

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

Germany

* 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)

- Pursuant to section 174 of the Criminal Code, criminal liability is incurred by individuals who perform sexual acts on or involving persons in their charge (i.e. where an individual has been entrusted to provide education or care; in superior-subordinate relationships of training, service or protection in which a dependency is abused; or in the case of biological or adopted children or children of spouses, of civil partners or of persons with whom the individual is living in a relationship similar to marriage or civil partnership). Those abusing children entrusted to them in institutions for education, training and care may incur a higher penalty.
- Sexual abuse of prisoners, persons detained by official order, or sick or vulnerable institutionalised persons is punishable under section 174a.
- Persons who, in their capacity as a public official charged with participation in criminal proceedings or in proceedings with the aim of imposing a custodial measure of reform and prevention or detention imposed by a public authority, exploit the dependency caused by the proceedings to commit sexual abuse are criminally liable pursuant to section 174b of the Criminal Code.
- Sexual abuse exploiting a counselling, treatment or support relationship is punishable under section 174c of the Criminal Code. Those who perform sexual acts on a person entrusted to them for psychotherapeutic treatment are criminally liable pursuant to section 174c (2) of the Criminal Code.

Substantive criminal law provisions essentially do not distinguish between juvenile and adult offenders. Section 176 (2) of the Criminal Code, which criminalises the sexual abuse of children, provides an exception to this rule. Pursuant to this provision, the court may dispense with punishment if the sexual acts between the perpetrator and the child are consensual and there is only a small difference in age and maturity between them; this does not apply if the perpetrator exploits the child's lack of capacity for sexual self-determination. Pursuant to section 182 (1) and (2) respectively, criminal liability is also incurred by anyone who abuses a person under eighteen years of age by performing sexual acts on that person or having that person perform sexual acts on him or her, either by exploiting that person's coercive situation or by financially rewarding that person. Pursuant to section 182 (3) of the Criminal Code, a person over 21 years

of age who abuses a person under 16 years of age and thereby takes advantage of the victim's lack of capacity for sexual self-determination incurs criminal liability.

§ 174 Sexual abuse of persons in one's charge

(1) Whoever performs sexual acts

1. on a person under 18 years of age who is entrusted to them for upbringing or care,
2. on a person under 18 years of age who is entrusted to them within a training, service or employment relationship, by abusing the dependence associated with the training, service or employment relationship or
3. on a person under 18 years of age who is their biological or adopted descendant or the biological or adopted descendant of their spouse, life partner or a person with whom they live in a quasi-marital relationship or quasi-life partnership

or has the person in their charge perform sexual acts on them incurs a penalty of imprisonment for a term of between three months and five years. Whoever, under the conditions of sentence 1, causes the person in their charge to perform sexual acts on or in the presence of a third person or causes a third person to perform sexual acts on them incurs the same penalty.

(2) Whoever is entrusted with the upbringing, education or care of persons under 18 years of age in an institution specified for this purpose and who

1. performs sexual acts on a person under 16 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them or
2. exploits their position in order to perform sexual acts on a person under 18 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them

incurs a penalty of imprisonment for a term of between three months and five years. Whoever, under the conditions of sentence 1, causes the person in their charge to perform sexual acts on or in the presence of a third person or causes a third person to perform sexual acts on them incurs the same penalty.

(3) Whoever, under the conditions of subsection (1) or (2),

1. performs sexual acts in the presence of the person in their charge for their own sexual arousal or that of the person in their charge or
 2. causes the person in their charge to perform sexual acts in their presence
- incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(4) The attempt is punishable.

(5) In the cases under subsection (1) sentence 1 no. 1, subsection (2) sentence 1 no. 1 or subsection (3) in conjunction with subsection (1) sentence 1 no. 1 or with subsection (2) sentence 1 no. 1, the court may dispense with imposing a penalty pursuant to this provision if the wrongfulness of the act is minor.

§ 174a Sexual abuse of prisoners, persons detained by official order, or sick or vulnerable institutionalised persons

(1) Whoever abuses their position to perform sexual acts on a prisoner or a person detained by official order, a person who is entrusted to them for upbringing, education, supervision or care, or has the prisoner or person detained perform sexual acts on them or causes the prisoner or person detained to perform or acquiesce to sexual acts on or by a third person incurs a penalty of imprisonment for a term of between three months and five years.

(2) Whoever abuses a person who has been admitted to an institution for sick or vulnerable persons and is entrusted to them for supervision or care and performs sexual acts on that person, thereby exploiting said person's illness or vulnerability, or whoever has that person perform sexual acts on them or causes that person to perform or acquiesce to sexual acts on or by a third person incurs the same penalty.

(3) The attempt is punishable.

§ 174b Sexual abuse exploiting official position

(1) Whoever, in the capacity as a public official charged with participating in criminal proceedings or

proceedings whose aim is to impose a measure of reform and prevention involving deprivation of liberty or detention imposed by official order, exploits the dependency caused by the proceedings to perform sexual acts on the person against whom the proceedings have been instituted or has said person perform sexual acts on them or causes that person to perform or acquiesce to sexual acts on or by a third person incurs a penalty of imprisonment for a term of between three months and five years.

(2) The attempt is punishable.

§ 174c Sexual abuse exploiting counselling, treatment or support relationship

(1) Whoever performs sexual acts on a person entrusted to them for counselling, treatment or support due to a mental illness or disability, including an addiction, or due to a physical illness or disability, and exploits the counselling, treatment or support relationship or has said person perform sexual acts on them or causes that person to perform or acquiesce to sexual acts on or by a third persons incurs a penalty of imprisonment for a term of between three months and five years.

(2) Whoever performs sexual acts on a person entrusted to them for psychotherapeutic treatment, thereby exploiting the treatment relationship, or has said person perform sexual acts on them or causes that person to perform or acquiesce to sexual acts on or by a third person incurs the same penalty.

(3) The attempt is punishable.

§ 176 Sexual abuse of children

(1) Whoever

1. performs sexual acts on a person under 14 years of age (child) or has the child perform sexual acts on them,
2. causes a child to perform sexual acts on a third person or to have a third person perform sexual acts on them,
3. offers or promises to supply a child for an offence under no. 1 or no. 2

incurs a penalty of imprisonment for a term of at least one year.

(2) In the cases under subsection (1) no. 1, the court may dispense with imposing a penalty in accordance with this provision if the sexual act between the offender and the child was consensual and the difference both in age and level of development and maturity is small, unless the offender is exploiting the child's lack of capacity for sexual self-determination.

§ 177 Sexual assault; sexual coercion; rape

(1) Whoever, against a person's discernible will, performs sexual acts on that person or has that person perform sexual acts on them, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person incurs a penalty of imprisonment for a term of between six months and five years.

(2) Whoever performs sexual acts on another person or has that person perform sexual acts, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person incurs the same penalty if

1. the offender exploits the fact that the person is not able to form or express a contrary will,
2. the offender exploits the fact that the person is significantly impaired in respect of the ability to form or express a will due to said person's physical or mental condition, unless the offender has obtained the consent of that person,
3. the offender exploits an element of surprise,
4. the offender exploits a situation in which the victim is threatened with serious harm in case of offering resistance or
5. the offender has coerced the person to perform or acquiesce to the sexual acts by threatening serious harm.

