

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

Fields marked with \* are mandatory.

## Introduction

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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

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\* Name of the Party responding or concerned by your response

Hungary

\* Name of the contact person/coordinator

\* Email address of the contact person/coordinator

## KEY NOTIONS Question 1. Does your national legal framework:

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a. [have a reference to “abuse of a recognised position of trust, authority or influence” as a separate sexual offence against children?](#)<sup>[6]</sup> 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)

Act C of 2012 on the Criminal Code has a reference to abuse of a recognised position of trust, authority, or influence. The Criminal Code includes this reference in case of the following offences:

- sexual coercion (Section 196 (2) b)
- sexual violence (Section 197 (3) b)
- sexual abuse (Section 198 (3))
- procuring (Section 200 (4) b)
- child pornography (Section 204 (2) b) and Section 204/A (2) b.

The Criminal Code refers to the scope of people belonging to the circle of trust by using the very same wording in case of the above listed offences.

As an example, see Section 196 (2) b) on sexual coercion as follows (this formulation related to the circle of trust is repeated throughout the Criminal Code):

Section 196

(1) A person who coerces another person to engage in, or tolerate, a sexual act is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) The punishment shall be imprisonment for two to eight years if sexual coercion is committed

a) against a person who has not attained the age of eighteen years,

b) against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

As you can see on the above example of sexual coercion under Section 196, the Criminal Code includes sexual coercion and sexual coercion committed against children or by a perpetrator belonging to the circle of trust under the same section, but different subsections. Due to the severity of the latter cases, the legislator itself codified them as qualified offences instead of leaving the decision to the discretion of the criminal courts.

The Criminal Code does not only regard this circumstance as a mere aggravating factor. To our understanding and based on the system of the Hungarian legal system as well as the jurisdiction of the courts, aggravating factors are facts and circumstances not included in the Criminal Code under the elements of the given criminal offence, but based on the jurisdiction of the courts, they are taken into consideration and reflected upon by the imposition of the sentence. Such aggravating circumstances might be related to the personal circumstances of the offender (being a recidivist, committing a crime while being released on probation, having committed same or similar offences earlier etc.), or they might be connected to the way the offence was committed (causing public danger, offending especially vulnerable people including children, pregnant women, or elderly, or repeating the offence several times etc.).

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”?<sup>[7]</sup> 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)

Act C of 2012 on the Criminal Code has a reference to abuse of a recognised position of trust, authority, or influence.

The Criminal Code includes this reference in case of the following offences:

- sexual coercion (Section 196 (2) b)
- sexual violence (Section 197 (3) b)
- sexual abuse (Section 198 (3))
- procuring (Section 200 (4) b)
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(1) A person who coerces another person to engage in, or tolerate, a sexual act is guilty of a felony and shall be punished by imprisonment for one to five years.

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b) against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

As you can see on the above example of sexual coercion under Section 196, the Criminal Code includes sexual coercion and sexual coercion committed against children or by a perpetrator belonging to the circle of trust under the same section, but different subsections. Due to the severity of the latter cases, the legislator itself codified them as qualified offences instead of leaving the decision to the discretion of the criminal courts.

The Criminal Code does not only regard this circumstance as a mere aggravating factor. To our understanding and based on the system of the Hungarian legal system as well as the jurisdiction of the courts, aggravating factors are facts and circumstances not included in the Criminal Code under the elements of the given criminal offence, but based on the jurisdiction of the courts, they are taken into consideration and reflected upon by the imposition of the sentence. Such aggravating circumstances might be related to the personal circumstances of the offender (being a recidivist, committing a crime while being released on probation, having committed same or similar offences earlier etc.), or they might be connected to the way the offence was committed (causing public danger, offending especially vulnerable people including children, pregnant women, or elderly, or repeating the offence several times etc.).

