

Protection of Children against Sexual Abuse in the Circle of Trust: Legal Frameworks (Lanzarote Convention Monitoring Questionnaire)

Fields marked with * are mandatory.

Introduction

1. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (hereinafter “the Lanzarote Convention” or “the Convention”), which entered into force in July 2010, requires criminalisation of all forms of child sexual abuse. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

2. The Committee of the Parties to the Convention (also known as the “Lanzarote Committee”), established to monitor whether Parties effectively implement the Convention (Article 1 § 2), decided that:

“1. The monitoring of the implementation of the Convention in the Parties shall be based on a procedure divided by rounds, each round concerning a theme decided by the Lanzarote Committee or any other approach deemed appropriate by the Lanzarote Committee within the scope of the Convention.

2. The Lanzarote Committee will determine the length of each monitoring round in the light of the themes selected and the provisions of the Convention to be monitored.

3. The monitoring round will be initiated by addressing a questionnaire on the implementation of the relevant provisions of the Convention with respect to the selected theme. The Parties shall respond to the questionnaire within the time-limit set by the Lanzarote Committee.”[1]

The notion of the circle of trust

3. In January 2018, the Lanzarote Committee concluded its first monitoring round “Protection of children against sexual abuse in the circle of trust”. The notion of “circle of trust” includes members of the extended family, persons having care-taking functions or exercising control over the child, and any other persons with whom the child has relations, including his/her peers.[2]

The previous and current monitoring rounds on the circle of trust

4. The two implementation reports adopted as a result of the first monitoring round evaluated the frameworks and strategies put in place by the 26 States Parties to the Lanzarote Convention which had ratified it by the time the monitoring round was launched[3]. Since then, the Convention has been ratified by 22 other Parties,[4] and numerous changes have taken place in the subject area due to the development of international standards and national reforms. Furthermore, a child’s circle of trust remains the environment

where the vast majority of sexual abuse occurs.[5] The Committee therefore decided to come back to the subject matter of the first monitoring round in 2023, to both take stock of the situation in the 22 Parties that had not been examined in the first round and to evaluate the follow-up given to the Committee's recommendations by the 26 Parties that had.

5. All of the current 48 Parties will be monitored at the same time to create a momentum around specific aspects of the monitoring theme. To ensure a more accurate reflection of the situation in the Parties and a speedier publication of intermediary results, the monitoring round will be divided into several parts and conducted on the basis of information submitted by the Parties and other stakeholders in response to questionnaires specific for each part.

Involvement of civil society and other relevant stakeholders in the monitoring round

6. In accordance with paragraph 4 of Rule 26 of the Lanzarote Committee's Rules of Procedure, the Secretariat shall seek the views of the representatives of civil society and any other bodies involved in preventing and combating sexual exploitation and sexual abuse of children on the implementation of the Convention by Parties, in particular by asking them to comment on the replies to this questionnaire or by any other means (e.g. by offering the observers and participants in the Lanzarote Committee to submit any relevant information they may have with regard to any Party to the Convention by replying directly to some or all of the questions of this questionnaire). These comments and replies will be transmitted by the Secretariat to the Party(ies) concerned and made public.

Type of questions and elements to be borne in mind when replying

7. Each of the questionnaires of this monitoring round will contain questions derived from the Committee's first monitoring round recommendations and findings, as well as a few new questions based on the Committee's adopted texts and international standards that have emerged in the meantime, including the case-law of the European Court of Human Rights, to gather information for capacity-building purposes. The first part of the monitoring round will assess the legal framework and related procedures with respect to sexual abuse of children in the circle of trust ("Legal frameworks").

8. This specific first questionnaire was adopted by the Lanzarote Committee on 2 June 2023. It is recalled that, in accordance with Rule 26 of the Lanzarote Committee's Rules of Procedure:

"...2. The Secretariat shall address such questionnaires to the Parties through the member in the Lanzarote Committee representing the Party to be monitored, who will act as "contact person".

3. Parties shall submit their replies in one of the official languages of the Council of Europe to the secretariat within the time limit set by the Lanzarote Committee. The replies shall be detailed, answer all questions and contain all relevant reference texts. The replies shall be made public.

5. The Secretariat may request additional information if it appears that the replies are not exhaustive or unclear. Where warranted, with the consent of the Party(ies) concerned and within the limits of budgetary appropriations, the Bureau of the Lanzarote Committee may decide to carry out a visit in the Party(ies) concerned to clarify the situation."

9. In addition, Parties are kindly requested to:

- answer the questions with regard to central, regional and local levels to the extent possible. Federal States may, in respect of their sovereign entities, answer the questions in a summarised way;
- provide, whenever questions/answers refer to it, the relevant text (or a summary) of legislation or other regulations in English or French;

- answer the questions from a gender equality perspective, i.e. specifying, where relevant, whether and how measures for victims and/or offenders take into account gender-specific requirements.

10. The term “national legal framework” used in the questionnaire includes not only laws but also all forms of regulations (decrees, resolutions, administrative directions, instructions, and any other decisions creating legal consequences for more than one individual) and higher courts’ directive rulings.

11. The questions asked concern the legal frameworks pertaining to both online and offline forms of activity. Should your national legal framework distinguish between them, please provide details.

12. As indicated above, some of the questions are included for capacity-building purposes. Therefore, nothing in the wording of these questions should be taken as an indication of a preferred state of affairs or course of action.

13. The questionnaire uses a colour-coded system to help you differentiate questions based on the Lanzarote Committee’s 1st monitoring report’s “invite” recommendations (in blue) and “urge”/ “consider” recommendations (in red). The questions based on the European Court of Human Rights’ case law and the Committee’s adopted texts are coloured red. The questions included for capacity-building purposes are coloured blue.

14. Some of the questions are addressed only to specific Parties found to be not in compliance with a particular requirement of the Convention in the first monitoring round, or to those Parties and to the 22 Parties which had not been evaluated during the first monitoring round. All other questions are meant to be replied to by all Parties.

[1] Rule 24 of the Lanzarote Committee’s [Rules of Procedure](#)

[2] See [1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework”](#), p. 12. Examples of the different categories of persons may be found in paragraphs 123-125 of the [Explanatory Report to the Lanzarote Convention](#)

[3] Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, France, Greece, Iceland, Italy, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Portugal, Romania, San Marino, Serbia, Spain, Türkiye and Ukraine

[4] Andorra, Armenia, Azerbaijan, Cyprus, Czech Republic, Estonia, Georgia, Germany, Hungary, Ireland, Latvia, Liechtenstein, Monaco, Norway, Poland, the Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, Tunisia, United Kingdom

[5] See the [Explanatory Report to the Lanzarote Convention](#), paras. 48 and 123-125

IDENTIFICATION OF THE RESPONDER

* Name of the Party responding or concerned by your response

Austria

* Name of the contact person/coordinator

* Email address of the contact person/coordinator

KEY NOTIONS Question 1. Does your national legal framework:

a. [have a reference to “abuse of a recognised position of trust, authority or influence” as a separate sexual offence against children?](#)^[6] If yes, please provide a copy of the relevant provision(s).

[6] 1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework” adopted by the Lanzarote Committee on 4 December 15, Recommendation 3.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (1.a Yes)

According to section 212 para. 1 subpara. 2 of the Austrian Criminal Code (CC) any person who engages in a sexual act with a minor who is being educated, trained, or supervised by a person abusing his or her position in relation to the minor is to be penalized. Sect. 212 CC reads as follows:

"Section 212 - Abuse of a position of authority

(1) Any person who engages in a sexual act with

1. a minor with whom the person is related in a descending line, a minor who is the adopted child of the person, the person's stepchild, or a minor under the guardianship of the person, or
2. a minor who is being educated, trained, or supervised by a person abusing his or her position in relation to the minor,

who has a sexual act performed on the person by such a minor, or who induces such a minor to perform a sexual act on himself or herself in order to sexually arouse or satisfy the person or a third person is liable to imprisonment for up to three years.

(2) The same penalty applies to any person [the perpetrator] being

1. a member of a health profession regulated by law or a chaplain, with a person in their professional care,
2. an employee of an educational institution or otherwise working in an educational institution with a person in the care of that institution, or
3. a government official with a person placed in their official care

who by abusing their position towards that person engages in a sexual act, has a sexual act performed by that person on the perpetrator, or who induces such a person to perform a sexual act on himself or herself in order to sexually arouse or satisfy the perpetrator or a third person.