(3) The attempt is punishable.

(4) The penalty is imprisonment for a term of at least one year if the inability to form or express a will is due to the victim's illness or disability.

(5) The penalty is imprisonment for a term of at least one year if the offender

1. uses force against the victim,
 2. threatens the victim with a present danger to life or limb or
 3. exploits a situation in which the victim is unprotected and at the mercy of the offender's influence.
- (6) In especially serious cases, the penalty is imprisonment for a term of at least two years. An especially serious case typically occurs where

1. the offender has sexual intercourse with the victim or has the victim have sexual intercourse or commits such similar sexual acts on the victim or has the victim commit them on them which are particularly degrading for the victim, especially if they involve penetration of the body (rape), or

2. the offence is committed jointly by more than one person.

(7) The penalty is imprisonment for a term of at least three years if the offender

1. carries a weapon or other dangerous implement,

2. otherwise carries an instrument or other means for the purpose of preventing or overcoming the resistance of another person by force or threat of force or

3. places the victim at risk of serious damage to health.

(8) The penalty is imprisonment for a term of at least five years if

1. the offender uses a weapon or other dangerous implement during the commission of the offence or

2. the offender

- a) seriously physically abuses the victim during the offence or

- b) by committing the offence places the victim in danger of death.

(9) In less serious cases under subsections (1) and (2), the penalty is imprisonment for a term of between three months and three years, in less serious cases under subsections (4) and (5) imprisonment for a term of between six months and 10 years, and in less serious cases under subsections (7) and (8) imprisonment for a term of between one year and 10 years.

§ 182 Sexual abuse of juveniles

(1) Whoever abuses a person under 18 years of age by taking advantage of a predicament by

1. performing sexual acts on that person or having said person perform sexual acts on them or

2. causing the person to perform sexual acts on a third person or to have sexual acts performed on them by a third person

incurs a penalty of imprisonment for a term not exceeding five years or a fine.

(2) A person over 18 years of age who abuses a person under 18 years of age by performing sexual acts on that person or having that person perform sexual acts on them for a consideration incurs the same penalty.

(3) A person over 21 years of age who abuses a person under 16 years of age by

1. performing sexual acts on that person or having that person perform sexual acts on them or

2. causing that person to perform sexual acts on a third person or to have a third person perform sexual acts on that person,

and thereby exploits the victim's lack of capacity for sexual self-determination, incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(4) The attempt is punishable.

(5) In the cases under subsection (3), the offence is prosecuted only upon request, unless the prosecuting authority deems there to be a special public interest in prosecution which calls for ex officio intervention.

(6) In the cases under subsections (1) to (3), the court may dispense with imposing a penalty pursuant to these provisions if, having regard to the conduct of the person against whom the offence was committed, the wrongfulness of the act is minor.

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

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

section 174, 174a, 174b, 174c StGB Criminal Code (exact wording of the provisions, see above question 1a)

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)

e.g. an individual who has been entrusted with the provision of education or care; in superior-subordinate relationships in training, service or protection settings in which dependency is abused; or in the case of biological or adopted children or children of spouses, of civil partners or of persons with whom the individual is living in a relationship similar to marriage or civil partnership (for the exact wording of the provisions, see question 1a above)

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)

The Criminal Code does not contain a legal definition.

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

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (2.a Yes)

(exact wording of the provisions, see above question 1a)

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

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (2.b Yes)

(exact wording of the provisions, see above question 1a)

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)

(exact wording of the provisions, see above 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

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

Whether or not the offender is married to the victim makes no difference to criminal liability.

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

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

Criminal liability within the circle of trust does not require coercion, force or threat.

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)

Under German criminal law, sexual acts are punishable if they exceed a degree of severity at which the behaviour can no longer be considered acceptable according to social and ethical standards. This does not necessarily require penetration or any similar act to have taken place. In assessing whether the severity threshold has been exceeded, all circumstances of a particular case must be taken into account. In addition to the type and intensity of the act, the context in which it took place and the relationship between the persons involved, there is also a generally unquantifiable temporal component that must be considered. Another decisive factor is the danger that the assault poses to the protected interest in question, which is why the severity threshold for sexual acts against children and adolescents is lower than for adults. The sexual integrity of children is thus afforded special protection.

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

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

There are no differences regarding the sexual orientation of the persons involved.

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?**^[1]

7] Please refer to the specific legal provisions.

[17] *Ibid.*, Recommendation 12

- Yes
 No

If appropriate, please provide more information (4.c 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)

According to section 152 of the German Code of Criminal Procedure (Strafprozeßordnung, StPO), the public prosecution office is authorised to prefer public charges. Unless otherwise provided by law, the public prosecution office is obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications. This obligation to investigate applies irrespective of whether the victim or his/her legal representative has reported the offence.

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)

See answer to question 5a. The public prosecutor's office is obliged to investigate even after a complaint has been withdrawn. Exceptions exist only in the case of criminal offences that can only be prosecuted upon request (section 158 (2) of the German Code of Criminal Procedure), which do not include sexual abuse or exploitation of children.

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)

According to the principles of German family law, it is up to the parents to take educational measures in the event that their child commits acts of sexual abuse towards other children. The legal framework provides support through child and youth welfare services. If the parents do not fulfil their responsibilities, the state can take measures to protect the child pursuant to section 1666 of the German Civil Code (Bürgerliches Gesetzbuch, BGB)).

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

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)

In Germany, the age of criminal responsibility is 14. For juveniles (14-17-year-olds) and – under certain conditions – for young adults (18-20-year-olds), specific juvenile criminal law is applicable, as provided for in the Youth Courts Act (Jugendgerichtsgesetz, JGG) (https://www.gesetze-im-internet.de/englisch_jgg/index.html). Its provisions are not limited to and do not refer to specific categories of offences such as the sexual abuse of children. The main goal of juvenile criminal law is not punishment or retribution. Instead, its application is above all to counter renewed criminal offences on the part of a juvenile or young adult (section 2 (1) JGG). In order to achieve this goal, the JGG states that legal consequences shall be orientated primarily in line with the educational concept. Thus, juvenile criminal law provides for a broad and nuanced spectrum of sanctions and measures, many of which are community-based, as appropriate for the circumstances of the individual case. These sanctions and measures include instructions (section 10 JGG) for the juvenile to live with a family or in residential accommodation, to submit himself or herself to the care and supervision of a specific person/care assistant, to attend a social skills training course or to attempt to achieve a settlement with the aggrieved person (victim offender mediation), and measures to make the juvenile acutely aware that he or she must assume responsibility for the wrong he or she has done (sections 13 et seqq. JGG) such as a requirement to perform certain tasks or pay a sum of money to a charitable organisation, or youth detention for up to four weeks. A youth penalty (sections 17 et seqq. JGG) of between a minimum of six months and a maximum of five, or in cases of serious crimes ten years, may only be imposed as a measure of last resort in grave cases when other sanctions or measures would not be sufficient. In certain, specific circumstances, commitment in a psychiatric institution for children and juveniles is also possible.