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?<sup>[8]</sup>

[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)

Act C of 2012 on the Criminal Code includes by the criminal offence of sexual coercion, sexual violence, sexual abuse, procuring and child pornography the following categories of adults who in contact with children automatically qualify as holding this position:

- perpetrator being a relative of the child
- perpetrator raising the child
- perpetrator having supervision over the child
- perpetrator being the caretaker of a child
- perpetrators medically treating the child
- (perpetrators abusing any other power or influence over the aggrieved party. Based on the jurisdiction of criminal courts, this term covers coaches, professors, bosses, etc.).

For textual reference, see as an example Section 196 (2) b) of the Criminal Code on sexual coercion as follows:

Section 196

(1) A person who coerces another person to engage in, or tolerate, a sexual act is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) The punishment shall be imprisonment for two to eight years if sexual coercion is committed

a) against a person who has not attained the age of eighteen years,

b) against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

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

d. define the notion of "circle of trust"?<sup>[9]</sup>

[9] *Ibid*

- Yes  
 No

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

Act C of 2012 itself does not define the notion of “circle of trust”. However, the relevant commentaries on the Criminal Code as well as the jurisdiction of the courts shaped it in line with the international recommendations and best practices.

The Criminal Code refers to the scope of people belonging to the circle of trust (as an example) as indicated under Section 196 (2) b on sexual coercion as follows:

Section 196

(1) A person who coerces another person to engage in, or tolerate, a sexual act is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) The punishment shall be imprisonment for two to eight years if sexual coercion is committed

a) against a person who has not attained the age of eighteen years,

b) against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

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

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

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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?**<sup>[10]</sup>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)



Act C of 2012 on the Criminal Code does not refer to the categories of minority or majority, but to persons below the age of 18 years old, below the age of 14 years old or below the age of 12 years old in context of sexual offences.

For textual reference, see as an example Section 197 of the Criminal Code on sexual violence as follows:  
Sexual violence

Section 197

(1) A person who,

- a) commits sexual coercion by violence or direct threat to life or physical integrity,
- b) to engage in a sexual act, takes advantage of the state of another person who is incapable of self-defence or unable to express his will commits sexual violence, is guilty of a felony, and shall be punished by imprisonment for two to eight years.

(2) A person who engages in a sexual act with another person who has not attained the age of twelve years, or has another person who has not attained the age of twelve years engage in a sexual act, also commits sexual violence and shall be punished by imprisonment for five to ten years.

(3) The punishment shall be imprisonment for five to ten years if the criminal offence specified in paragraph (1) is committed

- a) against a person who has not attained the age of eighteen years,
- b) by the perpetrator against a relative or a person raised by, or under the supervision, care, medical treatment or otherwise the power or influence, of the perpetrator, or
- c) by more than one person at the same time, with knowledge of the activities of each other.

(4) The punishment shall be imprisonment for five to twenty years if

a) the criminal offence specified in paragraph (2) is committed

aa) in a manner specified in paragraph (1),

ab) against an aggrieved party specified in paragraph (3) b), or

ac) in a manner specified in paragraph (3) c), or

b) the criminal offence specified in paragraph (3) a) also qualifies under paragraph (3) b) or c).

(4a) The punishment shall be imprisonment for ten to twenty years if the criminal offence specified in paragraph (4) a) aa) also qualifies under paragraph (4) a) ab) or ac).

(5) A person who makes available the conditions necessary for or facilitating the commission of sexual violence is guilty of a felony and shall be punished by imprisonment for up to three years.

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?<sup>[1]</sup> 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)

For textual reference, see the example of sexual coercion under Section 196 as follows:

Sexual coercion

Section 196

(1) A person who coerces another person to engage in, or tolerate, a sexual act is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) The punishment shall be imprisonment for two to eight years if sexual coercion is committed

a) against a person who has not attained the age of eighteen years,

b) against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

(3) The punishment shall be imprisonment for five to ten years if sexual coercion is committed against a person who has not attained the age of fourteen years.