(3) Any person committing a sexual harassment under sect. 218 para. 1a CC in the circumstances set out in paras. 1 or 2 is liable to imprisonment for up to one year or a fine of 720 penalty units."

Here you can upload any file(s) in support of your answer

b. [for 22 Parties + Belgium and Luxembourg] establish a separate offence of sexual abuse of children by someone in a recognised position of trust, authority or influence instead of considering the fact that the perpetrator holds that position just as an “aggravating circumstance”?^[7] If yes, please indicate the specific legal provision.

[7] *Ibid.*, Recommendation 2

- Yes
 No

Here you can upload any file(s) in support of your answer

c. list specific categories of adults in contact with children automatically qualifying as holding this position?^[8]

[8] *Ibid.*, Recommendation 4. Examples: members of the extended family (including new partners), persons having caretaking functions (including trainers of any kind) or exercising control over the child professionally or on a voluntary basis (including persons who look after children in their leisure-time) and any other person trusted by the child (including other children).

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (1.c Yes)

According to section 212 para. 1 subpara. 1 CC any person who engages in a sexual act with a minor a minor with whom the person is related in a descending line, a minor who is the adopted child of the person, the person's stepchild, or a minor under the guardianship of the person is to be penalized.

Furthermore, section 212 para. 2 CC lists the following categories of adults which automatically qualify as holding the position of authority/trust/influence:

1. a member of a health profession regulated by law or a chaplain, with a person in their professional care,
2. an employee of an educational institution or otherwise working in an educational institution with a person in the care of that institution, or
3. a government official with a person placed in their official care.

Section 212 para. 2 CC also protects adult victims.

The legal provision is provided under question 1a.

Here you can upload any file(s) in support of your answer

d. define the notion of “circle of trust”?^[9]

[9] *Ibid.*

- Yes

No

If appropriate, please provide more information (1.d No)

Section 212 paras. 1 and 2 CC directly defines the circle of trust/authority/influence rather than first using the notion "circle of trust" which would then have to be defined in light of the constitutional requirement for certainty.

Here you can upload any file(s) in support of your answer

VICTIMS' AGE Question 2. Does your national legal framework:

a. **[for 22 Parties + Italy, Portugal, San Marino, and Türkiye]** provide that every child up to 18 years of age is protected against the criminal offence of sexual abuse by someone in a recognised position of trust, authority or influence?^[10] Please refer to the specific legal provisions.

[10] *Ibid.*, Recommendation 6

Yes
 No

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + North Macedonia and Ukraine]** indicate that the child's legal age for engaging in sexual activities is not relevant in the case of child sexual abuse by someone in a recognised position of trust, authority or influence?^[1] Please provide details.

[1] *Ibid.*, Recommendation 5

Yes
 No

Here you can upload any file(s) in support of your answer

SCOPE OF OFFENCE Question 3. Does your national legal framework criminalise sexual abuse of children:

a. **where the offender abuses a recognised position of influence?** ^[12] Please refer to the specific legal provisions.

[12] *Ibid.*, Recommendation 1

Yes

No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (3.a Yes)

Section 212 paras. 1 and 2 CC criminalizes engaging in a sexual act with a minor, having a sexual act performed on the person by such a minor and inducing a minor to perform a sexual act on himself or herself in order to sexually arouse or satisfy the person or a third person when abusing the position of authority /influence/trust.

According to jurisprudence and academia, a sexual act comprises any sexually related act which is of some significance both in terms of its meaning and its intensity and duration in light of its outward appearance and thus constitutes an unacceptable, socially disturbing impairment of legal rights in the intimate area. It is not limited to sexual intercourse and equivalent actions.

For the wording of section 212 CC please refer to question 1a.

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + Belgium] where the victim is below 18 and emancipated through marriage, and the perpetrator is the victim's spouse or marital partner?**^[13] Please refer to the specific legal provisions.

[13] *Ibid.*, Recommendation 7

Yes
 No

Here you can upload any file(s) in support of your answer

c. **[for 22 Parties + the Republic of Moldova] where no coercion, force or threat is used by the perpetrator holding the position of trust, authority or influence?**^[14] Please refer to the specific legal provisions.

[14] *Ibid.*, Recommendation 8

Yes
 No

Here you can upload any file(s) in support of your answer

SCOPE OF OFFENCE Question 4. Does your national legal framework:

a. **criminalise sexual abuse of children for acts other than sexual intercourse and equivalent actions?**^[15]

Please specify which other acts are covered and whether violation of a child's "sexual integrity" specifically

is criminalised.

[15] *Ibid.*, Recommendation 9

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (4.a Yes)

Please cf. to the information provided under question 3a.

Additionally, according to section 212 para. 3 CC, committing a sexual harassment under section 218 para. 1a CC, i.e. the intensive touching of a part of the body associated with the sexual sphere such as one's backside, is penalized with a higher sanction if the perpetrator abuses the position of authority/influence/trust as set out in section 212 paras. 1 and 2 CC.

For the wording of section 212 CC please refer to question 1a.

Section 218 CC reads as follows:

“Section 218 - Sexual harassment and sexual acts done in public

(1) Any person who harasses another by performing a sexual act

1. on the other person, or

2. in front of the other person in circumstances capable of causing a reasonable nuisance

is liable to imprisonment for up to six months or a fine not exceeding 360 penalty units, unless the offence is punishable with a higher penalty by another provision.

(1a) A person is also liable under para. 1 if the person violates the dignity of another by intensive touching of a part of the body associated with the sexual sphere.

(2) [...]”

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + Bulgaria]** ensure equal sanctions for sexual abuse committed within a heterosexual and homosexual sexual activity?^[16] Please refer to the specific legal provisions.

[16] *Ibid.*, Recommendation 11

- Yes
 No

Here you can upload any file(s) in support of your answer

c. **[for 22 Parties + Albania and the Republic of Moldova]** make any distinct reference to “homosexual activities” in the description of criminal offences involving sexual abuse and sexual exploitation of children?^[17] Please refer to the specific legal provisions.

[17] *Ibid.*, Recommendation 12

- Yes
 No

Here you can upload any file(s) in support of your answer

EX OFFICIO PROSECUTION Question 5. Does your national legal framework:

- a. **contain a requirement to investigate and prosecute sexual abuse and exploitation of children by someone in a recognised position of trust, authority or influence without a complaint from the victim or his/her legal representative?** [18] Please refer to the specific legal provisions.

[18] *Ibid.*, Recommendation 57

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (5.a Yes)

Section 99 para. 1 of the Austrian Code of Criminal Procedure (= CCP) stipulates that in Austria the criminal investigation authority investigates ex officio or because of reports [sections 78–80 CCP]; Within their mandates, criminal investigation and prosecution authorities have a duty to investigate any reasonable suspicion of a criminal offence that has come to their attention (not including offences that are only prosecuted at the request of entitled persons) and probe it ex officio in investigating proceedings [“ex officio”-principle according to section 2 CCP].

Here you can upload any file(s) in support of your answer

- b. **contain a requirement to continue the proceedings even if the victim has withdrawn his/her complaint /statements?**[19] Please refer to the specific legal provision(s).

[19] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (5.b Yes)

Like already mentioned in the answer to question 5.a., criminal investigation and prosecution authorities have a duty to investigate any reasonable suspicion of a criminal offence that has come to their attention (not including offences that are only prosecuted at the request of entitled persons) and probe it ex officio in investigating proceedings. One consequence of this „ex officio“-principle is that if an official procedure has been initiated by an external complaint/statement, the person or body making the complaint/statement (e.g., the whistleblower, applicant, etc.) can no longer terminate the procedure, because the procedure must be continued (e.g., the "withdrawal of a criminal complaint" is not possible or has no effect).

Here you can upload any file(s) in support of your answer

c. **[for Portugal]** in case of a sexual act committed by an adult in respect of a child aged 14-16 years old which does not result in the child's death or suicide, require the child victim to lodge a complaint as a prerequisite for investigation and prosecution?[20]

[20] *Ibid.*, Recommendation 56

- Yes
 No

Here you can upload any file(s) in support of your answer

MEASURES IN RESPECT OF CHILDREN WHO SEXUALLY OFFEND AND CHILDREN DISPLAYING RISKY AND HARMFUL SEXUAL BEHAVIOUR Question 6. Does your national legal framework:

a. provide for non-criminal measures in respect of the children below the age of criminal responsibility who commit acts of sexual abuse towards other children?[21] Please provide details.