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

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)

In family court proceedings in such cases, the child will generally be appointed a guardian ad litem in accordance with section 158 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG). The role of the guardian ad litem is to look after the child's interests. To this end, he or she will inform the child in a suitable manner about the subject matter, course and possible outcome of the proceedings. The court must also hear the child in person in accordance with section 159 FamFG.

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)

In both cases, the parents already have knowledge of the proceedings, and are thus already aware of the discussions or have become aware of the matter in the course of the proceedings as a result of the formal appointment of the guardian ad litem and the determination of the date for the child hearing or the request to the parents to bring the child to the court for the purpose of the hearing.

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)

If the suspected perpetrator is a person from the family environment other than a parent, the victim can be protected upon request as follows:

Victims can be protected from further contact with the offender by court protection orders according to the Act on Protection against Violence (Gewaltschutzgesetz, GewSchG) in the form of a temporary injunction or a main decision.

Under section 2 GewSchG, a victim can apply to the family court for an order that the offender leave their jointly occupied home. Under section 1 GewSchG, a victim can also obtain an order prohibiting the offender from entering their place of residence or from attempting to establish contact with the victim. Pursuant to sections 49 et seq. and 214 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG), an order under the Act on Protection against Violence can also be issued as a temporary injunction (emergency protection order).

Issuance of a temporary injunction under the Act on Protection against Violence presupposes an urgent need for immediate action by the family court (sections 49 (1) and 214 (1) first sentence FamFG). Where it is necessary to prevent an acute and serious risk, the court may, as an exception, decide not to hear the offender in advance and make its decision straight away. If this occurs, in many cases an emergency protection order is issued on the day on which a corresponding application is sent to the family court. In all other cases, a decision on issuing an emergency protection order is usually made within a few days after a hearing at short notice has taken place or a deadline for a written statement has expired.

The duration of an emergency protection order under the Act on Protection against Violence is generally left to the discretion of the court. According to the wording of section 214 (1) FamFG, a "temporary provision" is to be made by means of a temporary injunction so that the main proceedings are not prejudiced.

In practice, such a court order is often limited to six months. Longer periods of protection are usually only ordered in the main proceedings. However, it is also possible to extend a temporary injunction, for example if the main proceedings are delayed.

Under the Act on Protection Against Violence, the temporary injunction becomes effective and therefore enforceable as soon as the offender is notified (sections 40 (1) and 53 (1) FamFG). However, the court may also allow enforcement even before serving the order (section 53 (2) FamFG).

German family law does not provide for the removal of a suspected perpetrator from the family environment, but in accordance with section 1666 (3) nos. 3 and 4 of the German Civil Code (Bürgerliches Gesetzbuch, BGB), the family court may issue prohibitions to use the family home or another home temporarily or for an indefinite period of time, to be within a certain radius of the home or to visit other places to be determined where the child regularly spends time, as well as prohibitions to establish contact with the child or to bring about a meeting with the child. Furthermore, regarding the parents of the child, the family court may exclude the right of contact with the child or order that contact may take place only if a third party is present pursuant to section 1684 (4) of the German Civil Code. If the suspected perpetrator is a person from the family environment other than a parent, the victim can be protected upon request as follows:

Victims can be protected from further contact with the offender by court protection orders according to the Act on Protection against Violence (Gewaltschutzgesetz, GewSchG) in the form of a temporary injunction or a main decision.

Under section 2 GewSchG, a victim can apply to the family court for an order that the offender leave their jointly occupied home. Under section 1 GewSchG, a victim can also obtain an order prohibiting the offender from entering their place of residence or from attempting to establish contact with the victim. Pursuant to sections 49 et seq. and 214 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious

Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG), an order under the Act on Protection against Violence can also be issued as a temporary injunction (emergency protection order).

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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 German Code of Criminal Procedure (Strafprozeßordnung, StPO) regulates who can be granted information and access to files including personal information and under what conditions. According to section 474 of the Code of Criminal Procedure, courts, public prosecutors' offices and other judicial authorities are granted access to files if this is necessary for the purposes of the administration of justice. In

addition, providing information from files to public agencies such as youth welfare offices is permissible under certain conditions. This is the case, for example, if such agencies would otherwise be entitled, pursuant to special provisions, to the ex officio transmission of personal data from criminal proceedings or if the transmission of further personal data is necessary for the performance of duties. Section 477 of the Code of Criminal Procedure sets out the conditions under which personal data from criminal proceedings may be transmitted ex officio to law enforcement agencies and criminal courts for the purposes of prosecution.

In accordance with sections 1666 and 1666a of the German Civil Code, if the child's physical, mental or emotional wellbeing or property is endangered and the parents are unwilling or unable to avert the danger, the family court is to take the measures necessary to avert the danger. Measures involving the separation of the child from their parental family are permissible only if the danger cannot be countered by other means, including public support measures. The removal of the child victim from their family environment is therefore considered as a last resort procedure; it requires a judicial decision following a comprehensive examination of the individual case and consideration of possible less intrusive options. The German legal framework does not set out further conditions for or the duration of removal, because this has to be considered individually for each case.

Sections 8a and 42 of Book VIII of the Social Code (Sozialgesetzbuch VIII, SGB VIII) form the legal basis for the Youth Welfare Office taking children into care. Since the Youth Welfare Office is responsible for protecting the best interests of children, appropriate measures need to be taken if there is an imminent danger to children's welfare or minors ask to be taken into care themselves. Children's welfare is assumed to be at risk if, for example, children are seriously neglected, witness violence within the family or are themselves victims of domestic violence; if there is sexual abuse; or if the parents or the children themselves exhibit serious behavioural problems (such as alcohol dependency) or commit a criminal offence. As a general rule, the Youth Welfare Office acts upon receiving a report (e.g. from teachers) that a child may be at risk. The report is then verified by questioning witnesses and making announced visits to the home of the family concerned. In cases of imminent danger, the minor can be taken into care immediately, without adhering to this verification procedure.

The child must not be taken into care for longer than is necessary. The primary objective of taking a child into care is to ensure that the essential needs of the child are met and to allow a child protection plan to be drawn up, determining whether and how the child can return to the family home or whether he or she should be placed in a youth protection institution indefinitely. Prior to the child being taken into care, it is very difficult to assess the measure.

The parents can object to their child's being taken into care. In this case, the Youth Welfare Office is required to file an application with the competent family court. If the family court rejects the removal of custody from the parents, care by the Youth Welfare Office must be terminated within 48 hours and the child must be returned to his or her family. The measure can also be terminated if the parents and the Youth Welfare Office agree to the parents' taking their child home and the parents subsequently cooperate with the Youth Welfare Office.

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)

Personal data may only be transferred on the basis of a statutory provision authorising the authority holding the information to pass it on. A statutory provision authorising the receiving authority to receive the information is also required. This is because the transmission of personal data always constitutes an interference with the right to informational self-determination.

Data transmission at the national level is permitted in accordance with section 25, read in conjunction with section 12 (2) - (4), of the Act on the Bundeskriminalamt and the Cooperation between Federal and State Authorities in Criminal Police Matters (Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten, BKAG). Under these provisions, the Federal Criminal Police Office (Bundeskriminalamt, BKA) is authorised to transmit personal data to other Federal police forces and to Länder police forces if this is necessary for the accomplishment of its tasks or of those of the recipient. The BKA may transmit personal data to other authorities and to other public bodies if this is provided for in other legal provisions or for the purpose of countering risks.

