary and secondary schools in Brčko District in BiH*<sup>10</sup> prescribed that a teacher, expert assistant and assistant in educational system who has been convicted for criminal offences against moral, official duty and violation of child rights as grounded in the Convention on children rights may not work in elementary and secondary schools in this District.<sup>11</sup>

*Cantonal law in a domain of preschool and primary education*<sup>12</sup> in this regard determines wider restrictions in employment of educators and expert assistants, respectively appointment of directors of those institutions stipulating that an educator, i.e. a director may not be an elected person who has been convicted for criminal offence by final decision implying that person is non-eligible for performance of duties and working tasks of preschool education.

*The Law on primary education of Tuzla Canton*<sup>13</sup> treats an employer in school, who had been by final decision sentenced by imprisonment for criminal offence against constitutional structure, against humanity and international law, against life and body, against dignity of person, against moral, against marriage and family, against official and other competent duty, after completion of his rehabilitation period, as eligible for work with children. Such a legal solution, *inter alias*, enables to persons who were convicted by final decisions for paedophilia and other forms of sexual exploitation and sexual abuse of children, to be employed in elementary schools as educators, teachers and therewith directly work with children, after the completed sentence and passage of legally determined time-limit for rehabilitation.

A special data base on persons who were convicted by final decision for criminal offences of sexual violence against persons who are under the age of 18 years (child) does not exist in Bosnia and Herzegovina.

In compliance with the Criminal Code of BiH, perpetrators of criminal offences, including sexual violence of children, in case they have not been convicted again for new criminal offences, after passage of time-limit of conviction shall be deleted by legal force from criminal record. Hence, sentence by imprisonment for a term of one to three years shall be deleted from criminal record as per expiration of deadline of five years from a day of execution, statute of limitations and pardoning of punishment, if the convicted person does not commit any new criminal act, sentence by imprisonment for a term of three to five years shall be erased from evidence after expiration of ten years from a day of execution, statute of limitations and pardoning, sentence by imprisonment for a term of five to ten years after expiration of fifteen years and similar. Sentence by long-lasting imprisonment shall not be deleted. By erasing a sentence from criminal record, a perpetrator of criminal offence shall be considered as a person with no criminal record. Such a legal solution produced a consequence that the perpetrator convicted by final decision for criminal offences of sexual violation of children, after passage of legally determined time-limit, after a completion of

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<sup>10</sup> "Official Gazette of BD BiH", nos. 10/08, 25/08, 04/13

<sup>11</sup> Law on Education in Primary and Secondary Schools in BD BiH, Article 113

<sup>12</sup> Law on Preschool Education of Tuzla Canton ( „Official Gazette of TC“ nos. 12/09, 08/11); Law on Primary Education of Canton Sarajevo (“Official Gazette of CS nos. 10/04, 31/11, 15/13)

<sup>13</sup> Law on amendments to the Law on Primary Education of TC („Official Gazette of TC 17/11)

sentence, has a status of a person with no criminal record and may be employed and perform certain duties that enable to that person a direct contact with children.

**b)**

Did not respond

## **BULGARIA / BULGARIE**

### **Question 3 of the TQ / du QT**

There is a proposal for a legislative change under the Law on the Amendments and Supplements of the Penal Code. The amendment foresees a special provision which gives the Court the legal ground for imposing cumulatively also a punishment under art 37, para1, i. 6 or i. 7 of the CC for perpetrators convicted under art 149-157 of the CC (sexual crimes against children).

art 37, para1,

“i. 6 deprivation of right to practice a specific state or public position”

“i. 7 deprivation of right to practice specific profession or activity”.

### **Question 9 of the GOQ / du QAG**

**a)**

Several legislative acts regulate the conditions under which professionals working with children can occupy a vacancy. In general, the certificate of conviction is an absolute must. In accordance with the Ordinance №4/11.05.1993 r. for documents required for labour agreement signing, the necessary documents are passport or other identity document that is returned immediately; documents for graduated education, qualification, competences, academic title or degree, when required for office or vacancy for which the person is applying; documents for experience, when office or vacancy for which the person is applying to possess such; document for medical examination for initial entry into work after suspension of work under an employment agreement for a period exceeding three months; certificate of conviction when a law or regulation require clear criminal record; permission from the labour inspection if the person is under 16 years of age or aged 16 to 18 years.

The Ordinance for the documents required for becoming a state employee envisaged among others the Certificate for conviction.

The Implementing Regulation on Public Education Act stipulates that no one shall become a teacher or a counsellor, if he or she is sentenced to deprivation of liberty and the decision has entered into force for intentional crime; is deprived from a right to exercise their profession; suffer from diseases and abnormalities that threatens 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.

The Ordinance for criteria and standards for social services for children stipulates that annually, every employee is inspected whether or not he/she was a subject of a pre-court proceeding, and 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.

The Criminal Code provides that the rehabilitation shall delete the conviction and shall revoke for the future the consequences ascribed by laws to the conviction itself, unless otherwise provided in certain aspects by law or decree (art 85).

#### Article 86

(1) Rehabilitation shall occur de jure in the following cases:

1. Where a person has been sentenced conditionally, provided during the probation period that person has not committed another crime for which he must serve the suspended punishment;
2. (Amended, SG No. 92/2002, effective 1.01.2005 in respect of the punishment of probation - amended, SG No. 26/2004, effective 1.01.2004, SG No. 103/2004) Where a person has been sentenced to deprivation of liberty for up to three years, or to probation, provided in the course of three years following the expiry of the term of punishment imposed by the sentence or decreased by work or by pardon, no other crime punishable by deprivation of liberty or by more severe punishment has been committed by that person;
3. Where a person has been sentenced, jointly or severally, to a fine, public censure or deprivation of rights, provided in the course of one year following the enforcement of the punishment that person has not committed another crime of general nature, and
4. Where a person has been sentenced as a minor, provided in the course of two years following the serving of the punishment that person has not committed another crime of general nature for which punishment by deprivation of liberty has been imposed on him.

(2) (Amended, SG No. 28/1982) Rehabilitation de jure shall not occur for a crime committed by a person of full age, who has been rehabilitated once.

#### Article 87

(1) Apart from the cases under the preceding paragraph any sentenced person may be rehabilitated by the court which has issued the sentence as first instance, provided in the course of three years following the expiry of the term of the punishment imposed by the sentence or reduced by work or pardon, he has not committed another crime punishable by deprivation of liberty or more severe punishment:

1. if that person has had good conduct, and
2. if that person has compensated the damages in the case of deliberate crime.

(2) The court may rehabilitate the convict even where he has not compensated the damages, if there are good reasons therefor.

(3) (Amended, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004, SG No. 103/2004) Where together with the punishment by deprivation of liberty also punishment by deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6

and 7 or probation has been imposed, the term of such punishment must have expired in order to rule on rehabilitation. Where a fine has been imposed, it must have been paid.

#### Article 88

Rehabilitation may also be requested by the heirs of the convict after his death, provided he has been entitled to it.

#### Article 88a

(New, SG No. 28/1982)

(1) (Supplemented, SG No. 89/1986) Where after the serving of the punishment a term has expired equal to that under Article 82, paragraph (1), and the convicted person has not committed new deliberate crime of general nature for punishment by deprivation of liberty is provided, the sentencing and the consequences thereof shall be deleted notwithstanding the provisions of other laws or decrees.

(2) Where the punishment imposed is deprivation of liberty for more than one year and the person has not been exempted from serving it pursuant to Article 66, the term under paragraph (1) may not be less than ten years.

Ordinance № 8/ 26.02.2008 on the functions and organization of the activities of the criminal record bureaus \*

#### FINAL PROVISIONS

§ 2. The Minister of Justice shall inform the General Secretariat of the European Commission the power of art. 47, para. 1 month after the entry into force of that ordinance.

