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Council of Europe project

Protecting children from sexual exploitation and sexual abuse in the Republic of Moldova

*Under the framework of
the Council of Europe Action Plan for the Republic of Moldova (2017-2021)*

**Draft concept note on the
analysis of judicial practice in cases related to
child sexual abuse and exploitation in the Republic of Moldova**

CONCEPT NOTE

Analysis of judicial practice in cases related to child sexual abuse and exploitation in the Republic of Moldova

Context

The Council of Europe project **Protecting children from sexual exploitation and sexual abuse in the Republic of Moldova** aims at supporting the Republic of Moldova to effectively implement the Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse (the Lanzarote Convention¹) and strengthen the state response towards child sexual exploitation and sexual abuse. The project is implemented in the framework of the [Council of Europe Action Plan for the Republic of Moldova \(2017-2020\)](#), anchored firmly in the [Council of Europe Strategy for the Rights of the Child \(2016-2021\)](#) and part of the Programme “Building a Europe for and with Children”. The project is implemented in the period of 15 October 2018-31 March 2020.

Objectives of the analysis

The project envisages carrying out an analysis of judicial practice on child sexual abuse and exploitation in the Republic of Moldova. This project activity will complement the *Mapping study on systemic issues affecting the child protection’s system response to child sexual exploitation and abuse and the effective implementation of the Lanzarote Convention*”, which is currently carried out by the Council of Europe. It will also enable to assess the efficiency and application of the present norms in practice, the uniformity of case law, and to the extent possible, reflect on the problems observed in practice and any potential capacity and training gaps with the aim to improve the position of the child victim in the court proceedings.

The specific objectives of the analysis are:

- To put in place a methodology for conducting a more systematic analysis of the respect of the rights of the child in criminal proceedings in cases of sexual exploitation and abuse of children;
- To provide holistic and objective generalised information and analysis on criminal proceedings in cases of child sexual abuse/exploitation;
- To identify the factors most commonly taken into account by the courts when sentencing offenders for child sexual offences and identify whether additional guidance for professionals is required in sentencing for child sexual offences to increase awareness on the significance of respect of the rights of the child in criminal proceedings and on child friendly justice.

¹ The Lanzarote Convention entered into force in the Republic of Moldova in 2012.

Scope of the analysis

The current study will focus on judicial practice on all offences of sexual/exploitation character for the period from **01 January 2017 till 31 December 2019**, where the child² is a victim (including the offences committed in the online environment). In particular, the criminal cases on the following articles of the Criminal Code of the Republic of Moldova will be analysed: Articles 171 (2) b, 172 (2) b, 174, 175, 175¹, 201, 206, 208¹, 208². The study will endeavour to take into account the findings of earlier studies conducted in the country on the judicial practice in this area, to the extent that those are relevant to substantiate the findings of the current study.

Considering the confidentiality of criminal investigation proceedings and the principles of respect for the child rights to freedom and dignity (Art. 10 para. 6 of Criminal Procedure Code (CPC)) secret of correspondence (Art. 14 of CPC), inviolability of privacy (Art. 15 CPC), publicity of the court hearing (Art. 18 of the CPC), the study will analyze only the criminal cases for which a final decision was issued by the court.

In line with the above mentioned, the analysis **aims** to study the following aspects of the Moldovan judicial practice on offences with sexual abuse / exploitation character:

- Compliance of the relevant legal norms with the Council of Europe and other international standards, particularly to the Council of Europe Convention on protection of children against sexual exploitation and sexual abuse (the Lanzarote Convention).
- Protection of the rights of the child victim of sexual abuse or exploitation crimes from the stage of submission of the complaint until the criminal proceedings are terminated and a final judgment is issued, including:
 - Provision of adequate information on the procedural rights and the services at the child's disposal (as well as those provided by NGOs), including at the stage of filling the complaint;
 - Provision of free legal assistance and to the extent possible, the quality of assistance provided;
 - Appointment of a special representative when there is a conflict of interests between the victim and the legal representative;
 - Protective measures undertaken by the criminal investigation body;
 - Protection of the child victim's safety as well as privacy;
 - The criminal investigation is carried out regardless of the victim's complaint;
 - Access to information on criminal investigation and trial proceedings;
 - The initiation, execution of the criminal investigation and judicial trial are carried out in the most strict terms;
 - The child's right to be heard and any special conditions to be applied (i.e. place of hearing, duration, number of hearings, relevance of the questions addressed, role of each party in addressing questions, the status of the interviewer, presence of relevant parties during the hearing, registration of the hearing);
 - Guarantee of an adequate evidence-gathering process which does not re-victimize the child (ie. legality of collecting evidence, sufficiency and relevance of the evidence)

² The current study interprets the term "child" according to Article 3 of the Lanzarote Convention, namely the child is considered any person under the age of 18. The same interpretation is provided by the Art. 6 point 47 of the Criminal Procedure Code of the Republic of Moldova.

- Judgment analysis: including sentencing outcomes, considerations of the proportionality of the sentence to the material and physical damage suffered by the victim and to the extent possible, comparison of sentencing outcomes for offences of rape committed against an adult;
- Anonymisation practices in children judgments to ensure, so far as possible, that children who have suffered significant harm are not caused further harm in the ensuing court process by the publication of material either that may lead to possible identification of them or that may cause them harm due to the nature of material that is published³.
- Criminal justice outcomes in cases of child sexual abuse and exploitation, taking into account also the overall duration of such proceedings;
- Possible impact of legislative reforms on sentencing outcomes during the reference period;
- Collection of data and monitoring of proceedings.