Data collection and transmission by other authorities and other public bodies (e.g. the Youth Welfare Office) in turn is largely regulated by provisions contained in Book VIII of the Social Code (SGB VIII). The fourth chapter of SGB VIII deals with the protection of social data, stipulating that, in the first instance, the data are to be collected from the data subject. Section 62 (3) no. 2d SGB VIII provides for an exception to this general rule and is applicable to the question at issue here. Pursuant to this provision, data may also be collected from the law enforcement authorities, without the knowledge of the data subjects, if collection would not be possible otherwise or if the task at hand can only be accomplished by collecting the data from others, and knowledge of the data is necessary for fulfilling the protection mandate in cases of a danger to a child's welfare in accordance with section 8a (1) SGB VIII. Data transmission, on the other hand, is regulated in section 64 SGB VIII.

In addition to the legislation cited so far, the Act on Cooperation and Information in Child Protection (Gesetz zur Kooperation und Information im Kinderschutz, KKG) is also relevant here. Section 4 KKG regulates consultation options available to persons subject to confidentiality rules as well as the passing on of information by such persons. However, the list of persons to whom the provision applies does not explicitly include law enforcement authorities.

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

Please provide information in support of your answer, if possible by referring to specific legal provisions and their exact wording (8 Yes)

Pursuant to section 1666 (1) and (3) of the German Civil Code (Bürgerliches Gesetzbuch, BGB), the family court may order the substitution of declarations by the person with parental custody and the partial or complete withdrawal of parental custody. This may also be done on a provisional basis in the form of a temporary injunction as a provisional measure to protect the child before a court decision on the conviction of the parent in question is taken.

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)

German family law does not provide for such an automatic mechanism. A suspension of parental rights pursuant to sections 1666 and 1666a of the German Civil Code Bürgerliches Gesetzbuch, BGB) always requires a court decision - if necessary in the form of a temporary injunction.

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)

(See a above:) German family law does not provide for such an automatic mechanism. A suspension of parental rights pursuant to sections 1666 and 1666a of the German Civil Code always requires a court decision - if necessary in the form of a temporary injunction.

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.

A person reporting suspected sexual abuse or exploitation in good faith would not be criminally liable for defamation under section 187 of the German Criminal Code (Strafgesetzbuch, StGB), because this offence requires that the person assert or disseminate an untrue fact despite knowing better.

A person who asserts or disseminates a fact about another person which is suited to degrading that person or negatively affecting public opinion about that person incurs criminal liability for malicious gossip according to section 186 of the German Criminal Code, unless the fact can be proved to be true. Such actions constitute an offence even if the person believed the fact to be true. However, reporting suspected sexual abuse or sexual exploitation of a child can be justified and thus not entail criminal liability under the conditions of section 193 of the German Criminal Code, namely if the person was safeguarding legitimate interests. This will typically be the case when a person reports in good faith suspected sexual abuse or sexual exploitation of a child.

Persons bound by professional confidentiality such as physicians incur criminal liability for disclosing secrets revealed to them in their professional capacity under section 203 of the German Criminal Code (violation of private secrets). However, the disclosure of secrets is justified and therefore not punishable if it is legally permitted.

Section 4 of the Act on Cooperation and Information in Child Protection (Gesetz zur Kooperation und Information im Kinderschutz, KKG) permits the disclosure of secrets revealed to physicians, psychologists, youth counsellors and other persons normally bound by professional confidentiality in the event of serious indications that a child's or adolescent's welfare is at risk, including indications of sexual abuse and sexual exploitation. Section 4 KKG provides for a two-stage procedure. If a professional within the scope of the provision, e.g. a physician, becomes aware of information indicating potential abuse, he or she is first to discuss the situation with the child and parents or guardians and, if necessary, urge them to seek assistance, provided that this does not jeopardize the effective protection of the child (section 4(1) KKG). If such an approach is not possible or is unsuccessful, or the professional in question considers a report necessary in order to avert the risk to the child's wellbeing, he or she is authorized to inform the Youth Welfare Office (Jugendamt) and provide it with the necessary data (section 4(3) sentence 1 and 2 KKG). Section 4 KKG thus does not oblige professionals to report suspected child sexual abuse. However, the

provision was amended in 2021 to the extent that physicians have a duty to inform the Youth Welfare Office without delay if they consider the child's welfare to be at imminent risk (section 4(3) sentence 2 KKG). Outside the scope of section 4 KKG, the disclosure of information may be justified under the conditions of the general provisions of section 34 of the German Criminal Code. According to those provisions, anyone who, when faced with a present danger to life, limb, liberty, honour, property or another legal interest which cannot otherwise be averted, commits an act to avert the danger from themselves or another is not deemed to act unlawfully if, upon weighing the conflicting interests, in particular the affected legal interests and the degree of the danger facing them, the protected interest substantially outweighs the one interfered with.

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

Under section 32 (2) of Book XIV of the German Social Code (Sozialgesetzbuch XIV, SGB XIV), relatives of an injured party also have a right to early psychotherapeutic intervention. Pursuant to section 33 SGB XIV, they have a right to psychotherapeutic intervention even for events that took place some time previously if they are suffering acute psychological stress as a result of those events.

Victims of sexual violence, like all victims of violent acts, can receive social compensation benefits and services. Relatives and close associates, such as persons living in a household with the injured party, may also be entitled to benefits and services. These include services from the trauma outpatient clinic. The trauma outpatient clinic provides trauma therapy aimed at preventing the onset of mental health disorders or their chronification. A simplified, low-threshold procedure ensures that the services of the trauma outpatient clinic can be accessed quickly and unbureaucratically. The first two sessions do not even require an application.

To ensure rapid and easy access to the trauma outpatient clinic, the Trauma Outpatient Clinic Ordinance, which will come into force on 1 January 2024, stipulates that the appointment for the first session must generally be granted within five working days of contacting the trauma outpatient clinic.

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

If considerable detriment to the welfare of the minor witness is to be feared, the court can order (according to section 247 of the Code of Criminal Procedure (Strafprozeßordnung, StPO) that the accused be removed from the meeting room during the hearing of the witness. In the event that the minor witness is at imminent risk of serious detriment, the court can also rule (according to section 247a of the Code of Criminal Procedure) that the witness does not have to be in the courtroom - in the presence of the accused - during his or her interrogation, but can instead be interrogated outside, with his or her testimony being transmitted via video-stream into the courtroom. A similar provision also applies to the preliminary proceedings (section 168e of the Code of Criminal Procedure); in this case, however, the persons entitled to be present are in another room and follow the interrogation by video transmission.