§ 3. This Ordinance transposes the provisions of Council Framework Decision 2009/315/JHA from 26 February 2009 on the organization and content of the exchange of information extracted from criminal records between Member States (OJ, L 93 of 7.04.2009 on) and Council Decision 2009/316/JHA of 6 April 2009 establishing a European information system for criminal records (ECRIS) in application of Art. 11 of Framework Decision 2009/315/JHA (OJ, L 93 of 7.04.2009 on).

§ 4. This Ordinance is issued pursuant to Art. 77, para. 4 of the Judiciary Act and repeals Ordinance № 1 of 2000 on the organization and functioning of the criminal record bureaus (SG. 10th 2000)

#### **b)**

There are provisions in the Youth Act regulating youth volunteering, and they do not contain any requirement for verification of candidates. Currently there is a draft Law on Volunteering, which was submitted to the National Assembly. This bill includes a requirement for the applicant volunteer to provide a Certificate of conviction before signing the contract for volunteering.

The check for criminal record of the volunteers is regulated in the Ordinance on the criteria and standards for social services for children.

#### Standard 12

The Contractor shall conduct a careful recruitment of staff and volunteers working with children.

Criterion 2: The provider has a written procedure for staff recruitment with criteria for assessing candidates and developed job descriptions that include requirements for education, training, experience and personal qualities.

Criterion 7: The service provider makes periodic attestation of employees, evaluates their professional and personal qualities, provides training, supports and monitors their work.

## **CROATIA / CROATIE**

### **Question 3 of the TQ / du QT**

See answer to question 9 of the GOQ

### **Question 9 of the GOQ / du QAG**

a)

Acts regulating the exercise of certain professions, such as, for instance, the Social Welfare Act<sup>14</sup>, Sports Act<sup>15</sup>, Primary and Secondary Education Act,<sup>16</sup> Act on Volunteering<sup>17</sup>, Nanny Act<sup>18</sup>, prohibit perpetrators of certain criminal offences committed against children from exercising these professions.<sup>19</sup>

Furthermore, perpetrators convicted by a final judgment are entitled to rehabilitation upon the expiry of deadlines specified in the Act on the Legal Consequences of Conviction, the Criminal Record and Rehabilitation. Criminal record data<sup>20</sup> are permanently and fully expunged pursuant to either the rehabilitation order issued by the authority charged with criminal record keeping, the final court decision on rehabilitation or the early rehabilitation decision by the authority granting amnesty or pardon. Provided the perpetrator of a criminal offence is not re-convicted of a new criminal offence, and the criminal offence of which he/she was convicted represents a criminal offence of sexual abuse and sexual exploitation of children<sup>21</sup>, i.e., the criminal offence of “Non-Consensual Sexual Intercourse”<sup>22</sup> “Rape”<sup>23</sup> or “Lewd Acts”<sup>24</sup> committed against a victim who is particularly vulnerable due to his/her age, or the criminal offence of “Trafficking in Human Beings” referred to in Article 106 of the Criminal Act, paragraphs 2 and 3 of which lay down special penalties if the said criminal offence is committed against a child, the rehabilitation period

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<sup>14</sup> Official Gazette 33/12.

<sup>15</sup> Official Gazette 71/06, 150/08, 124/10, 124/11, 86/12 and 94/13.

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

<sup>17</sup> Official Gazette 58/07 and 22/13

<sup>18</sup> Official Gazette 37/13.

<sup>19</sup> For instance, Article 106 of the Primary and Secondary Education Act lays down restrictions with respect to taking up employment with a school

<sup>20</sup> Article 17 of the Act on the Legal Consequences of Conviction, the Criminal Record and Rehabilitation

<sup>21</sup> Sexual Abuse of a Child under the Age of Fifteen – Title XVII of the CA.

<sup>22</sup> Article 152 of the CA

<sup>23</sup> Article 153 of the CA

<sup>24</sup> Article 155 of the CA

applicable to the said convicted person will be twice as long as the rehabilitation period in respect of perpetrators of other criminal offences. General rehabilitation periods are specified in Article 19 of the Act on the Legal Consequences of Conviction, the Criminal Record and Rehabilitation<sup>25</sup>If the period for the duration of which a safety measure was ordered is still running at the moment when the rehabilitation period expires, the data on the conviction and the safety measure will be expunged upon the expiry of, respectively, the rehabilitation period and the period for the duration of which the safety measure was ordered.

**b)**

Under Article 10 of the Act on Volunteering, volunteering for the provision of services to children, disabled persons, the elderly and the infirm, persons who are ill or who are fully or partially deprived of transactional capacity, is forbidden, amongst others, to persons who have been convicted by a final judgment or who are subject to criminal proceedings for a criminal offence against life and limb, criminal offence against personal freedom or sexual freedom, criminal offence of sexual abuse and sexual exploitation of children, criminal offence against marriage, family and children, and to persons who have been convicted by a final judgment of or against whom criminal proceedings are in progress for a criminal offence against sexual freedom and sexual morality subject to the CA provisions applicable at the time.

By way of example, according to the obtained data, each candidate for a job at the Centre for Child and Youth Mental Health Protection of the Zagreb Clinic for Children's Diseases is interviewed both by individual employees of the Centre and by interview panels (psychiatrists, psychologists, speech pathologists, special-education teachers) who have to decide whether there are any elements incompatible with working with children (e.g., sexual exploitation, sexual abuse). In this sense the written recommendations and the good references submitted by most candidates are also analysed. These measures apply to both permanent and temporary employees of the Centre, irrespective of the profession they exercise (psychiatrists, psychologists, special-education teachers, speech pathologists, nurses and technicians, occupational therapists), and to work-process observers, volunteers and interns.

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<sup>25</sup> Article 19 of the Act on the Legal Consequences of Conviction, the Criminal Record and Rehabilitation lays down the general periods of rehabilitation: for long-term imprisonment 20 years from the day the sentence is served, barred by the statute of limitations or remitted, for 10 years' imprisonment or a more severe sentence 15 years from the day the sentence is served, barred by the statute of limitations or remitted, for 3 years' imprisonment or a more severe sentence 10 years from the day the sentence is served, barred by the statute of limitations or remitted, for 1-year imprisonment or a more severe sentence or juvenile imprisonment 5 years from the day the sentence is served, barred by the statute of limitations or remitted, and for imprisonment of up to 1 year 3 years from the day the sentence is served, barred by the statute of limitations or remitted, for a fine from the day the fine is paid, for a conditional sentence from the day the probationary period expires, for community service from the day community service is completed, and for exemption from punishment from the day the decision on the exemption from punishment becomes final.

## DENMARK / DANEMARK

### Question 3 of the TQ / du QT

See answer to question 9 of the GOQ

### Question 9 of the GOQ / du QAG

a)

According to Article 2 of the Act on the retrieval of a statement of previous convictions in respect of children on the appointment of staff, the relevant Minister shall lay down detailed regulations governing the retrieval of a statement of previous convictions in respect of children (*børneattest*) before authorities and private physical and legal persons employ or engage persons who in the course of their duties will come into direct contact with children under the age of 15. This includes assistants, temporary staff, deputies and students on work placements, provided that it is the intention that the person's affiliation with the authority, association, etc., is to be of more than a one-off or short-term nature. Retrieval of a statement of previous convictions in respect of children requires the consent of the person concerned. Failure to give the required consent will impede the employment or engagement of the person concerned.

Pursuant to this provision 9 Executive Orders on the retrieval of a statement of previous convictions in respect of children have been issued by the following Ministers: the Minister for Business and Growth, the Minister of the Environment, the Minister for Gender Equality and Ecclesiastical Affairs, the Minister of Education, the Minister for Health, the Minister for Transport, the Minister for Social Affairs, Children and Integration, the Minister of Justice, and the Minister of Culture.