[21] Inspired by *X and Others v. Bulgaria* (no. 22457/16), 2 February 2021 and *A.P. v. the Republic of Moldova* (no. 41086/12), 26 October 2021

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (6.a Yes)

Cf. attached file

Here you can upload any file(s) in support of your answer

95b266dd-c293-4c9e-b3a7-6e52b8c55acb/Answer_to_question_6a.docx

b. differentiate between adults and children above the age of criminal responsibility in the application of sanctions for offences involving sexual abuse of children?^[22] Please refer to the specific legal provision(s) and specify the age of criminal responsibility in your legislation.

[22] Question included for capacity-building purposes

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (6.b Yes)

Cf. attached file

Here you can upload any file(s) in support of your answer

21b5dc3c-71e0-423a-b897-34f672ae0d5d/Answer_by_Austria_to_question_6b.docx

CHILD VICTIMS' RIGHT TO PROTECTION AND PARENTAL RIGHTS

Question 7. Does your national legal framework:

a. provide for the possibility for child protection professionals to conduct exploratory interviews of a child without informing in advance the parents/legal guardians in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?^[23] Please provide details.

[23] 1st Implementation Report "Protection of Children against Sexual Abuse in the Circle of Trust: The Framework", Recommendation 26

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.a Yes)

Section 138 of the Austrian General Civil Code (ABGB) stipulates that in all matters concerning the minor child, in particular custody and personal contacts, the best interests of the child (best interests of the child) are to be taken into account as the guiding principle and are to be ensured to the best possible extent. No. 7 of this provision includes as an important criterion in the assessment of the best interests of the child "the avoidance of the danger for the child of suffering assaults or violence itself or of witnessing such assaults or violence on important attachment figures". One of the essential tasks of child and youth welfare organizations in Austria is to protect children and adolescents from all forms of violence. If there is a concrete suspicion that children and adolescents are at risk, in particular due to reports of suspected risk to the welfare of the child, the responsible child and youth welfare agency must initiate a risk assessment. Children, adolescents, parents or other persons entrusted with care and upbringing must be involved in the risk assessment. The risk assessment must be carried out in a structured manner and in compliance with professional standards. As a matter of principle, home visits must be carried out and expert reports must be obtained. The risk assessment must always be made in cooperation of at least two specialists. If there is a risk to the child's well-being, educational assistance should be agreed upon with parents. If no agreement is concluded with parents the child and youth welfare services must apply to the guardianship court for approval of the necessary measures to support upbringing.

If there is reason to believe that parents/guardians could prevent the child/adolescent from disclosing the sexual abuse, they must not be informed beforehand.

Here you can upload any file(s) in support of your answer

b. [provide for the possibility for child protection professionals to conduct exploratory interviews of a child without acquiring the parents/legal guardians' prior consent in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?](#)^[24] Please provide details.

[24] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.b Yes)

Yes, if there is a risk that parents/guardians will prevent the child/adolescent from disclosing the sexual abuse or they will try to influence the child's statements, the child's well-being is thereby massively endangered and prior consent should not be obtained.

Here you can upload any file(s) in support of your answer

c. [allow for the removal of the suspected perpetrator from the family environment in case of reasonable suspicion of sexual abuse of a child living in the same environment together with the suspect?](#)^[25] Please provide details.

[25] This question results from the Committee's reasoning that "before resorting to the removal of the victim, the removal of the perpetrator should be preferred" (page 28 of the 1st implementation report).

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.c Yes)

Yes. Section 38a para. 1 Security Police Act (Sicherheitspolizeigesetz - SPG) authorizes the public security service to prohibit a person who, on the basis of certain facts, in particular because of a previous dangerous attack, is likely to commit a dangerous attack on life, health or freedom, in particular in a dwelling in which a person at risk lives (dangerous person), from entering a dwelling in which a person at risk lives, including an area within a radius of one hundred meters (prohibition of entry). The prohibition of entering is connected with the prohibition of approaching the endangered person within a radius of one hundred meters (prohibition of approach).

If the endangered person is a minor and it appears necessary in the individual case to inform those people in whose care he or she regularly resides, and if a minor resides in the dwelling covered by the prohibition of entry, the public security authorities are obliged to immediately inform the locally competent child and youth welfare agency about the order of a prohibition of entry and approach (section 38a para. 4 no. 1 and no. 2 SPG). The legal representative of affected children can then apply to the competent district court for a temporary injunction ordering the perpetrator to leave the home and its immediate surroundings and prohibiting him/her from returning. The application for a temporary injunction pursuant to section 382b Execution Code (Exekutionsordnung – EO) may be filed for a minor by the child and youth welfare agency if the legal representative (usually the mother or father) is in default in filing the application.

The prohibition of entry and approach ends two weeks after its order; by applying to the court for a temporary injunction, a ban on entering and approaching the premises imposed by the police is extended to a maximum of four weeks. Within this time, the court decision is made. The court shall order the offender to leave the dwelling and its immediate surroundings and prohibit her/him from returning to the dwelling and its immediate surroundings. A temporary restraining order against violence in apartments may be ordered for a maximum of six months (section 382e para. 1 EO). In addition, the court may fix the duration of the temporary injunction with the final conclusion of the pending proceedings or proceedings on the merits to be instituted within the ordered duration (section 382e para. 3 EO).

In case of a withdrawal of the application, the prohibition of entry and approach ends as soon as the security authority becomes aware of the withdrawal by notification of the ordinary court, but no earlier than two weeks after its order.

Here you can upload any file(s) in support of your answer

d. **consider the removal of the child victim from the family environment as a last resort procedure? Is that procedure clearly defined, and does it set out conditions for and duration of the removal?**^[26] Please provide details.

[26] *Ibid.*, Recommendation 27

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.d Yes)

The child and youth welfare agency shall apply for the court orders required to safeguard the welfare of a minor in the area of custody. In case of imminent danger, it may take the necessary measures of care and upbringing itself on a provisional basis with effect until the court decision; it shall apply for such decision without delay, in any case within eight days. To the extent of the measures taken, the child and youth welfare agency shall be entrusted with custody on a provisional basis (section 211 para. 1 General Civil Code (ABGB)). The necessary measures in case of imminent danger require an obvious endangerment of the child's welfare and the change of the existing situation.

If the child's well-being cannot be ensured in his or her family of origin, even with educational support (e.g. educational advice, intensive family care), the child and youth welfare services provide care with relatives (e.g. other parent not living in the household, grandparents), in a foster family or in a socio-educational institution as a last resort. The conditions of out-of-home placement are regulated in the child and youth welfare laws of the federal states. With regard to the duration of the placement, the legal principle applies that family rights and relationships may only be interfered with to the extent and for as long as this is necessary to ensure the best interests of the child.

Section 107a para. 1 of the Austrian Non-Contentious Proceedings Act (AußStrG) stipulates that in proceedings concerning an application by the child and youth welfare agency pursuant to section 211 para. 1 second sentence ABGB, the court shall, upon application by the child or the person whose custody has been interfered with, pronounce without delay, if possible within four weeks, whether the measure of the child and youth welfare agency is inadmissible or provisionally admissible. Such an application must be filed within four weeks of the commencement of the measure. If the court declares the measure inadmissible, this decision shall be provisionally binding and enforceable unless the court excludes it. The time limit for the appeal challenging the declaration of inadmissibility of the measure shall be three days. An appeal against the provisional declaration of admissibility shall not be admissible.

Here you can upload any file(s) in support of your answer

e. [ensure that the different agencies involved in the coordination and collaboration concerning child sexual abuse are allowed to share personal information as appropriate?](#)^[27] Please provide details.

[27] *Ibid.*, Recommendation 25

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.e Yes)

Section 40 of the Federal Child and Youth Welfare Act 2013 (B-KJHG) provides that, insofar as this is necessary in the overriding legitimate interest of the children and adolescents, personal data of involved parties may be processed, among other things, for the purpose of clarifying threats to the well-being of children, for the purpose of giving an opinion to civil and criminal courts. Likewise, personal data of participants may be transmitted to other child and youth welfare agencies, courts as well as institutions and persons who are active or should be active in the assessment, care and treatment of children and adolescents, in individual cases, insofar as this is necessary in the overriding legitimate interest of the children and adolescents.

The child and youth welfare laws of the federal states stipulate that the tasks of child and youth welfare are to be performed in cooperation with the education, health and social systems.