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

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

If appropriate, please provide more information (13.a No)

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)

In addition to the provisions contained in the Act on International Mutual Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen, IRG) listed by the Federal Ministry of Justice, the rules applying to the issuance of green notices/diffusions in the performance of the tasks incumbent upon the Federal Criminal Police Office (Bundeskriminalamt, BKA) are also relevant here. Section 27 of the Act on the Bundeskriminalamt and the Cooperation between Federal and State Authorities in Criminal Police Matters (Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten, BKAG) forms the legal basis for the transmission of such data. Judicial assistance (Act on International Mutual Assistance in Criminal Matters, IRG) is not relevant in the area of prevention. Section 27 (1) BKAG permits the transmission of personal data to police and judicial authorities as well as to further public bodies responsible for the prevention or prosecution of crime and to intergovernmental and supranational bodies in third states dealing with the prevention or prosecution of crime for the purposes specifically named in this provision.

The transmission of data on account of a danger pursuant to sentence 2 requires indications that serious criminal offences are about to be committed. The provision does not impose exceptionally strict requirements regarding the existence of such indications. It does not require knowledge of the timing, location and nature of a specific offence. Rather, it is sufficient if, based on experience, it appears possible that a registered sex offender could commit an offence.

The restriction to the effect that transmission is only permitted if it is necessary reflects the prohibition of excessive measures and thus the fact that it is not the task of the BKA, as the central agency, to engage in the unlimited transmission of information; instead, the BKA is only permitted to transmit the information that is necessary for the purposes set out in section 27 (1), sentences 1 and 2. The necessity of transmitting the information to specific states has to be set out on a case-by-case basis; transmission could, for example, be necessary because the sex offender has travelled to these states in the past and there are indications that he or she may have committed sexual offences there, or because these states are among the favourite (travel) destinations for sex offenders. This requirement does not mean that transmission to all 190 Interpol Member States cannot be considered necessary in specific cases on account of an acute risk of recidivism.

The rules governing the hypothetical re-collection of data also apply to data transmission under this provision. Since the transmission concerns an important legal interest (life, limb and sexual self-determination) and any kind of data collection measure would hypothetically be permitted to protect this interest, the transmission and use of existing information is permitted. The risk of the person reoffending forms the specific evidentiary basis for further investigations. This means that the data are not transferred without cause, but for a reason that is justifiable from a policing point of view and based on factual probability.

Furthermore, compliance with data protection standards under sections 78 - 80 of the Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG) has to be ensured and the transmission bans under section 78 (2) and section 28 BKAG have to be complied with.

In the framework of international legal assistance in criminal matters for the purpose of criminal prosecution, information (including information on convicted sex offenders) may also be passed on as spontaneously transmitted information provided the requirements of sections 61a and 92c IRG and any requirements resulting from international treaties are met. In accordance with section 61a (2) IRG, the transmission is to be linked to the condition that the time limits for deletion or for the review of deletion applicable under German law are to be complied with, that the transmitted data may only be used for the purpose for which they were transmitted and that the transmitted data are to be deleted without delay or to be rectified if it transpires that personal data which ought not to have been transmitted or incorrect personal data were transmitted and Germany has notified the recipient state thereof.

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

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)

According to German labour law, depending on the circumstances of the individual case, the employment contract may be terminated or the employee may be released or transferred if employment continues.

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)

There is no general obligation to report criminal offences under German law. In limited cases, failing to report a planned offence when its result can still be prevented may result in criminal liability under section 138 of the German Criminal Code (Strafgesetzbuch, StGB). This does not, however, include cases of child sexual abuse. In 2017, a Reform Commission on Sexual Crime Legislation set up by the Ministry of Justice advised the government by majority against adding sexual offences to section 138 of the German Criminal Code. The experts found that the risk of criminal liability might prevent the person in whom a victim confides from

helping him or her.

Failing to report an offence to be committed by another in the future may result in criminal liability by omission under section 13 of the German Criminal Code. This only applies if the person has a legal responsibility to ensure that the result does not occur. Such a legal responsibility is typically held by parents or custodians towards a child, including in out-of-home care settings. Parents and custodians are legally responsible for taking effective action in order to prevent offences such as sexual abuse against the child. Such action may include a report to the competent authorities. If parents or custodians fail to prevent the result, they may incur criminal liability as an accessory to the sexual offence against the child (see Federal Court of Justice, judgment of 7 September 1995 – 1 StR 236/95). A similar legal responsibility to protect a child may also apply to other persons such as youth welfare officials, depending on the individual circumstances.

Similarly, a person failing to report suspected sexual abuse of a child may be criminally liable for breach of their duty of care or upbringing under section 171 of the German Criminal Code. This applies if the person grossly neglected their duty of care or upbringing towards a person under 16 years of age, thereby creating a danger that the physical or mental development of the person placed in their charge could be seriously damaged. A duty of care in the sense of this provision is not only held by parents or custodians, but also by public officials such as those in the Youth Welfare Office (see e. g. Higher Regional Court of Düsseldorf, judgment of 27 April 2000 – 2 Ss 130/98 - 31/98 III). It can be breached by omission, for example by failing to report a suspicion of sexual abuse, if such action would almost certainly have prevented the danger to the child.

In the absence of a general obligation to report suspected cases of child sexual abuse, the Round Table on the Sexual Abuse of Children in Relationships of Dependency and Power in Private and Public Institutions and within the Family developed guidelines on the involvement of law enforcement authorities in 2011. These guidelines are directed at public and private institutions and associations in which children or adolescents are in relationships of dependency and power. The guidelines recommend a voluntary commitment to promptly forwarding relevant information to the competent authorities.

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)

In German law, a corporate fine can be imposed on a legal person or an association of persons (a company). The company can be held liable for any offence where a management-level person according to section 30(1) of the Act on Regulatory Offences (Gesetz über Ordnungswidrigkeiten, OWiG) committed such an offence or (2) where lower-level personnel committed the offence and this was facilitated by a lack of supervision by a manager (sections 130 and 9 OWiG). In the first case, a criminal offence attributed to the company is the basis for the imposition of the corporate fine under section 30(1) OWiG. In the second case, it is not the offence that is (directly) attributed to the company, but the administrative offence of breach of supervisory responsibilities (sections 130 and 9 OWiG) resulting in the criminal offence. In this case, corporate liability under section 30(1) OWiG is not triggered by a manager's criminal offence, but by his or

her administrative offence.

Even when there is no criminal prosecution of the natural person who committed the underlying offence, corporate fines can be imposed in what are known as independent proceedings. The “isolated” sanctioning of a company is possible, for example if the accused natural person is deceased or has absconded or if the public prosecution office has discontinued prosecution against the perpetrator (sections 153 and 153a of German Code of Criminal Procedure (Strafprozeßordnung, StPO). Independent proceedings are also possible in cases in which the individual perpetrator cannot be clearly identified. However, independent proceedings against the company are not admissible if prosecution of the natural person is not possible for “legal reasons”. This is the case, for example, if an offence can only be prosecuted based on a complaint by the victim and no such complaint is made. All this follows from section 30(4) OWiG. The same applies (in the case of section 130 OWiG) when it is not clear which of a number of managers has breached supervisory duties. However, in order to sanction the company in these cases, certain minimum requirements must be met. First, it must be established that a criminal offence has been committed. This requires an evidence-based finding that there has been intent or, if punishable, negligence. The competent judicial authority must state specifically whether it assumes intentional or negligent conduct, because this is essential for determining the amount of the fine. There must also be certainty that a manager committed the offence or (in the case of section 130 OWiG) breached a duty of supervision. If, in the first case, it cannot be ruled out that a non-management level person committed the offence, sanctioning in independent proceedings is not permissible. The possibility that a legal obstacle to prosecution exists even with regard to one of the managers also needs to be ruled out.