Within the Ministry of Culture's sphere of jurisdiction the following authorities and associations have a duty to retrieve a statement of previous convictions in respect of children before employing or engaging staff: sports associations, music schools, ballet and dancing schools, riding schools, riding centres, exercise and fitness centres, museums, zoos and animal parks, art galleries, emergency relief organisation, charities, orchestras and choirs, theatres and theatre schools, writing schools for children and young persons, film schools for children and young persons, craft schools, radio and television broadcasters, and libraries with sections, collections or activities for children.

The statement of previous convictions in respect of children contains information about any conviction concerning sexual activities or indecent behaviour with a child under 15 years of age and any conviction of possession or distribution of child pornography. The convictions will appear on the statement for a period of time which depends on the seriousness of the offence. The most serious offences will appear on the statement until the person reaches the age of 80. Less serious offences will appear on the statement until 20 years after a specified date. In case of imprisonment, that date is the date of release from prison or, if the release is conditional, the date when the conditions cease to apply. In case of a suspended sentence, that date is the date of the conviction. Minor offences, where the punishment is a

fine or a conditional withdrawal of charges, will appear on the statement until 10 years after the conviction.

In 2011, 242,026 statements of previous convictions in respect of children were retrieved. In 70 cases the statement included information of previous convictions.

**b)**

As described in the answer to question 9(a), a statement of previous convictions in respect of children must be obtained before employment or engagement of persons who in the course of their duties will come into direct contact with children under the age of 15. The reference to “engagement” includes persons who work as volunteers

## **FINLAND / FINLANDE**

### **Question 3 of the TQ / du QT**

See answer to question 9 of the GOQ

### **Question 9 of the GOQ / du QAG**

**a) & b)**

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 3 of the TQ / du QT

#### Rappel des réponses à la question 9 du QAG :

a)

#### Casier judiciaire national :

Outre la peine très spécifique d'interdiction d'exercer une activité professionnelle ou bénévole impliquant un contact habituel avec un mineur, créée par la loi du 17 juin 1998 et qui est encourue pour l'ensemble des crimes et délits à caractère sexuel, la législation française a réglementé strictement l'accès aux activités professionnelles en lien avec les publics vulnérables et notamment les mineurs.

Ainsi, même si l'interdiction professionnelle n'est pas prononcée, le simple fait d'avoir été condamné pour de telles infractions suffit, en fonction des textes, à faire obstacle à l'exercice de ces professions. (Exemple : article 133-6 du code de l'action sociale et des familles)

A l'exception des peines prononcées à l'encontre de mineurs, ces condamnations pour crimes ou délits sont par principe mentionnées au bulletin n°2 du casier judiciaire destiné aux administrations. L'accès au bulletin n°2 est possible, notamment, pour tout recrutement dans un emploi public impliquant un contact avec des mineurs, mais aussi en cas de recrutement pour une structure d'accueil des mineurs, pour toute activité d'enseignement, privé ou public, pour un certain nombre de professions liées au domaine de la santé, ou encore pour les procédures d'adoption. Il est impossible d'établir une liste exhaustive des professions ainsi réglementées car elles sont très nombreuses.

Le bulletin n°3 du casier judiciaire porte également mention des mesures d'interdiction d'exercer une activité professionnelle ou bénévole impliquant un contact habituel avec des mineurs pendant toute la durée de l'interdiction. (Article 777 – 4° du code de procédure pénale)

Le bulletin n°3, directement délivré à la personne qu'il concerne, pourra être sollicité pour tout emploi dans le secteur privé (agence de garde d'enfants notamment ou employeur particulier). Le bulletin n°3 devra être demandé par la personne concernée et ne peut en aucun cas être délivré à l'employeur (article 777 du code de procédure pénale).

Toute condamnation pour un crime ou un délit sera portée au casier judiciaire national (bulletin n°1) pendant une période de 40 ans (article 769 alinéa 3 du code de procédure pénale).

Les durées de conservation de ces condamnations au bulletin n°2 varient en fonction de la nature et de la durée de la peine (article 775 du code de procédure pénale). La peine d'interdiction d'exercer une profession impliquant un contact habituel avec des mineurs est portée au bulletin n°2 ou 3 pendant toute sa durée. (Article 775 4° et article 777 4° du code

de procédure pénale)

En outre, une condamnation ne peut être exclue de ces bulletins lorsque la condamnation concerne une des infractions de l'article 706-47 du code de procédure pénale (Article 775-1 alinéa 3 et 777-1 du code de procédure pénale). Ce texte vise notamment les infractions suivantes :

- Meurtre ou assassinat d'un mineur précédé, suivi ou accompagné d'un viol
- Agressions sexuelles sur mineur ou majeur
- Atteintes sexuelles sur mineur ou majeur
- Viol sur mineur ou majeur
- Proxénétisme à l'égard d'un mineur
- Recours à la prostitution d'un mineur

**Fichier national automatisé des auteurs d'infractions sexuelles ou violentes (FIJAIS) :**

La loi n°2004-204 du 9 mars 2004 a créé le FIJAIS afin de prévenir le renouvellement des infractions de l'article 706-47 du code de procédure pénale et de faciliter l'identification des auteurs (article 706-53-1 du code de procédure pénale).

Ce fichier contient l'identité et l'adresse de toute personne condamnée pour une des infractions de l'article 706-47 du code de procédure pénale. La personne inscrite a l'obligation de justifier de son adresse régulièrement et de tout changement d'adresse dans les quinze jours de celui-ci.

- L'inscription au FIJAIS est :
- Obligatoire pour toute infraction où la peine encourue est supérieure à 5 ans
- Obligatoire, sauf décision contraire de la juridiction, pour toute infraction où la peine encourue est égale à 5 ans
- Facultative, pouvant être prononcée par la juridiction, pour toute infraction où la peine encourue est inférieure à 5 ans

Sont inscrits à la fois les personnes condamnées en France, mais aussi les français condamnés à l'étranger dès lors que la France aura reçu notification de l'avis de condamnation.

Le FIJAIS est accessible aux administrations pour toute procédure de recrutement, affectation, autorisation, agrément ou habilitation concernant des activités ou professions impliquant un contact avec des mineurs, ainsi que pour le contrôle de l'exercice de ces activités ou professions (article 706-53-7-3° du code de procédure pénale).

### Précisions complémentaires relative à la législation française :

L'article 222-45 du code pénal dispose à ce jour : « *Les personnes physiques coupables des infractions prévues par les sections 1, 3 et 4 encourent également les peines suivantes :*

*.../...*

*3° L'interdiction d'exercer, soit à titre définitif, soit pour une durée de dix ans au plus, une activité professionnelle ou bénévole impliquant un contact habituel avec des mineurs ;*

*.../... ».*

L'article 225-20 du code pénal dispose : « *I. - Les personnes physiques coupables des infractions prévues par les sections 1 bis, 2, 2 bis, 2 ter et 2 quater du présent chapitre encourent également les peines complémentaires suivantes :*

*.../...*

*7° L'interdiction d'exercer, soit à titre définitif, soit pour une durée de dix ans au plus, une activité professionnelle ou bénévole impliquant un contact habituel avec des mineurs ;*

*.../....»*

Par ailleurs, en matière de réhabilitation, l'article 133-16 du code pénal précise : « *La réhabilitation produit les mêmes effets que ceux qui sont prévus par les articles 133-10 et 133-11. Elle efface toutes les incapacités et déchéances qui résultent de la condamnation.*

*Toutefois, lorsque la personne a été condamnée au suivi socio-judiciaire prévu à l'article 131-36-1 ou à la peine d'interdiction d'exercer une activité professionnelle ou bénévole impliquant un contact habituel avec des mineurs, la réhabilitation ne produit ses effets qu'à la fin de la mesure.*

*La réhabilitation n'interdit pas la prise en compte de la condamnation, par les seules autorités judiciaires, en cas de nouvelles poursuites, pour l'application des règles sur la récidive légale ».*

#### **b)**

Dans la législation française, le contrôle du bulletin n°2 des personnes participant à des activités bénévoles n'est pas toujours prévu par les textes.