Further, sexual abuse might be committed by a person who has attained the age of 18 years against a child who has attained the age of 14 years but is under 18 years. Section 198 (4) of the Criminal Code does not require that the offence be committed by the use of threat or violence. The offence is perpetrated in these cases by the abuse of power or influence over the child.

For textual reference, see Section 198 (4) of the Criminal Code on sexual abuse as follows:

Sexual abuse

Section 198

(1) A person who has attained the age of eighteen years who engages in a sexual act with a person who has not attained the age of fourteen years, or induces such a person to engage in a sexual act with another person, is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) A person who has attained the age of eighteen years who seeks to induce a person who has not attained the age of fourteen years to engage in a sexual act with him or another person shall be punished by imprisonment for up to three years.

(3) If the aggrieved party is a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or the perpetrator commits sexual abuse by abusing any other power or influence over the aggrieved party, the punishment shall be imprisonment for

a) two to eight years in the case specified in paragraph (1),

b) one to five years in the case specified in paragraph (2).

(4) A person who has attained the age of eighteen years who engages in a sexual act with a person who has attained the age of fourteen years but has not attained the age of eighteen years by abusing his power or influence over that person shall be punished by imprisonment for up to three years.

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:

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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)

Act C of 2012 on the Criminal Code includes this circumstance in case of the following offences:

- sexual coercion (Section 196 (2) b)
- sexual violence (Section 197 (3) b)
- sexual abuse (Section 198 (3))
- procuring (Section 200 (4) b)
- child pornography (Section 204 (2) b and Section 204/A (2) b).

The Criminal Code refers to the scope of people belonging to the circle of trust as indicated (as an example) under Section 196 (2) b on sexual coercion as follows:

Section 196

(1) A person who coerces another person to engage in, or tolerate, a sexual act is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) The punishment shall be imprisonment for two to eight years if sexual coercion is committed

a) against a person who has not attained the age of eighteen years,

b) against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

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?**<sup>[13]</sup> 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)

Pursuant to Section 2.10 (1) of Act V of 2013 on the Civil Code, a minor is a person under the age of eighteen. Upon conclusion of marriage, minors shall achieve majority.

However, Act C of 2012 on the Criminal Code does not refer to the categories of minority or majority, but to persons below the age of 18 years old, below the age of 14 years old or below the age of 12 years old in context of sexual offences.

Consequently, the achieved majority (by conclusion of a marriage below the age of 18 years) in terms of civil law does not affect the victim's status of being a person under the age of 18 years in terms of criminal law. For textual reference, see as an example Section 197 of the Criminal Code on sexual violence as follows:

Sexual violence  
Section 197

- (1) A person who,
- a) commits sexual coercion by violence or direct threat to life or physical integrity,
  - b) to engage in a sexual act, takes advantage of the state of another person who is incapable of self-defence or unable to express his will commits sexual violence, is guilty of a felony, and shall be punished by imprisonment for two to eight years.
- (2) A person who engages in a sexual act with another person who has not attained the age of twelve years, or has another person who has not attained the age of twelve years engage in a sexual act, also commits sexual violence and shall be punished by imprisonment for five to ten years.
- (3) The punishment shall be imprisonment for five to ten years if the criminal offence specified in paragraph (1) is committed
- a) against a person who has not attained the age of eighteen years,
  - b) by the perpetrator against a relative or a person raised by, or under the supervision, care, medical treatment or otherwise the power or influence, of the perpetrator, or
  - c) by more than one person at the same time, with knowledge of the activities of each other.
- (4) The punishment shall be imprisonment for five to twenty years if
- a) the criminal offence specified in paragraph (2) is committed
    - aa) in a manner specified in paragraph (1),
    - ab) against an aggrieved party specified in paragraph (3) b), or
    - ac) in a manner specified in paragraph (3) c), or
  - b) the criminal offence specified in paragraph (3) a) also qualifies under paragraph (3) b) or c).
- (4a) The punishment shall be imprisonment for ten to twenty years if the criminal offence specified in paragraph (4) a) aa) also qualifies under paragraph (4) a) ab) or ac).
- (5) A person who makes available the conditions necessary for or facilitating the commission of sexual violence is guilty of a felony and shall be punished by imprisonment for up to three years.