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

Pursuant to section 158 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG), the court must appoint a professionally and personally suitable guardian ad litem for the minor child in child protection proceedings relating to his or her person, insofar as this is necessary to safeguard the child's interests in the family court proceedings. In child protection proceedings under sections 1666 and 1666a of the Civil Code (Bürgerliches Gesetzbuch, BGB), which generally include cases of suspected sexual abuse, the appointment of a guardian ad litem is always required (section 158 (2) sentence 1 no. 1 FamFG). However, this procedural guardianship does not extend to the criminal investigation or main proceedings.

Pursuant to section 158b (1) sentence 1 FamFG, the guardian ad litem must determine the interests of the child and assert them in the family court proceedings. In order to ensure this in the best possible way, the legislature has, among other things, defined specific, binding qualification requirements and aptitude requirements for procedural assistants in child custody matters in the Act to Combat Sexualized Violence

(Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder) of June 16, 2021 (Federal Law Gazette I p. 1810). Procedural assistants must have demonstrable basic knowledge in the areas of family law, in particular the law on parent and child matters, procedural law in parent and child matters, and child and youth welfare law, as well as knowledge of child developmental psychology and child-friendly interview techniques, and must undergo further training at least every two years (section 158a (1) FamFG).

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 158 (1) sentence 1 FamFG, the procedural guardian to be appointed must be suitable not only professionally (section 158a (1) FamFG) but also personally to look after the interests of the child. Pursuant to section 158a (2) sentence 1 FamFG, a person is personally suitable if he or she can guarantee that he or she will look after the child's interests conscientiously, impartially and independently. This provision does not prevent the appointment of a lawyer who meets the suitability requirements of section 158a (1) sentence 1 FamFG as a guardian ad litem, but indeed instead makes this possible, provided he or she does not represent another party or parties in the family court proceedings in question as in such a case the procedural counsel could not be considered impartial and independent.

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

Pursuant to section 81(3) FamFG, a minor party may not be ordered to pay costs in parent and child matters that relate to him or her. If the child is represented by a lawyer, the state treasury bears the costs through legal aid to be granted by the court pursuant to sections 76 et seq. FamFG.

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

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (16.a Yes)

Yes, in accordance with section 158 (1) sentence 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG), the guardian ad litem must determine the interests of the child in the family court proceedings and bring them to bear in those proceedings. The appointment of a guardian ad litem is always necessary under section 158 (2) FamFG if a partial withdrawal of care of the person of the child, an exclusion of the right of access or an order for the child to remain where he or she currently is under the substantive provisions of the law is under consideration. The appointment of a guardian ad litem will as a rule also be necessary if the interests of the child are in considerable conflict with those of his or her legal representatives (section 158 (3) sentence 1 no. 1 FamFG).

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

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (16.b Yes)

A supplementary guardian appointed under section 1809 of the Civil Code (Bürgerliches Gesetzbuch, BGB) represents the child if the proceedings are directed against one of the parents or if there is any other conflict of interest (e.g. if the accused is a sibling of the victim). He or she may be present throughout the proceedings.

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

There are general protective measures that can apply to any witness (regardless of age or type of crime), for example:

- During an interrogation the witness may, if he or she wishes, be accompanied by a trusted person (section 406f of the Code of Criminal Procedure (Strafprozeßordnung, StPO)).
- Any interrogation that takes place outside the main trial can be conducted as follows: the witness can stay in a different room to the interviewer, with audiovisual transmission of the interview between the two rooms (section 58b of the Code of Criminal Procedure).
- Section 68 of the Code of Criminal Procedure stipulates which information the witness has to give on his or her personal circumstances before the court. Usually, the witness will be asked his or her name, age and place of residence. If there is reasonable cause for concern that the legal interests of the witness might be in danger or the witness could be exposed to unfair influence, the judge can allow that the place of residence of the witness be kept secret. The complete identity of the witness can be kept secret in the event of danger to the life, limb or liberty of the witness.
- It is possible to exclude the public from the trial when a danger to the life, limb or liberty of a witness is to be feared (section 172 no. 1a of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG)).
- Questions concerning the personal sphere of life of a witness may only be posed if they are indispensable (section 68a (1) of the Code of Criminal Procedure).
- Vulnerable witnesses who are not able to adequately safeguard their interests and rights themselves have the right to be assigned a lawyer free of charge to assist them legally during their testimony (section 68b (2) of the Code of Criminal Procedure).
- In the event of grave danger to the wellbeing of a witness to be examined by a judge, the judge can decide that the prosecutor, the defendant and his/her lawyer, who have a right of attendance, have to stay in a separate room, to which the examination is transmitted simultaneously (section 168e of the Code of Criminal Procedure).
- During the trial itself, witnesses are usually examined in the courtroom. Section 247a of the Code of Criminal Procedure offers the possibility that a witness can stay in a separate room during his or her examination in the event that having to testify in the courtroom before all other participants in the trial poses an imminent danger of serious detriment to his or her wellbeing. The testimony of the witness is in this case transmitted to the courtroom simultaneously.

There are also special procedural rules to protect children and young persons under the age of 18:

- In proceedings with minor victims, the hearings, interrogations and other investigative actions concerning the victim must be conducted in a particularly expedited manner insofar as this is necessary for the victim's protection or to avoid the loss of evidence, taking into account the personal circumstances of the witness and the nature and circumstances of the criminal act (section 48a (2) of the Code of Criminal Procedure).
- Examinations of young persons under the age of 18 during a trial are generally conducted only by the judge. All other participants with the right to ask questions must ask their questions via the judge (section 241a of the Code of Criminal Procedure).
- If it is to be feared that having to testify in presence of the defendant will pose a grave detriment to the wellbeing of a minor witness, the court can order that the defendant leave the courtroom for as long as the witness is being examined (section 247 sentence 2 of the Code of Criminal Procedure).
- The public has to be excluded when there are minor witnesses, particularly in cases of sexual crimes, crimes against life, and human trafficking, and the affected person applies for that exclusion (section 171b (2) and (3) of the Courts Constitution Act).
- Audiovisual recordings of a minor victim's testimony before a judge can also replace his or her testifying in the trial in cases of crimes against life or personal liberty.

There are various legal provisions aimed at protecting minors participating in investigation and court proceedings. Under section 48a (1) of the German Code of Criminal Procedure, where the witness is also the aggrieved person, then account is to be taken at all times of his or her particular vulnerability throughout hearings, examinations and other investigatory acts concerning him or her. Section 48a (2) of the Code of

Criminal Procedure provides that hearings, examinations and other investigatory acts concerning acts to the detriment of a minor aggrieved person must always be conducted in a particularly expedited manner. However, in the process, account must also be taken of the witness's personal situation and the nature and circumstances of the offence in order to protect him or her or to prevent the loss of evidence.

Where children are examined/heard in person, they have to be instructed in an appropriate, child-sensitive manner. The persons conducting such hearings/examinations must be aware of the legal and socio-educational support available to minors and pass on that information.