Lorsque ce n'est pas le cas, le responsable de l'organisme bénévole peut toutefois demander à la personne de produire son bulletin n°3 de casier judiciaire, qui porte mention des condamnations aux peines d'emprisonnement supérieures à 2 ans ferme, et des interdictions d'exercer une activité professionnelle ou bénévole impliquant un contact habituel avec des mineurs pendant toute la durée de l'interdiction.

S'agissant du FIJAIS, il peut être consulté par les administrations autorisées par décret y compris pour des activités bénévoles, l'article 706-53-7 du code de procédure pénale visant les « activités ou professions impliquant un contact avec des mineurs ».

## **GREECE / GRÈCE**

### **Question 3 of the TQ / du QT**

In order to be hired in the public sector the candidate must submit a copy of his/her criminal record. In the private sector employers usually require a copy of criminal records. Yet, there is no specific legislative measure requiring that in all professions that involve contact with children, candidates should be carefully recruited and screened with regard to prior convictions for child sexual abuse or sexual exploitation

### **Question 9 of the GOQ / du QAG**

a)

In case a person is convicted for a crime related to sexual abuse or sexual exploitation of children, he/she can additionally be sentenced to restrictions in employment options, whenever they involve contact with children. They can be excluded for up to five years from employment options that involve having contact with children (Penal Code, art. 67 par. 1, as modified). This is also provided in Law 4267/2014; however exact procedures and conditions for the implementation of those provisos are to be clarified by further legal actions. In those provisos there is no specific profession mentioned. If a person is convicted for the second time for an offence relating to sexual abuse or sexual exploitation against children, court mandatorily imposes a permanent prohibition of exercising a profession that involves regular contact with children.

b)

Insofar screening of candidates does not apply to volunteer activities. However, it should be noted that civil society had employed such screening procedures in certain cases of professionals or volunteers working with very young or very vulnerable children. Nevertheless, these screening processes are still informal and not comprehensive insofar.

## **ICELAND / ISLANDE**

### **Question 3 of the TQ / du QT**

As explained in question 9 of the GOQ persons that have been convicted of crimes identified in the Convention are not allowed to be recruited or work which involves regular contacts with children, including those who have committed crimes within the circle of trust.

### **Question 9 of the GOQ / du QAG**

a)

In Icelandic law there is mandatory screening, which involves examination of the criminal record from the Penal Registry before the recruitment of professionals working with and for children. That screening excludes people that have received a sentence for sexual abuse against children (including distributing or owning child pornography) from working with children, for example in Article 36 of the Child Protection Act no 80/2002, Article 6 para 3 of

The Preschool Act no 90/2008, Article 11 para 3 of The Primary School Act no. 91/2008 and Article 10, para 2 of The Youth act.

The screening for recruitment applies to teachers, supervisors of children and youth as well as those working in specialized services on the basis of the Act on Child Protection. Article 36 in the Act of Child Protection is about the situation if a person has been sentenced for sexual exploitation or sexual abuse of children. It stipulates that without exceptions in all recruitments in positions with the child protection services, or in homes or institutions covered by the Act, whether these are run privately, by the state or municipalities, statements from the Penal Registry and information from the Penal Register shall be obtained stating if the person concerned has been sentenced for offences with regard to sexual exploitation or sexual abuse of children. Persons who have been sentenced for violations of sexual exploitation or sexual abuse of children may not be engaged. If an applicant has been sentenced to punishment for other offences, an assessment shall be made of the implications of this regarding his/her suitability for the position in question, taking account *inter alia* the nature of the work and the nature of the offence.

**b)**

According to Article 10, para 2 of the Youth Act NO 70/2007, which specifically covers provisions applicable to voluntary activity for children and young people, screening of candidates also applies. The general provisions of the aforementioned acts also cover any voluntary activity that may take place in the respective field.

## **ITALY / ITALIE**

### **Question 3 of the TQ / du QT**

See answer to question 9 of the GOQ

### **Question 9 of the GOQ / du QAG**

**a)**

Art 609 nonies of the Penal Code sets out that those convicted for crimes related to children's sexual abuse and exploitation are permanently excluded from any office relating to the protection and guardianship of children. A screening is made of previous criminal records and/or convictions – if any – through the consultation of the Ministry of Justice and the Ministry of Interior databases.

**b)**

Yes, a screening is made of previous criminal records and/or convictions – if any – through the consultation of the databases run by the Ministry of Interior and Ministry of Justice law enforcement. Permission by the judicial authority is also necessary.

## LITHUANIA / LITUANIE

### Question 3 of the TQ / du QT

See answer to question 9 of the GOQ

### Question 9 of the GOQ / du QAG

a)

Article 682 of the Criminal Code establishes a penal sanction, i.e. deprivation of the right to be employed in a certain position or to engage in a certain type of activities, which the court imposes in the cases where the offender commits a criminal act in the field of his occupational or 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.

Having regard to the provisions of Paragraph 3 of Article 5 of the Lanzarote Convention, the Draft Law Amending the Republic of Lithuania Law on Fundamentals of Protection of the Rights of the Child has been produced. Article 25 of the draft law establishes provisions with regard to restrictions of occupation of convicted persons:

*“Article 25. Employment restrictions with regard to persons convicted for criminal acts against children’s freedom of sexual self-determination and inviolability*

*1. Persons declared guilty by an effective court judgement for criminal acts against children’s freedom of sexual self-determination and inviolability, purchase or sale of a child, use of a child for pornography, profiting from child prostitution, involvement of a child in prostitution and keeping of material of pornographic content, shall be prohibited from:*

*1) obtaining employment, irrespective of its functions, in child social, primary health care, educational and sport institutions, companies and organisations;*

*2) obtaining employment in other institutions, companies or organisations, volunteering in these institutions, companies and organisations, if their functions are directly (permanently or temporarily) related to upbringing, teaching, maintenance of children and assurance of safety of children;*

*3) engaging in individual activities, if these activities are directly (permanently or temporarily) related to upbringing, teaching, maintenance of children and assurance of safety of children.*

*2. Before employing a person, the employer, in cases specified in items 1 and 2 of paragraph 1 of this Article, shall address the IT and Communications Department under the Ministry of the Interior of the Republic of Lithuania on the data the Register of Suspected, Accused and Convicted Persons has on persons declared guilty for criminal acts specified in Paragraph 1 of this Article.*

*3. Before issuing the authorisation for engagement in individual activities, in cases specified in item 3 of paragraph 1 of this Article, the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania shall address the IT and Communications Department under the Ministry of the Interior of the Republic of Lithuania on the Data the Register of Suspected, Accused and Convicted Persons has on persons declared guilty for criminal acts specified in Paragraph 1 of this Article.*

It should be noted that currently the Seimas has launched the deliberation of the Draft Law Amending and Supplementing Articles 24, 56 of the Republic of Lithuania Law on Fundamentals of Protection of the Rights of the Child and Supplementing the Law with Articles 471 and 561 (XIIP-321), one of which also offers to establish the above prohibition, including for persons engaged in volunteer activities.

b)

*“Article 9. Organisation of Voluntary Activities*

*3. Taking into consideration the character of volunteering and requirements set out by legal acts, a volunteer organiser may require from individuals wishing to carry out voluntary activities to submit documents necessary to carry out such activities (a medical certificate, a criminal record certificate, etc.).”*

## **LUXEMBOURG**

### **Question 3 of the TQ / du QT**

Il existe au Luxembourg la possibilité de demander un extrait spécifique du casier relatif à la protection des mineurs. Ainsi, l'article 9 de la loi du 29 mars 2013 relative au casier judiciaire dispose que « toute personne physique ou morale se proposant de recruter une personne pour des activités professionnelles ou bénévoles impliquant des contacts réguliers avec des mineurs reçoit, sous condition de l'accord de la personne concernée, le relevé de toutes condamnations pour des faits commis à l'égard d'un mineur ou impliquant un mineur, et pour autant que cet élément soit constitutif de l'infraction ou qu'il en aggrave la peine. » Certes, un tel extrait n'est délivré qu'avec l'accord de la personne concernée, mais le refus de cette dernière ne rassurera guère l'employeur potentiel dans son choix d'embaucher la personne.