Hence, the Criminal Code does not differentiate between victims being minors or having achieved majority (in terms of civil law) by conclusion of marriage. Similarly, the fact whether the perpetrator is a spouse or marital partner (or any further relative of the victim) will only be considered in the framework of the examination of any qualified cases' presence.

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?<sup>[14]</sup> 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)

The criminal offence of sexual coercion ensures protection by criminal law at an earlier stage compared to the criminal offence of sexual violence since it renders punishable a sexual act committed by intimidation, meaning it is indirect, is not *vis absoluta* (as in the case of sexual violence) but rather *vis compulsiva*, and it does not actually qualify as threat or violence, it is only capable of bending the will of another person. Coercing someone to engage in or endure a sexual act includes every kind of behaviour that causes the victim not to give voluntary and free consent to the sexual act; thus he or she is pressured, and there is a lack of consent on the victim's part. This offence can be established even in case the perpetrator performs the sexual act by exploiting the relative age difference between him/her and the victim.

By contrast, when the sexual act is committed by violence or qualified threat (meaning a direct threat against life or bodily integrity), or when the perpetrator utilizes the state of another person who is incapable of self-defence (e.g. because of unconsciousness) or of declaring his/her will for a sexual act (e.g. being under the influence of drugs or alcohol, or having a mental disability), thus the victim cannot give voluntary consent, is punishable under the criminal offence of sexual violence due to the increased seriousness of such acts. Also, performing a sexual act with a person under 12 years old constitutes sexual violence regardless of the victim's consent.

Sexual coercion

Section 196

(1) A person who coerces another person to engage in, or tolerate, a sexual act is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) The punishment shall be imprisonment for two to eight years if sexual coercion is committed

a) against a person who has not attained the age of eighteen years,

b) against a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or by abusing any other power or influence over the aggrieved party.

(3) The punishment shall be imprisonment for five to ten years if sexual coercion is committed against a person who has not attained the age of fourteen years.

Similarly, no coercion, force or threat is used by the perpetrator under Section 198 (4) of the Criminal Code, it however constitutes a qualified offence with regard to the abuse of the power or influence over the victim.

Sexual abuse

Section 198

(1) A person who has attained the age of eighteen years who engages in a sexual act with a person who has not attained the age of fourteen years, or induces such a person to engage in a sexual act with another person, is guilty of a felony and shall be punished by imprisonment for one to five years.

(2) A person who has attained the age of eighteen years who seeks to induce a person who

has not attained the age of fourteen years to engage in a sexual act with him or another person shall be punished by imprisonment for up to three years.

(3) If the aggrieved party is a relative or a person raised by or under the supervision, care or medical treatment of the perpetrator, or the perpetrator commits sexual abuse by abusing any other power or influence over the aggrieved party, the punishment shall be imprisonment for  
a) two to eight years in the case specified in paragraph (1),  
b) one to five years in the case specified in paragraph (2).

(4) A person who has attained the age of eighteen years who engages in a sexual act with a person who has attained the age of fourteen years but has not attained the age of eighteen years by abusing his power or influence over that person shall be punished by imprisonment for up to three years.

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?](#)<sup>[15]</sup>  
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)

Act C of 2012 on the Criminal Code penalises the following sexual offences committed against children:

- Section 196 (sexual coercion)
- Section 197 (sexual violence)
- Section 198 (sexual abuse)
- Section 199 (incest)
- Section 200 (procuring)
- Section 201 (Facilitating prostitution)
- Section 203 (exploitation of child pornography)
- Section 204-204/A (child pornography)
- Section 205 (indecent exposure).