According to section 76 para. 6 CCP, the criminal police, public prosecutors' offices and courts shall be entitled, for the purpose of preventing an act threatened with considerable punishment (section 17 Security Police Act = SPG) against life, health, freedom or morality, to transmit personal data obtained under this Act, which may permissibly be used in criminal proceedings, to the participants of a security police case conference (section 22 para. 2 SPG). In any case, this shall not be done if, in an individual case, confidentiality interests worthy of protection (section 1 para. 1 of the Data Protection Act) outweigh the purposes pursued with the transmission.

Pursuant to section 25 para. 3 Security Police Act (Sicherheitspolizeigesetz – SPG) the Federal Minister of the Interior is authorised to contract suitable victim protection institutions to address people who are threatened by violence, including persecution (section 107a of the Criminal Code), for the purpose of counselling and non-material support (intervention centres). If such a victim protection institution mainly serves the purpose of counselling and supporting women, the contract shall be concluded jointly with the Federal Minister for Health and Women, and if such an institution mainly serves the purpose of counselling and supporting children, jointly with the Minister for Social Affairs.

Pursuant to section 56 para. 1 SPG law enforcement authorities may inter alia transmit personal data to intervention centres (section 25 para. 3 SPG) and counselling centres for the prevention of violence (section 25 para. 4 SPG), insofar as this is necessary for the protection of persons at risk or for counselling on the prevention of violence, whereby in the case of an order for a prohibition of entry and approach (section 38a) the documentation (section 38a para. 6 SPG) and otherwise the personal data corresponding to the content of such documentation shall be transmitted.

Here you can upload any file(s) in support of your answer

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 8. Does your national legal framework clearly distinguish:

- cases of suspension of parental rights as a provisional measure to protect the child before a court decision on the conviction of the concerned parent is taken, and
- cases of withdrawal of parental rights once the court has convicted the said parent?^[28] Please provide details.

[28] *Ibid.*, Recommendation 32

- Yes
 No

If appropriate, please provide more information (8 No)

From a legal point of view, it should first be noted that if sexual abuse of the child is to be assumed within the circle of trust, the parent is not suitable to exercise custody of the child.

Section 181 para. 1 ABGB regulates the withdrawal or restriction of custody. If the parents endanger the welfare of the minor child by their conduct, the court, whoever is called upon to do so, shall make the orders necessary to safeguard the welfare of the child. The court may withdraw custody of the child in whole or in part, including rights of consent and assent provided by law. The basis of assessment for the deprivation or restriction of custody is always the best interests of the child.

If a parent has been convicted of offenses against sexual integrity and self-determination by a criminal court, this must also be taken into account in the guardianship proceedings. If sexual abuse has been established or a criminal court conviction has taken place, the question of whether this parent can exercise custody no longer arises.

Here you can upload any file(s) in support of your answer

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 9. Does your national legal framework provide for:

a. [automatic suspension of parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of own child are pending](#)?^[29] Please provide details.

[29] Question included for capacity-building purposes, i.e. to map whether there are Parties that have a particular legal framework in such cases.

- Yes
 No

If appropriate, please provide more information (9.a No)

Here you can upload any file(s) in support of your answer

b. [automatic withdrawal of parental rights of parents convicted of sexual abuse of own child](#)?^[30] Please provide details.

[30] *Ibid*

- Yes
 No

If appropriate, please provide more information (9.b No)

A statutory provision of this kind is not provided for in the current law. A new draft law on the law of parent and child, which provides for a special provision in this regard, is still in the political decision-making process.

Here you can upload any file(s) in support of your answer

GUARANTEES OF PROTECTION FOR PERSONS REPORTING SUSPECTED OFFENCES Question 10.

How does your national legal framework ensure that any person reporting in good faith suspected sexual abuse and sexual exploitation of a child, including a person bound by professional confidentiality rules, does not get prosecuted or punished by judicial proceedings for defamation, libel or similar offences?^[31]

[31] Based on *Yuppala v. Finland* (no. 18620/03), 2 December 2008 and *M.P. v. Finland* (no. 36487/12), 15 December 2016. Partly based on Article 12 of the Lanzarote Convention.

According to section 80 para. 1 CCP any person who becomes aware of the commission of a criminal offence has the right to report this matter to any criminal investigation authority or prosecution authority. Reports made in good faith are generally lawful and cannot lead to any criminal or civil consequences. A knowingly false report in which another person is accused of a judicially punishable act or a disciplinary offense and which exposes him or her to the risk of prosecution by the authorities is not covered by the right to report and constitutes the offence of false accusation under section 297 of the Austrian Criminal Code (Schwaighofer in Fuchs/Ratz, WK StPO section 80 Rz 7f).

Should reports that were made in good faith nevertheless be reported, they would not constitute a criminal offense from the outset and would therefore not be prosecuted by the criminal prosecution authorities. According to section 190 para. 1 CCP, if it is established on the basis of the clarified facts that the act on which the preliminary investigation is based is not punishable by criminal law or that further prosecution would otherwise be inadmissible for legal reasons, the public prosecutor's office must discontinue the proceedings. If this is to be assumed from the outset (i.e. without carrying out an investigation), the public prosecutor's office shall refrain from launching investigation proceedings (section 35c Public Prosecutor Act).

The offenses of false accusation (section 297 CC) and of feigning the commission of a crime (section 298 CC) require knowledge (section 5 para. 3 CC) that the suspicion or feigning the commission of the crime is false. Moreover, a person cannot be held criminally liable for the offense of criminal defamation (section 111 CC) if the circumstances that gave the person adequate reason to believe the allegations were truthful can be established (section 111 para. 3 CC).

Thus, a person reporting suspected offences in good faith cannot be prosecuted or punished by judicial proceedings for these crimes.

Sections 297, 298, 5 and 111 CC read as follows:

“Section 297 - False accusation

(1) Any person who puts another at risk of official prosecution by falsely suspecting the person of an offence requiring official prosecution or of violating official or professional duties, knowing (section 5 para. 3) that the suspicion is false, is liable to imprisonment for up to one year or a fine not exceeding 720 penalty units; the penalty is imprisonment for six months to five years if the offence of which the other person is falsely

accused is punishable by more than one year imprisonment.

(2) A person is not criminally liable under para. 1 if the person freely removes any risk of official prosecution before the authorities have undertaken any steps to prosecute the suspect.”

“Section 298 – Feigning commission of crime

(1) Any person who knowingly feigns the commission of an offence to the authorities (section 151 para. 3) or to a government official responsible for receiving complaints is liable to imprisonment for up to six months or a fine not exceeding 360 penalty units unless the person is punishable under section 297 para. 1.

(2) A person is not criminally liable under para. 1 if the person freely effects that his or her conduct does not lead to official investigations.”

“Section 5 – Intention

(1) [...]

(2) [...]

(3) A person acts with knowledge if the person considers the existence or occurrence of a circumstance or result for which the law requires proof of knowledge to be certain, and not merely considers the existence or occurrence to be possible.”

“Section 111 – Criminal defamation

(1) Any person who accuses another of a despicable characteristic or disposition, of dishonourable conduct, or of conduct against common decency in a way that the accusation is perceivable by a third person and in a manner capable of decrying or degrading the other person in the public opinion is liable to imprisonment for up to six months or a fine not exceeding 360 penalty units.

(2) Any person who through printed material, broadcasting, or in any other way makes the defamation accessible to the public at large is liable to imprisonment for up to one year or a fine not exceeding 720 penalty units.

(3) The person may not be punished if the allegation is proven to be truthful. In cases under para. 1, the person will also not be criminally liable if the circumstances that gave the person adequate reason to believe the allegations were truthful can be established.”

Here you can upload any file(s) in support of your answer

ASSISTANCE TO THIRD PARTIES Question 11.

What kind of legislative or other measures does your national legal framework have in place to ensure that persons close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care?^[32]

[32] 1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework”, Recommendation 30

According to section 66b CCP victims may be granted psycho-social support for the proceedings, if this is necessary to preserve their rights, taking into account their personal concerns. Psycho-social support for the proceedings includes the preparation of the person concerned for the proceedings and for the emotional stress associated with the proceedings as well as accompanying the person to questioning during investigation proceedings and at trial. Due to the quality standards for support for the proceedings, family members of girls, boys and adolescents who may have been victims of sexual and physical violence can also make use of the support for the proceedings.