A video recording of the examination of a minor witness in proceedings concerning sexual offences or abuse is as a rule required (section 58a of the Code of Criminal Procedure) or, as a minimum, an audio recording and a verbatim transcription. Lastly, it has to be considered whether, for reasons of witness protection, witnesses should be permitted to state an address at which documents can be served instead of stating their home address (section 68 (2) and (4) of the Code of Criminal Procedure).

There are a number of other protective provisions, such as section 5 of the Act on Cooperation and Information in Child Protection (Gesetz zur Kooperation und Information im Kinderschutz, KKG), pursuant to which the Youth Welfare Office has to be informed if a substantial indication of risk to the wellbeing of the child or young person becomes apparent in the course of criminal proceedings. Sections 247a and 168e of the Code of Criminal Procedure are also relevant here.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend, BMFSFJ), the Independent Commissioner for Child Sexual Abuse Issues (Unabhängige Beauftragte für Fragen des sexuellen Kindesmissbrauchs, UBSKM), the National Council against Sexual Violence Committed against Children and Adolescents and the Federal Ministry of Justice have published a number of information sheets and guidelines directed at investigating authorities and public prosecution offices, and also at aggrieved persons. They provide information on rights and obligations as well as on psychosocial assistance in legal proceedings.

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

The protective measures described above also apply in cases of sexual abuse committed in respect of a child by someone in a recognised position of trust, authority or influence.

Prior to the commencement of an aggrieved person's examination, the aggrieved person must be informed that the person providing psychosocial assistance or (upon application) a person whom he or she trusts is permitted to be present during the examination (sections 406g (1), 406f (2) of the Code of Criminal Procedure). Upon request, contact between the person providing psychosocial assistance and the aggrieved person can be established prior to the filing of an application.

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

Minors under the age of 18 who have been victims of sexual crimes or certain violent crimes are entitled to apply for a psychosocial assistant, who is appointed free of charge by the court, without having to claim special vulnerability. Psychosocial assistants are highly qualified specialists in the field of social work that offer non-legal support and assist the victim before, during and after court proceedings and can give them general information e.g. about the course of the proceedings. This measure is intended to reduce the strain on the victims. Psychosocial assistance is a complement to the services offered by victim and witness support services and to legal assistance.

The person providing psychosocial assistance or (upon request) a person whom the victim trusts is permitted to be present at the examination (sections 406g (1) and 406f (2) of the Code of Criminal Procedure). Upon request, contact between the person providing psychosocial assistance and the aggrieved person can be established prior to the filing of an application.

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)

Since 2015, there have been changes in the legal framework, including changes that strengthen the rights of child victims in proceedings.

The 3rd Victims' Rights Reform Act (3. Opferrechtsreformgesetz) of 2015 introduced an entitlement to psychosocial assistance during court proceedings as specialized non-legal support. Minors under the age of 18 who have been victims of sexual crimes or certain violent crimes are entitled to apply for a psychosocial assistant, who is appointed free of charge by the court, without having to claim special vulnerability. The 3rd Victims' Rights Reform Act of 2015 also created a central legal basis for determining a corresponding need for protection and the resulting need for special protective measures in favour of the injured person (section 48a (1) (Strafprozeßordnung, StPO).

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

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

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

Premises specifically tailored to the needs of children and adolescents (under 18) who have been victims of physical assault or sexual violence are available in special police units that are specialized in this field. Interview rooms on these premises that create a pleasant atmosphere through appropriate fittings and are designed to reduce stress are regularly made available specifically for children and young people.. Important to mention are also the Childhood Houses (Childhood-Häuser) of the World Childhood Foundation. These are designed as child-friendly, multidisciplinary, outpatient drop-in centres for young victims of physical and sexual violence. The aim is to avoid repeated interviews or examinations of the young victims as far as possible through close cooperation between doctors, psychologists, child and youth welfare services, police and the judiciary under one roof.. A Childhood House has rooms for meetings and conferences and for medical examinations; it also has rooms that are equipped with the necessary technology for recording and transmission and are therefore suitable for judicial questioning. The first Childhood House in Germany opened in Leipzig in 2018, and there are currently other houses in Berlin, Düsseldorf, Heidelberg, Ortenau, Munich, Flensburg, Schwerin and Hamburg. More houses are at the planning stage. The aim is to have at least one Childhood House available in each of the 16 German states.

The Federal Criminal Police Office (Bundeskriminalamt, BKA) does not have special interview rooms for children.

The equipment of interview rooms varies between the different Länder. As far as is known here, a “child-oriented” design (toys, colourful furnishings, teddy bears etc.) is rarely used, since this would distract the minor victims too much.

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

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

Decisions about whether and to what extent such training is run fall within the responsibility of the Länder.

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)

Section 48a of the German Code of Criminal Procedure (Strafprozessordnung, StPO) provides that hearings, examinations and other investigatory acts concerning acts to the detriment of a minor aggrieved person must be conducted in a particularly expedited manner insofar as this is necessary. Furthermore, Germany has guidelines that must be observed by the police and prosecution authorities (Richtlinien für das Strafverfahren und das Bußgeldverfahren (RiStBV)). These guidelines set out principles governing the examination of minors (No. 19). No. 19 (1) provides that repeated examinations of minors prior to the main hearing must be avoided because of the emotional stress these generally cause. Moreover, under section 241a of the Code of Criminal Procedure, at the main hearing, the examination of witnesses under 18 years of age must be conducted solely by the presiding judge.

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)

In proceedings with minor victims, the hearings, interrogations and other investigative actions concerning the victim must be conducted in a particularly expedited manner insofar as this is necessary for the victim's protection or to avoid the loss of evidence, taking into account the personal circumstances of the witness and the nature and circumstances of the criminal act (section 48a (2) of the Code of Criminal Procedure). In the case of minor victims of criminal offences, the public prosecutor's office is to avoid repeated interviews prior to the main hearing as far as possible in accordance with No. 19 (1) of the Guidelines for Criminal Proceedings and Administrative Fine Proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren, RiStBV). No. 222 RiStBV provides that in criminal investigations regarding sexual offences against children, the involvement of an expert who has special knowledge and experience in the field of child psychology shall be considered. No. 222 RiStBV also states that, in the event that the accused confesses in court, the court is to consider whether it is still necessary to examine the victim.

The service rules for the police state that if there is a special need for protection and the victim so wishes, rules including the following apply for police questioning:

- Questioning by personnel specially trained for this task or with their participation

- Questioning conducted by the same people

- Questioning victims of sexual violence, gender-based violence or violence in close relationships conducted by a person of the same sex, provided this does not affect the course of the criminal proceedings.

The national legal framework thus gives flexibility to ensure that interviews are conducted by the same person if this is necessary for the child victim's protection.

Federal Ministry of the Interior: Interviewing a child victim more than once should be an extremely rare exception (cf. Section 48a (2) of the Code of Criminal Procedure, pursuant to which hearings, examinations

and other investigatory acts concerning acts to the detriment of a minor aggrieved person must be conducted in a particularly expedited manner. There are no provisions stipulating whether or not interviews should be conducted by the same person.