For textual reference, see the attached file.

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

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b. **[for 22 Parties + Bulgaria] ensure equal sanctions for sexual abuse committed within a heterosexual and homosexual sexual activity?**<sup>[16]</sup> 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)

Act C of 2012 on the Criminal Code does not differentiate between abuse committed within a heterosexual or homosexual sexual activity.

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?**<sup>[17]</sup> Please refer to the specific legal provisions.

[17] *Ibid.*, Recommendation 12

- Yes  
 No

If appropriate, please provide more information (4.c No)

Act C of 2012 on the Criminal Code does not make any distinct reference to homosexual activities in the description of criminal offences involving sexual abuse and sexual exploitation of children.

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

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

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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?** <sup>[18]</sup> 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)

All sexual offences are investigated ex officio with the exception of the following, which are punishable only upon the private motion of the aggrieved party:

- Section 196 (1) of sexual coercion
- Section 197 (1) a) of sexual violence
- Section 205 (3) of indecent exposure.

For textual reference, see Section 207 of the Criminal Code on private motions in the context of sexual offences as follows:

Private motion  
Section 207

The criminal offences specified in section 196 (1), section 197 (1) a), and section 205 (3) shall only be punishable upon private motion, unless the criminal offence is committed in relation with another criminal offence that is punishable without a private motion.

The Criminal Code hence sets the general rule of ex officio investigations for sexual offences.

Please note that this does not only refer to perpetrators being in the circle of trust, but to perpetrators of any kind.

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?**<sup>[19]</sup> 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)

All sexual offences are investigated ex officio with the exception of the following, which are punishable only upon the private motion of the aggrieved party:

- Section 196 (1) of sexual coercion
- Section 197 (1) a) of sexual violence
- Section 205 (3) of indecent exposure.

For textual reference, see Section 207 of the Criminal Code on private motions in the context of sexual offences as follows:

Private motion  
Section 207



The criminal offences specified in section 196 (1), section 197 (1) a), and section 205 (3) shall only be punishable upon private motion, unless the criminal offence is committed in relation with another criminal offence that is punishable without a private motion.

In case of any further sexual offences, it does not have any effect on the continuation of the criminal proceedings whether the aggrieved party withdraws his/her complaints or statements.

Please note that according to Section 31 (6) of the Criminal Code, a private motion cannot be withdrawn. Further, please note that this does not only refer to perpetrators being in the circle of trust, but to perpetrators of any kind.

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?**<sup>[20]</sup>

[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:

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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?**<sup>[21]</sup>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 § 111 of Act XC of 2018 on criminal proceedings, if the court, the prosecutor's office or the investigative authority establishes a fact in the course of its proceedings, or notices a circumstance due to which the initiation of further judicial or administrative proceedings or other proceedings seem to be necessary, it informs the body authorized to initiate or conduct the procedure.

Based on § 17 (2) of Act XXXI of 1997 on the protection of children and guardianship administration, the investigative authority performs tasks related to the child protection system in order to prevent and eliminate the child's endangerment. In the context of this, it is obliged to report the child's danger to the child welfare services, and to initiate official proceedings in the event of child abuse, serious neglect or the existence of other serious endangering reasons, as well as in case of the child's self-inflicted serious endangering behavior.

The institution of preventive probation - one of the aims of which is to promote socialization and to prevent recidivism as early as possible-, became part of the Hungarian legal system on January 1st, 2015. A further objective of preventive probation is to provide juvenile offenders with the necessary help and support during criminal proceedings in order to promote their reintegration into society.

Preventive probation can be initiated if the child is suspected of committing a criminal offence or is subject to an infraction procedure that may also result in confinement. Preventive probation is regulated as a specific addition to the procedure of the guardianship authority aimed at taking the juvenile under protection.