Close relatives of child victims of abuse are entitled to benefits of the Victims of Crime Act (Verbrechensopfergesetz - VOG, Fed. Law Gazette. No. 288/1972). The crime must have caused the family member to suffer a shock resulting in psychological difficulties of clinical significance because the victim suffered life-threatening or serious injuries.

The assumption of costs caused by causal psychotherapy and an assumption of costs for a crisis intervention is provided.

Legal basis for:

- assumption of costs caused by causal psychotherapy: Section 4, Paragraph 5 Victims of Crime Act
- assumption of costs for a crisis intervention: Section 4a Victims of Crime Act
- persons close to the victim: Section 1, paragraph 1, subparagraph 2 Victims of Crime Act

Here you can upload any file(s) in support of your answer

ASSISTANCE TO THIRD PARTIES Question 12.

When determining the support required to the victim and the persons close to him or her, how does your national legal framework ensure that the child's disclosure does not worsen his or her situation and that of the other non-offending members of the family?^[33]

[33] *Ibid.*, Recommendation 31

The child and youth welfare laws of the federal states and the Civil Code stipulate that the best interests of the child must be taken into account as a guiding principle in all matters concerning the minor child. The financial support under the Victims of Crime Act (therefore an application of the victim or the person close to him or her is necessary) will not worsen the situation of the victim or the other non-offending family members.

According to section 66a para. 1 CCP victims also have the right to have their special protection needs assessed and determined as soon as possible subject to their age, psychological and health condition as well as the type and specific circumstances of the criminal offence. In any case, victims with special protection needs are those victims,

1. whose sexual integrity and self-determination might have been violated,
2. for whose protection a prohibition of entry and approach could be issued for protection against violence according to section 38a para. 1 SPG (National Security Police Act)
3. who are minors (section 74 para. 1 subpara. 3 Criminal Code).

Victims with special protection needs have the right:

- to be interviewed during the investigation proceedings by a person of the same sex if the victim so wishes and if possible;
- to require that interpretation services are provided by a person of the same sex during questioning of the victim in the preliminary proceedings and in the main hearing, if possible;
- to refuse to answer specific questions as far as they go into detail of the criminal act and the victim considers the answer unbearable, or which concern circumstances of the victim's intimately personal area of life;
- upon request, to be interviewed during the investigation and the trial phase in a protecting manner (sections 165, 250 para. 3 CCP), namely a minor victim who could have been injured in his or her sexual sphere by the offence the accused person is charged with, in any event in the manner described in section 165 para. 3, if necessary by an expert.
- upon request to exclude the public from the main trial (section 229 CCP);
- to be immediately informed ex officio of the release or escape of the accused person from custody and provisional custody (sections 172 para. 4, 177 para. 5, 181a CCP);
- to be interviewed in the presence of a person of his/her trust (section 160 para. 2 CCP);
- to be notified of their special rights prior to their initial interrogation (section 70 para. 1 CCP).

Here you can upload any file(s) in support of your answer

cf3fd078-2c17-479b-9f59-fd1fda2904e9

/Relevant_provisions_of_the_Austrian_Code_of_Criminal_Procedure.docx

MONITORING OF OFFENDERS Question 13. Does your national legal framework provide for:

a. [a mechanism to monitor or supervise persons convicted of child sexual abuse and, specifically, persons convicted of child sexual abuse while holding a recognised position of trust, authority or influence?](#)^[34]

Please provide details.

[34] *Ibid.*, Recommendation 33

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.a Yes)

Section 52a CC provides for the supervision by the court in cases involving sexual offenders and sexually motivated violent offenders.

Section 52a CC reads as follows:

“Section 52a - Supervision by the court in cases involving sexual offenders and sexually motivated violent offenders

(1) If a person who has been sentenced to imprisonment or preventive detention for committing an offence

1. against sexual integrity and self-determination, or
2. against limb and life or against liberty, if the person committed the offence for the purpose of sexual arousal or gratification, is released conditionally, the person has to be placed under supervision by the court for the duration of the parole period, if, having regard to compliance with a directive under section 51 para. 3 or a directive not to engage in certain conduct, the monitoring of the person’s behavior (para. 2) is necessary or appropriate to prevent the person from committing further offences of this kind.

(2) During the period of court supervision, the court has to monitor the person’s behaviour and the compliance with the directives with the assistance of the probation assistance, where relevant in consultation with the National Security Agencies, the Youth Justice Assistance, or other relevant institutions. The institution in charge of the supervision has to report its activities and perceptions [of the parolee] to the court. If supervision by the court has been ordered, the probation supervisor has to report to the court whenever the court so demands or when it is required or appropriate, and, in any case, every three months during the first half of the period of court supervision, and every six months in the second half of that period.

(3) To fulfil the duties conferred to the National Security Agencies under para. (2), the organs of the National Security Service are authorized to ascertain the identity of a person under the provisions of the National Security Police Act [Sicherheitspolizeigesetzes (SPG)], if there are specific grounds to believe that the person has been placed under supervision by the court and that the person failed to comply with directives placed upon that person or if the person otherwise displayed a behaviour that conflicts with the purposes of the court supervision order.”

If, on the basis of certain facts, it may be assumed that a convicted person who is under judicial supervision pursuant to section 52a or section 52b of the Criminal Code will not comply with instructions issued to him or will escape the influence of the probation officer, the convicted person may be brought before the police for the immediate issue of a formal warning. The criminal investigation department is entitled to bring the convicted person forward on its own initiative if an order from the court cannot be obtained in reasonable time due to imminent danger (section 496 para. 2 CCP).

Here you can upload any file(s) in support of your answer

b. **sharing with other countries data concerning persons convicted of child sexual abuse?**^[35] Please provide details.

[35] Based on Article 38 of the Lanzarote Convention.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.b Yes)

Cf. attached file

Here you can upload any file(s) in support of your answer

f8cff60b-2be4-46f9-91d1-af0fcaeb846f/Answer_by_Austria_to_question_13b.docx

MEASURES IN RESPECT OF PROFESSIONALS AND LEGAL PERSONS Question 14. Does your national legal framework:

a. **allow for the immediate removal or suspension of a professional or volunteer working with children suspected of sexually abusing a child?**^[36] Please provide details.

[36] Based on Article 27§3(b) of the Lanzarote Convention.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.a Yes)

In addition to the grounds for dismissal under labor law, there is a "provisional procedure" that allows for immediate suspension from duty.

Furthermore, section 220b CC provides for an occupational ban in case of conviction of the perpetrator. Section 220b CC is currently being amended. According to section 27 para. 1 subpara. 3 CC, if a government official is convicted for the offence of abuse of a position of authority (section 212 CC) and sentenced to imprisonment, the conviction also involves the loss of office.

Section 27 CC reads as follows:

"Section 27 - Loss of office and other legal consequences of a conviction

(1) If a government official is sentenced to imprisonment by a domestic court for committing one or more intentional offences, the conviction also involves the loss of office if

1. the sentence exceeds one year imprisonment,
2. the sentence that was not conditionally suspended exceeds six months, or
3. the conviction occurred, in whole or in part, for the offence of abuse of a position of authority (section 212 CC).

(2) [...]"

- With regard to section 220b CC

Section 435 para. 1 CCP stipulates that ordinarily (section 441), the application of the preventative measures set out in sections 21 para. 2, 22, 23 and 220b CC [Strafgesetzbuch (StGB)] are decided with the judgment convicting the defendant.

According to section 441 para. 1 CCP if sufficient grounds exist to suggest that the conditions for a separate direction concerning the preventative measures set out in sections 21 para. 2, 22, 23, and 220b of the Criminal Code [Strafgesetzbuch (StGB)] are met (section 65 para. 5 Criminal Code), the prosecution authority has to file a motion for a direction to order one of the preventative measures set out in these provisions. The provisions concerning the bill of indictment apply, mutatis mutandis, to this motion.

- With regard to section 27 CC

According to section 492 para. 1 CCP, the conditional suspension of a sentence, of detention in a facility for the treatment of addiction, of detention in a mental health facility and of a legal consequence has to be included in the judgment.

Section 493 para. 1 CCP stipulates that the conditional suspension or its omission are part of sentencing and may be contested in favour or to the disadvantage of the convicted person by way of appeal. The appeal only has deferring effect insofar as the enforcement of the sentence, detention in a facility for the treatment of addiction, or the effect of legal consequences are concerned.