Implementation arrangements

The analysis would be undertaken from **01 October 2019** till **28 February 2020⁴**, as follows:

	Activity	Deadline
1.	Desk research and development of the Methodology	18 October 2019
2.	Development of the check list forms and research schedule	25 October 2019
3.	Coordination of the Methodology, check list forms and research schedule with the Superior Council of Magistracy	01 November 2019
4.	Research in the field by local experts	04 November – 31 December 2019
5.	Analysis of the data gathered and provided by local experts, desk research of the national and international standards, statistical data, information provided by national authorities and drafting the overall research report	31 January 2020
6.	Finalising/revising/approving and disseminating the final report to the authorities	February 2020 (TBC)

Principles of the research:

The research should be performed based on the following principles, as follows:

- Objectivity and impartiality;
- Professionalism;
- Confidentiality;
- Accuracy and precision;
- No conflict of interest.

³ Based on the Regulation on the publication of judgments on the national portal of courts and on the website of the Supreme Court, approved by the Supreme Council of Magistracy decision no. 2068 of 24.11.2017

⁴ The schedule of specific elements, activities and access in courts will be provided in the Methodology on the Study and/or in a separate attachment to it.

Planning

The research will be implemented by a team of 4 Council of Europe experts. They will ensure the elaboration of a full-fledged methodology and coordinate and supervise the elaboration of the analytical research in close cooperation with the Council of Europe Project team.

The research will be a multi-dimensional one and a full range of data/information will be analysed. It will be implemented through the following methods/data analysis and generalisation:

- Analysis of legal and internal regulatory framework and statistics:
 - a) the criminal legislation concerning the investigation/prosecution and examination of offences of sexual/exploitation character against children;
 - b) bylaws and regulations, internal instructions, existing judicial guides, summaries of court practice, reports and other relevant materials concerning the investigation of such crimes in the Republic of Moldova and application of the national criminal legislation etc.
 - c) all available statistical data concerning this type of offences, for the period from 2017 till 2019 inclusively;
 - d) the relevant European Court of Human Rights case-law.
- Analysis of the finalised criminal case files from 2017-2019 inclusively:
 - a) all relevant criminal cases for which a final decision was issued by the court, accompanying audio recordings of child hearings.
- Meetings with the team of experts and cooperation with authorities.

A group of international and local experts selected by the Council of Europe will perform the desk-based analysis/research. The international expert should be a (former) judge or prosecutor with experience in examining/investigating criminal cases involving children and who works/worked in a judicial system similar to the Republic of Moldova. The local experts should have experience in dealing with criminal cases, particularly those involving children (e.g. practicing lawyers, former judges/prosecutors or academia).

The methodology and the checklist forms for the analysis of the finalised criminal case files will be prepared by the local and international experts. The project team will determine the number of files to be analysed based on the number of existing relevant files provided by the Superior Council of Magistrates. The files will cover the period from 2017 till 2019, inclusively, and will concern only completed criminal files.

The local experts will analyse the files and audio recordings of the child hearings, and will fill in the check list forms. The local experts will analyse the criminal case files located in the courts from all regions of Moldova (depending on the registered files on the relevant offences). The courts will be selected in cooperation with the Superior Council of Magistracy, based on the registered relevant files. A presentation letter identifying the local consultant under the Project and an authorisation from the Superior Council of Magistracy to have access to the courts will be provided to local experts.

The contact person of each court will be provided the contacts of local experts who will visit the courts for research purposes.

The team of local experts will be responsible for the generalization of the data of the filled-in check list forms. The generalized data will be provided to the Council of Europe project team for their further transmission to Council of Europe international expert responsible for the overall analysis and systematization of the data in the general research report.

The Council of Europe Project team will be responsible for:

- the overall coordination and supervision of the process of the implementation of the research;
- negotiating the commitment on the performance of the research concerned with the relevant national authorities;
- selecting a group of international and local experts responsible for the implementation of the research in compliance with their roles, as described below;
- approving the timeframe/schedule of the research in close cooperation with the selected experts;
- providing support for developing the methodology and the check list forms;
- being in close cooperation with the interested authorities and the group of local experts during the implementation period and providing support in overcoming any encountered challenges;
- finalising/ revising/ approving and disseminating the final report.

The Council of Europe international expert(s) with the support of the local experts will be responsible for:

- developing the methodology and check list forms for conducting the research;
- analysing the generalised data compiled by the group of local experts;
- performing desk research of the national and international standards, statistical data, information provided by national authorities;
- drafting in cooperation with local experts the overall research report and drawing up recommendations;
- participating in relevant expert discussions throughout the research implementation process.

The local experts will be responsible for:

- defining the research schedule in coordination with the Council of Europe team and Superior Council of Magistracy;
- analysing the audio recordings of the child hearings and the finalized criminal case files;
- filling in the prepared check list forms, generalising the data of the respective analyses and sending it to the Council of Europe project team;
- liaising with the Council of Europe project team in overcoming challenges if/when they emerge;
- drafting in cooperation with the international expert the overall research report and drawing up recommendations;
- participating in relevant expert discussions throughout the research implementation process.

Superior Council of Magistracy (SCM) will cooperate in this process by:

- informing all relevant courts on the research programme;

- defining the access (research) schedule to the courts/archives for the analysis of the audio recordings of the child hearings and the relevant criminal case files in close cooperation with the Council of Europe project team;
- providing access to relevant judicial guidance documents, summaries of court practice, reports, statistical data, etc. that will be used during the desk-based analysis/research;
- providing relevant authorizations as/if required and support to the Council of Europe project team, in overcoming challenges encountered with regard to the analysis of the audio recordings of the court hearings and the finalised criminal case files;
- participating in relevant expert discussions throughout the research implementation process.