### **Question 9 of the GOQ / du QAG**

a)

L'article 9 de la loi du 29 mars 2013, relative à l'organisation du casier judiciaire et aux échanges d'informations extraites du casier judiciaire entre les Etats membres de l'Union européenne, transposant la Directive 2011/92/UE du Parlement européen et du Conseil du 13 décembre 2011 relative à la lutte contre les abus sexuels et l'exploitation sexuelle des enfants, ainsi que la pédopornographie et remplaçant la décision-cadre 2004/68/JAI du Conseil, dispose que « Toute personne physique ou morale se proposant de recruter une personne pour des activités professionnelles ou bénévoles impliquant des contacts réguliers avec des mineurs reçoit, sous condition de l'accord de la personne concernée, le relevé de toutes condamnations pour des faits commis à l'égard d'un mineur ou impliquant un mineur, et pour autant que cet élément soit constitutif de l'infraction ou qu'il en aggrave la peine ».

L'extrait du casier judiciaire est destiné à permettre à tout employeur, personne physique ou personne morale, qui souhaite recruter une personne pour des activités professionnelles ou bénévoles impliquant des contacts réguliers avec des mineurs de vérifier si cette

dernière a fait l'objet de condamnations pour des faits commis à l'égard d'un mineur ou impliquant un mineur, et pour autant que cet élément soit constitutif de l'infraction ou qu'il en aggrave la peine.

L'extrait du casier judiciaire « Protection des mineurs » est fourni par la personne concernée au potentiel recruteur. La loi luxembourgeoise n'établit pas une liste limitative des professions visées mais vise toutes les activités professionnelles ou bénévoles impliquant des contacts réguliers avec des mineurs.

Dans la même optique il importe de souligner encore que l'article 378 du Code pénal luxembourgeois prévoit que les tribunaux peuvent prononcer « une interdiction soit à vie, soit pour une durée de dix ans au plus, d'exercer une activité professionnelle, bénévole ou sociale impliquant un contact habituel avec des mineurs. Toute violation de cette interdiction est punie d'un emprisonnement de deux mois à deux ans

**b)**

A l'heure actuelle, les bénévoles sont tenus de présenter un extrait du casier judiciaire dans le secteur de l'accueil de jour d'enfants seulement.

## **MALTA / MALTE**

### **Question 3 of the TQ / du QT**

In Malta, most organisations and employers seeking to employ professionals to work with children request that their prospective employees present a copy of their police conduct upon application.

Chapter 518 of the Laws of Malta – Protection of Minors (Registration) Act – states in Article 4(2) that: “Any relevant entity which, against payment or otherwise, intends to employ any person or to entrust any person with a position within the entity shall, before so employing or entrusting such person, request the competent court for information which may be registered in the Register in respect of that person.”

The above implies that any entity wishing to employ a person for paid or voluntary work must first check with the courts to check with the Register (of persons guilty of such crimes) to see if the person they seek to employ has been convicted of any acts of sexual exploitation or sexual abuse on children. This way, those professionals involved with children will be duly screened. Nevertheless, some persons go by unnoticed as those persons pending conviction are not listed on the Register. Furthermore, listing on the Registry is at the discretion of the judiciary and therefore conviction of such an offence does not automatically equate that the person would be placed on the Register.

### **Question 9 of the GOQ / du QAG**

**a)**

According to Chapter 518 of the Laws of Malta, any entity or organisation employing or otherwise engaging a person who shall be in contact with minors is required to file an application to the Court of Voluntary Jurisdiction inquiring whether such person's name is

listed in the Register of Sexual Offenders. Furthermore, according to Chapter 77 'Conduct Certificates Ordinance' the Public Service Commission has the right to request a complete record of criminal convictions of persons it intends to employ or which it employs.

b)

The provisions of Chapter 518 are applicable to any persons having contact with minors, irrespective of whether s/he is an employee or a volunteer.

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

### **Question 3 of the TQ / du QT**

In accordance with Law no. 158 of July 04, 2008 on the public office and status of civil servant may apply for a public person that has:

- no criminal record for offenses committed intentionally;
- is not deprived of the right to hold certain positions or to practice certain activities, as a basic or complementary, following final court judgment ordering the ban.

According to the Government Decision No.1018 of 13.09.2004 Framework regulation of temporary placement center for children is approved.

Section 7. The center staff

From the moment of employment, every six month, the worker should pass the medical examination according to the standards of the Ministry of Health.

Law No 547 of 21.07.1995 Law on education

Chapter IV the staff of education

Art. 53 section 5. The conditions of employment of teaching position

People with criminal records, who committed crimes against minors, to public health and social life cannot occupy teaching, scientific, educational and administrative position in education.

Moreover, in order to ensure appropriate training for those working with children in contact with the justice system, the Ministry of Justice has proposed adjusting the legal framework in this segment, taking in consideration the results of the study conducted. However, based on research results, the amending of the legislation in this regard was considered to be unnecessary, thanks to a good specialization of the actors working with children.

Additionally, the Ministry of Justice elaborated individualized Methodology on working with minors, namely the case management method, piloted in Prison no. 10 till the end of 2013. Recently, prison employees' attended to the training seminar organized with NORLAM support.

The Ministry of Justice and UNICEF have developed the Curriculum for staff working with children in detention – "Ensuring the rights of children in detention" through the joint project "The Support to the Ministry of Justice in promoting juvenile justice reforms". The Training Centre of the Department of Penitentiary Institutions, in collaboration with the educational, psychological and social assistance Department, has assessed the needs for trainings of those working with children in detention. Thus, the curricula for all trained staff

in the Training Centre have been revised and amended, being introduced a new discipline, "Ensuring the rights of children in detention."

The criminal record is permanent. (interinstitutional order between the Ministry of Internal Affairs, the Ministry of Justice, The Prosecution office, the Courts – nr. 198/84/111/166/10/2-40/34 of 04.05.2007)

#### **Question 9 of the GOQ / du QAG**

a)

See above answer to question 3

b)

No. Law 121 of 18.06.2010 on voluntary does not provide the named issues, but the screening depends on each voluntary organization recruiting conditions.

### **MONTENEGRO**

#### **Question 3 of the TQ / du QT**

The legislation provides for the issuance of a medical certificate of fitness to work in accordance with the requirements of the competition for employment, but does not require an explicit confirmation of whether the person has been convicted for acts of sexual exploitation and sexual abuse of children, if the work involves regular contact with children.

The Law on Civil Servants and State Employees prescribes the general requirements for employment in public administration bodies, so that the employment may be established if a person is medically fit to perform the job, has not been convicted of a crime that renders him / her unfit to work in public administration, and if no criminal proceedings have been instituted against the person for a criminal offence that is prosecuted ex officio.