Except in cases under section 494a, decisions about revoking conditional suspension of a sentence or part of a sentence, of detention in a mental health facility or a facility for the treatment of addiction, or of legal consequences are made in closed sessions by order of the court that made the first instance decision in the proceedings in which the conditional suspension was decided (section 495 para. 1 CCP).

Decisions that a conditional suspension of a sentence, of detention in a mental health facility or in a facility for the treatment of addiction, or of a legal consequence has become permanent are made by order of the presiding judge (section 497 para. 1 CCP).

Here you can upload any file(s) in support of your answer

b. ensure that professionals working in the public, private or voluntary sectors failing to report offences of child sexual abuse occurring in “out-of-home care”^[37] settings are held liable?^[38] Please provide details.

[37] In accordance with the Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse adopted at its 25th meeting (15-18 October 2019), “out-of-home care” represents all settings in which children can be placed out of their home for care (see point b of the Declaration).

[38] Based on the Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse, point 6.

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.b Yes)

Section 37 Federal Child and Youth Welfare Act 2013 (B-KJHG 2013) which is directly applicable federal law provides for an obligation to report in case of suspicion of child endangerment to the competent child and youth welfare agency.

Section 78 CCP which provides for a reporting obligation for employees of the public service, also applies to the school sector.

According to section 12 CC, not only the immediate offender, but also any person directing another or contributing in any other way to the commission of an offence is taken to have committed that offence. Therefore, every person who causally contributes to the commission of an offence is considered an offender, even if the different forms of participation are defined separately in the respective provision. The liability to penalty of two or more persons involved is independent of each other. Assisting offenders are thus also punishable if the immediate offender is exempted from criminal liability due to for example insanity defence, or is under the age of criminal liability (monistic model of perpetration -funktionale Einheitstäterschaft). Every offender is criminally liable for the committed offence by his/her individual guilt, and his/her activity must fulfil particular elements of criminal intent defined for the respective criminal offence.

2 Section CC provides for the liability for omissions in regard of persons with a legal duty to act.

Like already mentioned in the answer to question 5.a., criminal investigation and prosecution authorities have a duty to investigate any reasonable suspicion of a criminal offence that has come to their attention (not including offences that are only prosecuted at the request of entitled persons) and probe it ex officio in investigating proceedings.

Furthermore, civil liability by way of official liability and the subsequent recourse proceedings against the injuring party, on the basis of whose acts the state had to pay damages, can occur, on the one hand, through a failure to report a crime. However, it can also arise from a breach of the duty of supervision, if a teacher has violated his or her obligation to supervise pupils at school, at a school event (e.g. sports week) or a school-related event during the school day.

Sections 2 and 12 CC read as follows:

“Section 2 – Liability for omissions

If the law criminalizes the causation of a result, any person failing to avert that result shall also be criminally liable if the person has a legal duty to act and if failing to avert the result can be considered equal to causing the result through a positive act.”

"Section 12 – Participants taken to be principal offenders

The immediate perpetrator and any person directing another or contributing in any other way to the commission of an offence is taken to have committed that offence."

Section 37 B-KJHG 2013 reads as follows:

"(1) If, in the course of performing a professional activity, a reasonable suspicion arises that children or adolescents are being or have been abused, tormented, neglected or sexually abused, or that their wellbeing is in any other way significantly endangered, and if this concrete significant endangerment of a specific child or adolescent cannot be prevented in any other way, the following institutions shall immediately notify the locally competent child and youth welfare agency in writing:

1. courts, authorities and organs of public supervision;
2. institutions for the care or instruction of children and adolescents;
3. facilities for psychosocial counseling;
4. private institutions for child and youth welfare;
5. hospitals and convalescent homes;
6. home health care facilities;

(2) The decision on notification shall be made, if necessary, in cooperation between at least two professionals.

(3) The duty to notify pursuant to subsection (1) shall also apply to:

1. persons who provide freelance care or instruction for children and adolescents;
2. freelance persons commissioned by the child and youth welfare services;
3. members of health care professions regulated by law, unless they perform their professional activities in an institution referred to in subsection (1).

(4) The written notification shall in any case contain information on all relevant perceptions and conclusions drawn therefrom, as well as the names and addresses of the children and adolescents concerned and of the person required to notify.

(5) Professional regulations on confidentiality shall not prevent the fulfillment of the duty to report pursuant to par. 1 and par. 3."

Here you can upload any file(s) in support of your answer

c. **ensure that legal persons failing to protect children in their care from sexual abuse are held liable?**^[39]

Please provide details.

[39] *Ibid.*, see point 7.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.c Yes)

The Austrian Federal Statute on the Responsibility of Entities for Criminal Offences

(Verbandsverantwortlichkeitsgesetz, VbVG) regulates the conditions under which legal persons are responsible for criminal offences. The prerequisites of an entity's responsibility are laid down in section 3 VbVG.

Section 3 VbVG reads as follows:

“Responsibility

Section 3. (1) Subject to the additional conditions defined in paragraphs 2 or 3 an entity shall be responsible for a criminal offence if

1. the offence was committed for the benefit of the entity or
2. duties of the entity have been neglected by such offence.

(2) The entity shall be responsible for offences committed by a decision maker if the decision maker acted illegally and culpably.

(3) The entity shall be responsible for criminal offences of staff if

1. the facts and circumstances which correspond to the statutory definition of an offence have been realised in an illegal manner; the entity shall be responsible for an offence that requires wilful action only if a staff has acted with wilful intent, and for a criminal offence that requires negligent action only if a staff has failed to apply the due care required in the respective circumstances; and
2. commission of the offence was made possible or considerably easier due to the fact that decision makers failed to apply the due and reasonable care required in the respective circumstances, in particular by omitting to take material technical, organisational or staff related measures to prevent such offences.

(4) Responsibility of an entity for an offence and criminal liability of decision makers or staff on grounds of the same offence shall not exclude each other.”

The liability of a legal person thus depends on the fact that a natural person (a decision-maker or staff of the association) has committed a criminal offence and that this can be attributed to the association (section 3 para. 1 VbVG). A criminal offence can also be committed by omission or by assisting the immediate offender. For the criminal liability of commission by omission and the criminal liability of persons assisting the immediate offender, see answer to question 14.b.”

The Public Liability Act applies to the school system as part of the Austrian administration. It is therefore possible to hold the Republic of Austria liable. The owners of private schools are legal entities under civil law, mostly associations, to which the general civil liability and compensation regulations apply.

Here you can upload any file(s) in support of your answer

SPECIAL REPRESENTATIVES Question 15. How does your national legal framework ensure that special representatives and guardians ad litem who are appointed to avoid a conflict of interest between the holders of parental authority and the child victim:

- a. [receive appropriate training and legal knowledge to ensure and safeguard the best interests of the child victim during criminal investigations and proceedings?](#)^[40]

[40] 1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework”, Recommendation 35

If, in the course of negotiations or disputes, there is a conflict of interests between a minor and his/her legal representative and if the risk of the child being disadvantaged does not seem to be excluded, a collision curator may be appointed by the court to represent the interests of the minor instead of the legal representative. Pursuant to section 279 para. 1 ABGB, the interests of the represented person, the suitability of the curator and the matters to be taken care of shall be taken into account when selecting the curator. This provision is the basis for the selection of the curator. The selection of the collision curator is the responsibility of the court, which usually appoints the child and youth welfare agency.

Here you can upload any file(s) in support of your answer

b. [avoid combining the functions of a lawyer and guardian ad litem in one person?](#)^[41]

[41] *Ibid.*, Recommendation 36

Pursuant to section 279 para. 1 ABGB, the interests of the represented person, the suitability of the curator and the matters to be taken care of shall be taken into account when selecting the curator. This provision is the basis for the selection of the curator. The selection of the collision curator is the responsibility of the court, which usually appoints the child and youth welfare agency.

Here you can upload any file(s) in support of your answer

c. [are provided free of charge for the child victim?](#)^[42]

[42] *Ibid.*, Recommendation 37

The curator shall be entitled to reasonable annual compensation (section 283 para. 1 ABGB). The court may reduce this compensation if it considers this appropriate for special reasons (section 283 para. 2 ABGB).

Here you can upload any file(s) in support of your answer

SPECIAL REPRESENTATIVES Question 16. [for 22 Parties + Malta]

a. [Do you appoint a special representative or guardian ad litem when there is a conflict of interest between the holders of parental authority and a child?](#)^[43] Please provide details.