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 decision of the investigating judge that the hearing of a child victim is to be recorded because this will better safeguard the interests of the child victim (section 58a (1) of the Code of Criminal Procedure) cannot be circumvented by the criminal defence team, which cannot contest this protection measure.

The same applies to decisions of the judge concerning the questioning of witnesses during the trial itself. The decision that a witness can stay in a separate room during his or her examination, with and the testimony of the witness transmitted to the courtroom simultaneously (section 247a Code of Criminal Procedure), cannot be circumvented by the criminal defence team, which cannot contest this protection measure.

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 (CDEF) 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)

As described in the answers to questions 17a) and 19f), there is the possibility during the investigation stage of audiovisual recordings of a minor victim's testimony, with the questioning conducted by a judge, and for this to replace the examination of the victim during the trial. To protect their interests and with their consent, victims of sexual crimes must give their testimony before a judge and an audiovisual recording of that testimony is required. Those recordings can be played during the main proceedings and used as evidence. This makes it possible to avoid repeated interviews and revictimization, although additional questioning of the victim is still possible with regard to new facts or evidence (see sections 58a, 255a of the Code of Criminal Procedure).

During the trial itself, witnesses are usually interviewed in the courtroom. Section 247a of the Code of Criminal Procedure offers the possibility that a witness can stay in a separate room during his or her examination in the event that having to testify in the courtroom in the presence of the other participants in the trial poses an imminent danger of serious detriment to his or her wellbeing. The testimony of the witness is in this case transmitted to the courtroom simultaneously.

Federal Ministry of the Interior: Since the question refers to judicial proceedings, we would consider it appropriate to address it to the judiciary.

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)

As detailed in the answers to questions 12, 17 and 20a) above, a court may rule (according to section 247a of the Code of Criminal Procedure) that a witness does not have to be in the courtroom during the interrogation, but can be interrogated elsewhere, with his or her testimony transmitted via video-stream into the courtroom. This rule does covers children although it does not apply exclusively to them.

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

If appropriate, please provide more information (20.c No)

No, as there is no rule applying exclusively to children.

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)

As described in the answer to question 20a), section 58a of the Code of Criminal Procedure provides that a video and audio recording can be made of a victim's testimony in order to replace examination during the trial. The recordings are admissible as evidence in court proceedings according to section 255a of the Code of Criminal Procedure.

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

In the judicial proceedings 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?

Please also see the comments on question 7 c).

As described in the answer to question 17a), there is the possibility of audio-visual recordings of a minor victim's testimony before a judge to replace examination during the trial, so that there is no further contact

between the child victim and the offender. The court can also rule that the defendant leave the courtroom for as long as the witness is being examined if it is to be feared that having to testify in presence of the defendant will pose a grave detriment to the wellbeing of a minor witness (section 247 sentence 2 of the Code of Criminal Procedure). Furthermore, according to section 241a of the Code of Criminal Procedure, the questioning of child victims is only to be conducted by the judge. All other participants with the right to ask questions must ask their questions via the judge.

In family court proceedings, the hearing of the child required under section 159 FamFG must take place in a suitable manner, in-person and at the court's discretion. Within this framework, the court decides on the presence or absence of the parents or their authorized representative, although the presence of the parents at the hearing of the child is generally not considered appropriate (Bumiller/Harders/SchwambFamFG /Bumiller, 13th edition, § 159 margin no. 13).

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)

As described above, when it is to be feared that having to testify in the presence of the defendant will pose a grave detriment to the wellbeing of a minor witness, the court can rule that the defendant leave the courtroom for as long as the witness is being examined. As soon as the defendant is brought back into the courtroom, the presiding judge is required to inform him or her of the essential content of the proceedings, including the testimony given, during his or her absence. (section 247 sentence 2 and 4 of the Code of Criminal Procedure).

In cases in which the examination of child victims of sexual crimes is conducted by a judge at the investigation phase with an audiovisual recording of the testimony being made, the judge can decide, in the event of a grave risk to the wellbeing of the witness, that the prosecutor, the defendant and his/her lawyer who have a right of attendance must stay in a separate room to which the examination is then transmitted simultaneously (section 168e of the Code of Criminal Procedure).

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*

The protection measures described in the answers to questions 20e) and 20f) also ensure that there is no face-to-face confrontation of the child victim with the defendant.

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

The Courts Constitution Act (Gerichtsverfassungsgesetz, GVG), which regulates the criminal courts, provides for several statutory rules to prevent a violation of a child victim's right to privacy.

In principle, proceedings before the court, including the pronouncement of judgments and orders, are to be public (section 169 (1) GVG). However, section 169 (1) also states that sound and television recordings as well as sound and film recordings for the purpose of public presentation or publication of their content are not permitted. This same applies to audio transmission to a press room. Although audio transmission to a room for persons reporting for the press, radio, television or for other media may be permitted by the court, such transmission may be partially prohibited in order to protect the interests of the parties or third parties or to ensure the proper conduct of the proceedings. Under certain conditions, there can be further exceptions to the principle of public court proceedings. Section 171b GVG standardises the conditions for excluding the public to protect privacy in the context of a main trial. The public may be excluded if circumstances from the personal sphere of a witness or injured person are discussed, the public discussion of which would violate interests worthy of protection. In this context, the particular burdens that may be associated with a public main trial for children and juveniles are to be taken into account. Furthermore, the public is to be excluded, for example, in cases in which proceedings are to be conducted for offences against sexual self-determination or for the ill-treatment of charges and a witness under the age of 18 is to be examined. Section 172 no. 4 GVG states that the court may exclude the public for the main trial or for parts of it if a person under 18 years of age is being heard. The exclusion of the public is decided by the court in accordance with section 174 GVG. This is done either at the request of a party or if the court deems an exclusion appropriate. Furthermore, section 174 (3) GVG also ensures that all persons who were actually present during the main hearing must continue to treat as confidential facts discussed during a trial from which the public has been excluded in accordance with section 171b GVG. This confidentiality order is issued by court order.

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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)

Child victims of sexual crimes or certain violent crimes who are entitled to be joint plaintiffs have the right to be assigned a lawyer free of charge by the court without having to claim special vulnerability or being financially needy; see section 397a (1) of the Code of Criminal Procedure. All victims who are witnesses can also be assigned a lawyer as legal assistance for the duration of their testimony if they are vulnerable and, therefore, unable to exercise their rights themselves (section 68b (2) of the Code of Criminal Procedure). This also applies in cases of sexual abuse by someone in a recognised position of trust, authority or influence.

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)

Child victims of sexual crimes or certain violent crimes who are entitled to be joint plaintiffs have the right to be assigned a lawyer free of charge by the court. The lawyer has the right to represent them in their own name during the trial by asking questions, requesting evidence and appealing if the defendant is not convicted by the court.

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

As described in the answer to question 17c), minors under the age of 18 who have been victims of sexual crimes or certain violent crimes are entitled to apply for a psychosocial assistant (see section 406g of the Code of Criminal Procedure). Psychosocial assistants also support the victim after court proceedings once a ruling has been handed down by the criminal courts. This also applies in cases of sexual abuse by someone in a recognised position of trust, authority or influence.

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