In addition to the general conditions and other conditions stipulated in this law, the special law, other regulation or act on internal organisation and job descriptions, other requirements for employment may also be prescribed.

Medical fitness to perform the job is proven by a certificate issued by the authorised health care institution in accordance with the law.

#### **Question 9 of the GOQ / du QAG**

a)

Article 225 of the Criminal Procedure Code provides that criminal records are kept by the ministry in charge of judiciary affairs. Based on this, the Decree of the Government of Montenegro (Official Gazette of Montenegro 51/11 of 28 October 2011) defines the methods and manner of erasing criminal records, as well as the date of taking over the records between the Ministry of Justice and the Police Administration. Due to technical and

administrative reasons, the takeover was not done. Instead, the Decree on Amendments to the Decree on the Manner of Keeping Criminal Records prolonged the action-taking of the Police Administration in this area to 31 March 2014. In this regard, under Article 119 of the Criminal Code, the Police Administration is in charge of the legal rehabilitation of the criminal offences for which the sentence of imprisonment of more than one year is stipulated, which includes the criminal offences referred to in the question 9 of the General Overview Questionnaire on the implementation of the Lanzarote Convention.

As regards the police officers, including those who have regular contact with children in their work, in addition to the general requirements for employment, they must meet certain specific requirements. One of the specific requirements is the worthiness for performing police affairs, which implies that the person was not finally convicted for, among other criminal offences, the criminal offence out of dishonest motives, as well as for offences involving violence (Article 85 of the Law on Internal Affairs).

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Medical fitness to perform the job is proven by a certificate issued by the authorized health care institution in accordance with the law.

**b)**

As regards the requirements for volunteers, the answer is the same as in 9a above.

## **NETHERLANDS / PAYS-BAS**

### **Question 3 of the TQ / du QT**

Please see question 9 of the GOQ.

## Question 9 of the GOQ / du QAG

a)

A certificate of conduct (Verklaring Omtrent het Gedrag, VOG) is a document by which the Dutch Minister of Security and Justice declares that the applicant did not commit any criminal offences that are relevant to the performance of his or her duties. People can apply, both in person or digitally, for a certificate of conduct at the Population Affairs Department (Burgerzaken/Publiekszaken) of the municipality where they are registered in the Municipal Personal Records Database (GBA). The information you supply on your application form is entered in the computer, which automatically adds data from the GBA. All this information is then sent to Justis which issues certificates on behalf of the Minister. If it emerges from the investigation that they have no criminal record, the certificate will be issued. If they do, the authorities decide whether the offences in question are relevant to the application. Offences that would present difficulties for someone wanting a teaching job, for example, may not be relevant to an accountant. The screening profiles and assessments are laid down in policy rules. Applicants can estimate their prospects of obtaining a certificate in advance by consulting the screening profiles, as can employers in order to check what requirements they may impose on applicants. This also implies that the employer will not be specifically informed about the records (and thus; the offences) that have led to denouncing the VOG. They are informed that the person does not match the profile required.

There is a special profile for people who work with children.

From March, 2013 onwards a new type of screening, being a “continuous screening” was introduced for personnel working in day care centres. This implies that any new criminal record on a specific person working in this field will be looked at specifically by Justis which issues certificates on behalf of the Minister. If Justis deems it necessary they will contact the relevant municipal authority, who will instruct the person to ask for re-issuing of the certificate.

In case of offences connected to abuse of children, be it sexually or by use of other violence, the rules state that there is no time limit for keeping and using criminal records.

NGO's implemented a code of conduct for their employees and volunteers who work with children.

b)

Over 2 million Dutch nationals work as a volunteer with children, e.g. in sports or scouting. This involves many children who are in need of good and safe guidance. The sport clubs and other organizations themselves bear primary responsibility for guaranteeing safety for children, including safety from possible sexual abuse by caretakers. These organizations are very much encouraged to implement policies on integrity. In order to help the organizations the State secretaries of Security and Justice and of Health, Safety and Sports launched a “toolkit”, a stepped approach and a possible reference list for volunteers who were disciplinary sanctioned. Next to this organizations can make use of the certificate of conduct (see answer above under 9.a.) The government is introducing a subsidy to help organizations of volunteers to overcome the costs of certificates of conduct.

Within the Action plan to tackle child sex tourism the government is exploring the possibilities for screening of volunteers working for Dutch voluntary (often charity) organizations in third countries.

## **PORTUGAL**

### **Question 3 of the TQ / du QT**

Please refer to the answer provided in the GOQ.

Screening of people working with children, both in professional and voluntary activities, is mandatory.

Pursuant to Law nr. 113/2009, of 17 September, entities recruiting for positions which involve regular activities with children, including voluntary activities, must request that the candidate presents his/her criminal register when applying, in order to have his/her capacity to work with children appreciated. The extract of the criminal register of the candidate should contain information on convictions on domestic violence; ill treatment, crimes against sexual freedom and sexual self-determination (including sexual offences committed in the circle of trust) and accessory penalties applied as a result of these convictions.

### **Question 9 of the GOQ / du QAG**

#### **a) & b)**

In 2009, legislation establishing children's protective measures, in compliance with Article 5 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, was published (Law nr.113/2009, of 17 September).

This Law basically foresees the conditions for the accessing to professions, jobs, functions or activities, public or private, even if unpaid, whose exercise involves a regular contact with children, where the recruiting entity has to compulsory require the applicant's criminal record and is obliged to consider whether the applicant is suitable to the exercise of such functions.

Total number of positive criminal records for the above mentioned purpose:

This Law basically foresees the conditions for the accessing to professions, jobs, functions or activities, public or private, even if unpaid, whose exercise involves a regular contact with children, where the recruiting entity has to compulsory require the applicant's criminal record and is obliged to consider whether the applicant is suitable to the exercise of such functions.

Total number of positive criminal records for the above mentioned purpose:

2010: 144.387, of which <b>5.054 positives</b> ;
2011: 160.947, of which <b>6.296 positives</b> ;
2012: 167.606, of which <b>6.189 positives</b> ;
2013: 171.329, of which <b>5.556 positives</b> .

Moreover, the judicial authorities that have to decide on the adoption, custody, guardianship, foster care, civil sponsorship, delivery or custody of minors or on the regulation of the exercise of parental responsibilities may accede to the criminal record of the persons to whom the child is to be entrusted, so as to know whether they are considered suitable or not. The judicial authorities may also accede to the criminal record of other persons that cohabit with the child.

Public Prosecutors can as well request the criminal record of the person to whom the child is to be entrusted and/or of other persons that cohabit with the child.

The definitive removal from the criminal record of information regarding the convictions and penalties applied due to sexual crimes against children can only take place 23 years have elapsed from the extinction of the main sentence or of its replacement or security measure applied but only if, in the meanwhile, no new conviction occurs (Article 15 (1) a) of the Law nr. 57/98, of 18 August).

## **ROMANIA / ROUMANIE**

### **Question 3 of the TQ / du QT**

See answer to question 9 of the GOQ

### **Question 9 of the GOQ / du QAG**

**a)**

According with art. 97 of Law No. 272/2004 concerning the protection and fostering of children's rights, as subsequently modified and supplemented, in public or private institutions, as well as within residential public or private services which ensure the protection, raising, care or education of children it is forbidden to hire the person against whom a final court decision has been given for intentional perpetration of an offence.

Law No. 272/2004 also contains some other precautionary measures concerning the hiring of professionals who have contact with children, like for example the obligation to submit a neuropsychiatric report upon hiring, the yearly testing of the staff<sup>26</sup>.

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<sup>26</sup> Article 97 – It is forbidden to employ a person against whom an enforceable court decision 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.”