[43] *Ibid.*, Recommendation 34

- Yes
 No

Here you can upload any file(s) in support of your answer

b. [Is this person allowed to be present throughout the criminal proceedings?](#)^[44] Please provide details.

[44] *Ibid*

- Yes
 No

Here you can upload any file(s) in support of your answer

SUPPORT FOR CHILD VICTIMS IN INVESTIGATIVE AND JUDICIAL PROCEEDINGS Question 17. In investigative and judicial proceedings how does your national legal framework ensure that:

a. [protection measures are available to all children irrespective of their age](#)?^[45] Please provide details.

[45] *Ibid.*, Recommendation 38

All victims' rights within the meaning of §section 66 to 67 CCP are available to all victims in criminal proceedings regardless of the victim's age or any other conditions.

Here you can upload any file(s) in support of your answer

b. [specificities of sexual abuse committed in respect of a child by someone in a recognised position of trust, authority or influence are taken into account in the measures and procedures applied during criminal investigations and proceedings in order not to aggravate the trauma experienced by the child](#)?^[46] Please provide details.

[46] *Ibid.*, Recommendation 39

In Austrian criminal proceedings, child victims have several rights in order not to aggravate their experienced trauma:

- Appointment of a curator (special representative) for the minor victim if a legal representative of the minor victim is suspected of having committed the criminal offence or if there is otherwise the risk of a conflict of interests between the minor victim and his legal representative, or if no legal representative can assist the minor victim in criminal proceedings (section 66a para. 3 CCP);
- Information on the escape and recapture as well as the first unmonitored release from the institution or on a pending or an actual release of the prisoner including any instructions given to him in order to protect the victim (§section 106 para. 4, 149 para. 5 of the Prison Act);
- Psychosocial and legal support for the proceedings that is free of charge, if this is necessary to preserve the rights of the victim, taking into account their personal concerns (section 66b para. 1 CCP). Some victims are afforded this support in any case (victims whose sexual integrity might have been violated and who are under the age of 14). Psycho-social support for the proceedings includes the preparation of the person concerned for the proceedings and for the emotional stress associated with the proceedings as well as accompanying the person to questioning during investigation proceedings and the main proceedings; legal support for the proceedings includes legal advice and representation by an attorney (section 66b para. 2 CCP). The Federal Ministry of Justice is authorized to delegate contractually provision of assistance to victims during criminal proceedings to suitable experienced institutions and has to finance the provision of psychosocial and legal assistance by these institutions. Many of these institutions, such as child protection centres, violence prevention centres and intervention centres, are specialised in working with children.
- Adversarial questioning of a witness in order to avoid secondary victimisation and the direct contact of the witness and the defendant. The participation at the interrogation of other participants in the proceeding

may be limited by the use of technical means of audio and visual transmission for following the interrogation and the right to ask questions being exercised without being present at the interrogation. Moreover, in some cases it is possible to appoint an expert to conduct the interrogation (§section 165 and 250 CCP);

- If an adversary questioning has taken place, the witness is released from the obligation to further testify and the protocol of the adversary questioning can be read in the main trial phase (section 252 para. 1 subpara. 2a CCP);
- Protection of the identity of the witness (§section 10 para. 3, 161 para. 1, 162 CCP)
- Protection of the victim's privacy (section 228 para. 4 CCP - TV and radio recording as well as taking pictures or film of the trial are inadmissible; section 7a para. 1 subpara. 1 of the Law on the Media);
- Provide for the possibility for a witness to be interrogated at home or at another place (e.g. in cases of ill health, frailty, reasonable circumstances section 160 para. 1 CCP and section 247a CCP).
- Victims under the age of 18 years are considered to be particularly vulnerable in any event and have special rights during the criminal proceedings in addition to the general victims' rights (for more information please see the answer to question 12)
- Since 1997, child-friendly interrogation rooms have been set up in all the courts in which criminal proceedings are carried out.

Here you can upload any file(s) in support of your answer

c. **a child who is a presumed victim of sexual abuse is supported by a professional trained to safeguard children's psychological well-being**?^[47] Please provide details.

[47] Based on *N.Ç. v. Türkiye* (no. 40591/11), 9 February 2021

This is ensured by the psychosocial support for the proceedings (for more information please see the answer to question 17.b.).

Here you can upload any file(s) in support of your answer

SUPPORT FOR CHILD VICTIMS IN INVESTIGATIVE AND JUDICIAL PROCEEDINGS Question 18.

Since the adoption of the 1st implementation report in the 1st monitoring round in 2015, has your national legal framework been amended to ensure that the justice system accommodates more fully the specificities attached to the participation of children as victims in proceedings and not solely as perpetrators of criminal offences?^[48] Please provide details.

[48] 1st Implementation Report "Protection of Children against Sexual Abuse in the Circle of Trust: The Framework", Recommendation 40

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (18 Yes)

Here you can upload any file(s) in support of your answer

aedc874f-de49-4640-8468-9a0735041c71/Answer_by_Austria_to_question_18.docx

INVESTIGATION Question 19. In the investigation phase:

In 2023 the Steering Committee for the Rights of the Child (CDENF) circulated a questionnaire in the framework of its mapping study of the implementation and development of Barnahus model in Europe. Should your authorities have responded to this questionnaire, you may reiterate those replies and complete as need be.

a. are interviews of child victims arranged in a child-friendly setting separate from the usual premises where investigations and interviews are conducted (such as police, hospital or court premises), and are such settings provided throughout your territory?^[49] Please provide details.

[49] *Ibid.*, Recommendation 41

- Yes
 No

If appropriate, please provide more information (19.a No)

In order to avoid secondary victimisation and the direct contact of the witness and the defendant, in the judicial area of the criminal proceedings, the CCP provides for adversarial questioning of a witness in order to avoid secondary victimisation and the direct contact of the witness and the defendant.

If a victim with special protection needs (section 66a CCP) like a child victim or another witness who meets the criteria listed in section 66a CCP is questioned, or for other purposes to establish the truth, the opportunity to participate in the questioning must be restricted, upon request by the prosecution authority or ex officio, in a manner that participants in the proceedings and their representatives can follow the questioning using technical audio and video transmission equipment and to exercise their right to pose questions without being present at the questioning (section 165 para. 3 CCP). Pursuant to section 165 para. 2 CCP, the conduct of such an adversarial questioning shall be the exclusive responsibility of the court, because only in this way the guarantees of Article 6 of the ECHR can be met - also with regard to the requirements for an independent and impartial tribunal. The questioning is therefore usually conducted by the judge. In particular, if special protection needs exist, an expert (in most cases a psychologist or psychiatrist) may be commissioned to carry out the questioning. In any event, insofar as possible care has to be taken that the witness does not encounter the accused and other participants in the proceedings. If an adversary questioning has taken place, the witness is released from the obligation to further testify and the protocol of the adversary questioning can be read in the main trial phase (section 252 para. 1 subpara. 2a CCP).

Witnesses who are minors and whose sexual sphere might have been violated through the criminal offence the accused allegedly committed must in any case be questioned by the court in the way and manner set out in section 165 para. 3 CCP, other victims with special protection needs (section 66a CCP), the witnesses mentioned in section 156 para. 1 subpara. 1 CCP as well as witnesses to whom the criteria mentioned in section 66a para. 1 CCP apply, must be questioned in that manner if requests are made by them or by the prosecution authority (section 165 para. 4 CCP).

Regardless of the possibility of an audio and video recording, personal inquiries generally ensure a child-friendly interview situation, with particular attention to a quiet and trusting environment, convenient seating possibilities and the provision of toys.

Here you can upload any file(s) in support of your answer

b. [are all staff responsible for interviewing child victims required to undergo suitable qualifying training?](#)^[50]
Please provide details.

[50] *Ibid.*, Recommendation 42

- Yes
 No

If appropriate, please provide more information (19.b No)

According to the CCP, children (under the age of eighteen), who have presumably been victims of a criminal offense against their sexual integrity are considered by law as particularly vulnerable victims (section 66a Para. 1 CCP). As such, they are entitled to being questioned by a person of the same gender during the investigation as well as during the main trial (Art. 66a Para. 2 CCP).

Child victims shall be interviewed by police officer or other specially qualified persons who are specially trained for this purpose (SPG - guideline regulation section 6 para. 2 Z 3).

According to Art. 165 Para. 3 and 4 CCP, minor victims must be interrogated in a gentle manner, i.e. without the physical presence of the parties, who can rather follow the interrogation via live video transmission from a different room. Especially in cases of particular vulnerability, an expert may be entrusted with the questioning. These experts are psychologists who are specialized in dealing with children. The decision to involve such an expert for the interrogation rests with the competent judge and is made based on both the nature of the alleged offense and the personal characteristics of the minor victim.

Beyond that, there is no specific training obligation for judges and public prosecutors in relation to the interrogation of minor victims. However, the Austrian judicial training providers offer such (voluntary) training activities on a regular basis, which are well-received by the affected judges and public prosecutors. Participation in training activities is strongly encouraged and is considered service. The participation in training activities is also taken into consideration when judges and public prosecutors apply for new positions.

Here you can upload any file(s) in support of your answer

c. [does your national legal framework require that interviews with child victims are conducted as soon as possible after the offence, that their duration and number are limited, and that in their organisation account is taken of the child's age and attention span?](#)^[51] Please provide details.

[51] *Ibid.*, Recommendation 43

- Yes

No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.c Yes)

For more information regarding the appointment of experts for the adversarial questioning of children and the release from the obligation to further testify please see the answer to question 19.a.

Here you can upload any file(s) in support of your answer

d. **[for Serbia]** how do you ensure that child victims of sexual abuse by someone in a recognised position of trust, authority or influence are not repeatedly interviewed during the proceedings?^[52]

[52] *Ibid.*, Recommendation 54

Here you can upload any file(s) in support of your answer

e. where it is indispensable to interview the child victim more than once, does your national legal framework require that the interviews should, if possible and where appropriate, be conducted by the same person and under the same material conditions as the first?^[53] Please provide details.

[53] *Ibid.*, Recommendation 44

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.e Yes)

The fixed allocation of business (sections 26ff, 32ff and 45ff of the Courts Organization Act) ensures that all cases for the coming calendar year are already allocated to the judges of the ordinary court in advance. A case that falls to a judge according to this allocation of business may only be taken from him by order of the senate appointed for this purpose by federal law and only in the event of his being prevented or if he is prevented from dealing with it within a reasonable period of time due to the scope of his duties, thus ensuring that a victim is only heard by the judge appointed for this purpose in advance by the allocation of business. A certain degree of flexibility for cases of illness and other hindrances to the performance of official duties is necessary and is also required, in particular, with regard to compliance with the general requirement to expedite proceedings pursuant to section 9 CCP. In the area of the public prosecutor's office, this requirement is also taken into account by the institute of business allocation.

Here you can upload any file(s) in support of your answer

f. does your national legal framework offer criminal defence the possibility to contest a child's disclosure during the interview through questions, thus obviating the need for the child to be present in the court room during the proceedings?^[54] Please provide details.

[54] *Ibid.*, Recommendation 45

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.f Yes)

The court has to afford the prosecution authority, the accused, the victim, private parties, and their representatives the opportunity to participate in adversarial questioning and to pose questions (section 165 para. 2 second sentence CCP). The prosecutor, the lawyer of the child, private parties and their representatives, the defendant and the defence lawyer can observe the interview in a separate room, while the judge, the social or child protection worker (psychosocial court assistance) or the guardian/parent /support person of the child (section 160 para. 2 CCP) and – if necessary – the recording clerk are in the interrogation room with the child.

Here you can upload any file(s) in support of your answer

JUDICIAL PROCEEDINGS Question 20. In the judicial proceedings:

In 2023 the Steering Committee for the Rights of the Child (CDENF) circulated a questionnaire in the framework of its mapping study of the implementation and development of Barnahus model in Europe. Should your authorities have responded to this questionnaire, you may reiterate those replies and complete as need be.

a. is systematic use of video equipment made in order to record interviews of child victims or enable him or her to testify remotely during the proceedings?^[55] Please provide details.

[55] *Ibid.*, Recommendation 46

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.a Yes)

The adversarial questioning is usually carried out in the investigation proceedings (section 165 CCP). If an adversary questioning has taken place, the witness is released from the obligation to further testify and the protocol of the adversary questioning can be read in the main trial phase (section 252 para. 1 subpara. 2a CCP).

However, if a questioning of victims has to take place in the main trial, victims under section 65 subpara. 1 lit. a CCP and victims with special protection needs (section 66a CCP; e.g. minors) shall be questioned by

the presiding judge at their request in a manner as described in section 165 para. 3 CCP (section 250 para. 3 CCP).

Here you can upload any file(s) in support of your answer

b. [does your national legal framework make an exception in the requirement to be physically present at court hearings for child victims of sexual abuse, including when they are giving evidence?](#)^[56] Please provide details.

[56] *Ibid.*, Recommendation 59

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.b Yes)

Please see the answer to question 20.a.

Here you can upload any file(s) in support of your answer

c. [is there any difference in the scope of the application of this requirement based on the child's age?](#)^[57] Please provide details.

[57] *Ibid.*, Recommendation 60

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.c Yes)

There are certain specific measures for minors regarding adversarial questioning (for more information please see the answer to question 19.a).

Here you can upload any file(s) in support of your answer

d. [are video recordings of interviews of child victims regarded as admissible evidence?](#)^[58] Please provide details.

[58] *Ibid.*, Recommendation 47

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.d Yes)

If an adversary questioning has taken place, the witness is released from the obligation to further testify. The protocol of the adversary questioning can be read and the audio and video recordings of the questioning of a witness can be presented in the main trial phase (section 252 para. 1 subpara. 2a CCP).

Here you can upload any file(s) in support of your answer

e. [what measures do you take to guard against any further contact between a child victim of sexual abuse by someone in a recognised position of trust, authority or influence and a presumed offender during the criminal proceedings?](#)^[59]

[59] *Ibid.*, Recommendation 48

Please see the answers to questions 19.a. and 19.f.

Here you can upload any file(s) in support of your answer

f. [does your national legal framework allow taking the child's testimony without the presumed offender being present?](#)^[60] Please provide details.

[60] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.f Yes)

Yes, for more information please see the answer to question 19.a.

Here you can upload any file(s) in support of your answer

g. [how do you ensure that face-to-face confrontation with the defendant during the proceedings does not take place?](#)^[61]

[61] *Ibid*

Please see the answers to questions 19.a. and 19.f.

Here you can upload any file(s) in support of your answer

h. [what measures do you take to prevent violation of the child victims' right to privacy by the media through disclosure or publication of personal information or data?](#)^[62]

[62] *Ibid.*, Recommendation 49

Please see the answers to questions 12 and 17.b.

Here you can upload any file(s) in support of your answer

i. [does your national legal framework provide for free legal aid to child victims of sexual abuse by someone in a recognised position of trust, authority or influence under the same or more lenient conditions as that available to adults?](#)^[63] Please provide details.

[63] *Ibid.*, Recommendation 50

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.i Yes)

All victims' rights within the meaning of §section 66 to 67 CCP, hence also the right to legal support in criminal proceedings (section 66b CCP), are available to all victims in criminal proceedings regardless of the victim's age or any other conditions.

Here you can upload any file(s) in support of your answer

j. [does your national legal framework grant to child victims of sexual abuse by someone in a recognised position of trust, authority or influence the right to be represented in their own name by a lawyer trained in the relevant matters?](#)^[64] Please provide details.

[64] *Ibid.*, Recommendation 51

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.j Yes)

This is ensured by the legal support for the proceedings (for more information please see the answer to question 17.b.).

Here you can upload any file(s) in support of your answer

k. [what assistance, if any, do you provide to child victims of sexual abuse by someone in a recognised position of trust, authority or influence, once a criminal justice decision has been taken?](#)^[65]

[65] *Ibid.*, Recommendation 52

Under the Victims of Crime Act compensation is awarded when it is likely that the victim suffered injury to body or damage to health as a result of an unlawful and intentional act carrying a sentence of more than six months' imprisonment on the date on which the decision of the compensation authority is taken.

Financial state compensation includes i.a.: psychotherapy, crisis intervention, medical costs, rehabilitation, loss of earning, loss of maintenance, allowances for nursing care, allowances for the blind, flat-rate compensation for pain and suffering, funeral costs.

Legal basis: Section 2 Victims of Crime Act.

A judicial proceeding or the offenders conviction is not a prerequisite of state compensation.

Here you can upload any file(s) in support of your answer

Contact

[Contact Form](#)