There are also professions for which the law provides for the obligation of submitting the criminal record<sup>27</sup>, this being a pre-requisite for the employment: it applies for judges and prosecutors, police workers and other civil servants and probation officers.

The regulations for the organization of entrance examinations for such professions impose the condition of a good reputation and of a clean criminal record.

The Government's Decision No. 611/2008 for the approval of the rules for the organization and development of the career of civil servants sets out that the file for the registration for the competition has to contain the criminal record (art. 49 para. 1).

As regards the recruitment and employment of teachers, the National Ministry for Education has introduced in the Minister's Order No. 6239/2012 concerning the approval of the Framework methodology regarding the mobility of the teachers in the pre-college education system the rule according to which persons who have been removed from the education system based on a final criminal court decision do not have the right to participate in the competition for a teacher's position (art. 58 para. 3).

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Article 144 - (1) The education, protection and nursing staff within the public and private institutions who come into contact with the child through the nature of their job, must undergo through a neuropsychiatric evaluation at the time when they are employed.

(2) The staff mentioned under paragraph (1) is assessed on a yearly basis from a psychological point of view.

(3) The neuropsychiatric evaluation reports and the psychological assessment reports are kept in the personal file of each staff member, according to the law.

<sup>27</sup> According to Article 9 of Law no. 290/2004 on criminal records, with subsequent amendments and supplements, in respect of natural persons, the criminal record shall contain data regarding:

- a) Sentences, safety and correctional measures, imposed according to enforceable court judgments;
- b) Wave or postponement of the sentence service, commencement, interruption and termination of the sentence service and of the correctional measures, suspension under supervision of the sentence service, replacement, reschedule and payment of the criminal fine;
- c) Amnesty, pardon, statutes of limitations, rehabilitation, political nature of the offence;
- d) Sentences and measures imposed according to enforceable court decisions abroad, as well as measures taken by action of the criminal judicial institutions abroad, if these judgments were recognized by the competent Romanian courts;
- e) Enforceable judgments which require corrections in the criminal record;
- f) Extradition.

Article 15 of Law no. 290/2004 on criminal records, republished. The natural persons registered in the criminal records or for whom temporary mentions were made shall be removed from the records, if one of the following situations occurs:

- "a) the committed acts are no longer provisioned by the law as offences;
- b) the court or lawful rehabilitation occurred;
- c) amnesty occurred;
- d) the persons concerned were sentenced to pay a fine or to serve a custodial sentence of up to 3 years and 20 years have passed since the sentencing was rendered enforceable;
- e) the persons concerned deceased;
- f) the prosecution was waved or the offences were subject to classification or an enforceable judgment for acquittal or termination of the criminal trial was issued;
- g) one year has passed since the service date of the correctional measure;
- h) 2 years have passed since the date when a enforceable decision for the postponement of the sentence service was issued and the revocation or the annulment of the postponement of the sentence service was not ordered, according to Article 88 or 89 of the Penal Code;
- i) 5 years have passes since the date when one of the administrative penalties provisioned by Article 91 of Law no. 15/1968 on the Penal Code, republished, with subsequent amendments and supplements, was applied."

b)

Law No. 195/2001 concerning voluntary service does not expressly provide among documents which are necessary for the performance of voluntary service the criminal record.

According with the information provided by the general direction DGASPC, some of these services also request the criminal record when recruiting volunteers (Arges, Bihor, Bucharest sector 1, 3 and 5, Caras-Severin, Cluj, Covasna, Hunedoara, Iasi, Mehedinti, Neamt, Olt, Suceava, Tulcea and Vrancea).

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

### **Question 3 of the TQ / du QT**

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

### **Question 9 of the GOQ / du QAG**

a)

San Marino legal system has provided for additional penalties inflicted by the judicial authority to punish the criminal conduct, in order to suppress and punish not only the offence, but also the criminal behaviour of the offenders and their chance for future repetition of it.

A penalty of disqualification shall affect the legal capacity of sentenced persons, banning them **from public offices or services and from the tasks related to them, respectively, of public officer and civil servant** - Art. 82, paragraph 3, no. 1) -.

Although this penalty is mentioned in the general part of the Criminal Code and not specifically for the offences referred to in this questionnaire, the scope of the provision shall also covers the category of offences against children.

San Marino system includes two types of certificate: a historical criminal record for internal use only of public administration, judicial offices and Police forces, containing information relating to criminal proceedings against an individual; a general criminal record, to which special clauses apply (non-disclosure of convictions and suspended sentence) for convicted persons, not recidivists, punished for minor offences.

b)

No.

## **SERBIA / SERBIE**

### **Question 3 of the TQ / du QT**

Ministry of Labour, Employment and Social Policy:

The Rules on Forbidden Practices in Social Welfare by Staff, adopted in 2012 (Official Gazette of RS, RS 8/2012 of 3 February 2012) is intended to increase legal liability of the staff and to strengthen the children placed in residential care institutions of social welfare system and community-based services to protect their rights. The Rules forbids every form of physical, emotional and sexual abuse, exploitation, abuse of trust or power, neglect or any other form of behaviour and conduct that have impact on beneficiaries' health, dignity and development. This document provides for the particulars and details of the ban on corporal, emotional and sexual violence, and/or abuse, prohibition of exploitation, prohibition of neglect. Also, in connection to every form of violence referred to there are provisions under which it has been specifically proscribed how they are related to the child who is beneficiary of services, whereof special position of the child is emphasized and the need for protection of the child when using services. In particular, the Rules impose obligation of reporting and checking up the safety of other beneficiaries in case that violence occur in residential care institutions or other service providers.

NGO Astra answer:

Please see the answer to the question 9 of the GOQ.

## **SPAIN / ESPAGNE**

### **Question 3 of the TQ / du QT**

See answer to question 9 of the GOQ

### **Question 9 of the GOQ / du QAG**

a)

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

The criminal record certificate is issued under these circumstances:

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

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

- Ministry for Home Affairs, in the area of the Guardia Civil: cancellation of criminal records; cancellation of unfavourable notes for personnel in the Civil Guard Corps; firearms and explosives permits; selection procedures for entry in the different levels of the Corps; private rural Guards; protection and security services.

- Ministry for Home Affairs, in the area of policing: protection and security service (security guards, heads of security, bodyguards, private detectives); police rank selection; cancellation of police/criminal records; cancellation of unfavourable notes.
- Ministries for Home Affairs, of Employment and Social Security: residence permits (granting and renewal) and non-nationals working in Spain.
- Ministry of Defence: selection of officers, non-commissioned officers, soldiers and sailors; cancellation of unfavourable notes in military records; selection of volunteer reservists; granting military recognition.

The criminal record certificate is also issued directly to the competent body in the selection procedures for Justice Administration personnel. For legal procedures related to incapacity, guardianship and tutorship, the certificate is issued directly to the Courts hearing the case.

Royal Decree 95/2009 introduced some minor changes but upheld the basic principle that the certificate is only accessible to judges, public prosecutors and the judicial police.

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

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

**b)**

The same rule applies.

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

### **Question 3 of the TQ / du QT**

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

### **Question 9 of the GOQ / du QAG**

**a)**

#### Ministry of Justice

In the laws on primary, secondary and high education as a condition for employment (to be confirmed by MIN. of Education and Science) is defined as a condition of employment in these institutions, among others, the person should have a certification were is not pronounced a prohibition on performing profession, activity or duty.

In the Criminal Code of the Republic of Macedonia the prohibition of performing profession, activity or duty represent penalty that may be pronounced only as a secondary penalty together with imprisonment sentence or suspended sentence that is determined with the imprisonment. In article 106 are contained provisions for criminal records. In addition to in paragraph 5 is regulated that: "Nobody has the right to require from citizens to submit proof of their convictions or criminal records." Paragraph 4 provides that: "Data from the criminal records on special requests can be granted to the state authorities, legal or individuals if still exists certain legal consequences of conviction or penalties which are consisted on prohibitions or if there exist a justified interest based on law. "

Also, in article 106 of the Criminal Code are contained provisions for Special registry where is regulated that: "Dates for effective court decision for imposed an action of security, the court submitted to the state administration responsible for the affairs of health, because registration health records, as well as to the state administration responsible for the affairs of labour and social policy, because registration in a special register.

In the paragraph 2 is regulated that: "the Court submit to the organ of the state administration responsible for the labour affairs and social policy data's for persons convicted by a final judgment for crimes against sexual freedom and sexual morality and crime under article 418-g of this Code committed against minors, for which has a special register. "

Paragraph three provides that: "The data referred to paragraphs (1) and (2) of this article may be used exclusively to protect the health of people for whom are pronounced security measures or protection of minors rights, under the terms and procedure established by law."

Considering these provisions a Law was adopted for a special registry for persons convicted by a final judgment for crimes of sexual abuse of minors and paedophilia. With this law is regulated the category of personal data contained in the Register of persons convicted for crimes of sexual abuse of minors and paedophilia, the way of giving personal data on using them, the level of confidentiality and term of data storage. The Register is maintained by the Ministry of Labour and Social Policy by PI Institute for social activities. The data on convicted persons entered in the Register are publicly available.

Also in articles 103-105 are contained provisions for rehabilitation which could be performed under the law (legal rehabilitation) or based on a court decision (court rehabilitation). Rehabilitation means early termination of penalties which consists the prohibitions and the punishment of expulsion of foreigner from the country and the legal consequences of the conviction and deletion of the conviction from criminal records. Rehabilitated person is considered as untried, and the data's of deleted sentence not given to anyone. According to Article 105, paragraph 4 where is regulated the judicial rehabilitation is determined that after expiration of three years from the date of application of penalties for interdiction of profession, activity or duty and prohibition of driving a motor vehicle and temporarily expulsion foreigners from the country, as well as the penalty

permanent prohibition for performing activity of a legal person, the court may decide to cease.

When is deciding on the rehabilitation, the court will take into account the behaviour of the convicted person after the conviction, the circumstance if he compensated the damage, if is returned the property benefits, as well as other circumstances relevant to this decision.

The Court may, with the request of the convicted to determine to erase from the criminal record of the conviction imprisonment: over three years to five years within five years; over five years to ten years within ten years; more than ten years to 20 years and 40 years within 20 years from the day of serving, outdated or pardoned penalty, if at that time the convicted did not commit a new crime. When is deciding on deleting the condemnation, the court shall take into account the behaviour of the convicted person after serving the sentence, the nature of the crime and other circumstances which may be important for the assessment of the justification for the deletion of the condemnation.

**b)**

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

## **TURKEY / TURQUIE**

### **Question 3 of the TQ / du QT**

See answer to question 9 of the GOQ

### **Question 9 of the GOQ / du QAG**

**a)**

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.”

b)

Necessary evaluations are being conducted by the Ministry of Family and Social Policies depending on the nature of the voluntary activity.

## **UKRAINE**

### **Question 3 of the TQ / du QT**

See answer to question 9 of the GOQ

### **Question 9 of the GOQ / du QAG**

a)

Item 14 of the Instructions regarding a foster family, as approved by the Decree # 565 of the Cabinet of Ministers of Ukraine as of 26 April 2002.

The Ministry of Internal Affairs partook in the development of the draft Law of Ukraine “On Amendment of Certain Laws of Ukraine due to Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse” as developed by the Ministry of Justice of Ukraine (the draft law has been submitted to the

relevant parliamentary committees of Verkhovna Rada of Ukraine). This draft law foresees amendments to the Law of Ukraine “On Protection of Childhood” as regards requirements for individuals working in contact with children.

An individual shall be held to have a conviction from the date, on which the verdict of guilty enters into force and until the conviction is cancelled or revoked (Paragraph one, Article 88 of the CCU).

In accordance with Items 7-9, Article 89 of the CCU, the following individuals shall be held to have no conviction:

- sentenced to imprisonment for a medium grave offense, if they commit no further offenses within three years from the date on which they completed to serve their sentence (primary or additional);
- individuals sentenced to imprisonment for a grave offense, if they commit no further offenses within six years from the date on which they completed to serve their sentence (primary or additional);
- individuals sentenced to imprisonment for a special grave offense, if they commit no further offenses within eight years from the date on which they completed to serve their sentence (primary or additional);

Rape of an individual under the age of majority or of a minor, forceful satisfaction of sexual passion by unnatural means committed against a minor are considered *special grave offences*.

At the same time, forceful satisfaction of sexual passion by unnatural means committed against an individual under the age of majority, corruption of minors, as well as sexual intercourse with an individual under the age of majority as committed by a father, mother, stepfather, stepmother, guardian, trustee or other individual entrusted with obligations of bringing up the victim or caring for him or her are classified as *grave offences*.

If sexual intercourse with an individual who has not reached the age of majority was committed by any other individual, this is classified as a *medium grave offence*.

**b)**

No, such screening does not take place.

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

### **BLÁTT ÁFRAM (ICELAND / ISLANDE)**

#### **Question 9 of the GOQ / du QAG**

**b)**

The absence of screening seems to be a problem for organizations that utilize the help of volunteers, such as sports clubs and an ongoing list of NGOs. Blátt Áfram emphasizes the importance as well as the responsibility of organizations using volunteers who work with and around children, to implement screening and training for all adults in the interest of protecting these children

### **FUNDACIÓN ANAR (MISSING CHILDREN EUROPE) (SPAIN / ESPAGNE)**

#### **Question 9 of the GOQ / du QAG**

No information available on any legislative measure taken.

With regard to the 116 000 hotline service run by us, Fundación ANAR requires a criminal record certificate for any contractual or voluntary staff member.

Although the Penal Code contains a provision on disqualification it is almost never applied by Spanish courts.

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

#### **Question 3 of the TQ.**

There are articles in various acts on the prohibition of those that have been convicted for acts of sexual exploitation or abuse of children. Teachers and those working with youth can be asked to turn in their criminal record. The criminal record that employers are given will show activity for the last five years, but extended information is available by request to the state prosecutor.

#### **Question 9 of the GOQ / du QAG**

**a)**

There are articles in various acts on the prohibition of those that have been convicted for acts of sexual exploitation or abuse of children. Teachers and those working with youth can be asked to turn in their criminal record but there is no official supervision within individual schools whether they effectively make all applicants turn in their criminal records. The

criminal record that employers are given will show activity for the last five years, and extended information is only available by request to the state prosecutor.<sup>28</sup>

**b)**

Refer to answer a - article 10 of the Youth Act also encompasses volunteers.

## **EUROCEF (FRANCE)**

### **Question 9 of the GOQ / du QAG**

**b)**

Vérifications de casier judiciaire.

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<sup>28</sup> Individuals who have been convicted for violations of Chapter XXII of the General Penal Code, number 19/1940 may not be hired to work with staff mentioned in article 2 who works with children and youth under the age of 18. The same applies to those who have been sentenced for violation of the Narcotics Act number 65/1974 in the last five years. This provision includes also those who are entrusted with the management of children and young people under 18 years old within a framework of volunteer work. Administrators of schools, day-care centres, summer camps, sport and recreation centres and other such institutions or places where children and young people congregate or stay for a long or short time and to whom article 2 applies, have the right to information from the penal registry upon that individual's consent, on whether a particular individual who has applied to them for employment has been sentenced for violations covered by paragraph 3. For operations by state, municipality or other parties that fall within the scope of this Act, care shall be taken that they meet conditions of laws and regulations on accessibility, facilities, health and safety.