During the application of preventive probation, at the request of the guardianship authority, the preventive probation officer prepares a risk analysis in cooperation with the family and the child welfare service. During the risk assessment, the preventive probation officer may evaluate the child's degree of vulnerability to criminality as low, medium or high.

In case of high risk, it is mandatory to propose preventive probation and the guardianship authority must order it. In case of medium risk, both the proposal to order preventive probation and the ordering by the guardianship authority are subject to individual consideration. In case of low risk, preventive probation is not ordered.

If preventive probation is ordered, the guardianship authority must regulate the frequency of contact with the preventive probation officer, the rules of behavior and their monitoring. As part of this and in addition to the mandatory monthly personal meeting with the preventive probation officer, it is possible to set rules for participation in the services provided by the judicial service of the county or capital government offices as a rule of conduct. The services can be e.g. group sessions to develop social skills; individual reparation activity; learning support programs; organization of structured free time; mediation.

Preventive probation is terminated by the guardianship authority in case it is successfully conducted; if the child comes of age; or if a probation officer needs to be appointed, placement in a juvenile correctional institution or a prison sentence is imposed. If the preventive probation is terminated because of its successful completion, at least half a year long favorable experiences are required based on the recommendation of the preventive probation officer and the family and child welfare services. If such a proposal is not received and neither the parent nor the child has requested the termination of preventive guardianship, the guardianship authority reviews the necessity of maintaining it annually.

Preventive probation was ordered in 398 cases in 2022, and it was terminated in 103 cases, while a total of 1,598 minors were under protection due to the commission of a criminal offence of initiation of infraction proceedings. In 2015, the year this legal institution was introduced, preventive probation was ordered in 425 cases and terminated in 75 cases.

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?<sup>[22]</sup> 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)

The Criminal Code differentiates between adults and children above the age of criminal responsibility in the application of sanctions. Chapter XI of the Criminal Code includes these provisions on juveniles. (Please find attached).

The aim of the differentiation is to emphasize that the development, education and protection of juveniles are of priority.

#### Section 105

(1) Those who have attained the age of twelve years but have not attained the age of eighteen years when committing the criminal offence shall qualify as juveniles.

(2) The provisions of this Act shall apply to juveniles with the derogations specified in this Chapter.

#### Section 106

(1) The primary objective of a penalty imposed on or a measure applied to a juvenile shall be to assist the juvenile concerned to develop in the appropriate direction and become a useful member of society; for this reason, the education and protection of the juvenile concerned shall be taken into account when deciding on the measure or penalty.

(2) A penalty shall be imposed on a juvenile if the application of a measure would not achieve its objective. Those who have not attained the age of fourteen years when committing the criminal offence shall only be subject to measures.

(3) A juvenile shall only be subject to a custodial measure or custodial penalty if the objective of the measure or penalty cannot be achieved by other means.

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

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## CHILD VICTIMS' RIGHT TO PROTECTION AND PARENTAL RIGHTS

### Question 7. Does your national legal framework:

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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?<sup>[23]</sup> Please provide details.

- Yes  
 No

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

Since January 1st 2018, the investigation of child abuse cases in institutions providing specialized child protection services and in correctional institutions must take place on the basis of the methodology prepared by the then Ministry of Human Resources (now: Ministry of Interior), which is published on the website of the ministry with the title " Institutional and sectorial methodology for the investigation and handling of cases of abuse of children and young adults in institutions providing child protection services, foster parents' networks and in correctional institutions". This regulatory material requires the hearing of the abused child as an immediate measure in case of detected or reported child abuse in such institutions - irrespective of the identity of the alleged perpetrator -, in addition to simultaneously informing the legal representative (or child protection guardian): this way the information is not provided in advance and the hearing is not subject to the consent of the legal representative.

Hearing and therapy of neglected and abused children (including primarily sexually abused children) are conducted by the Hearing and Therapy Services operated by the child protection services. They apply the Barnahus method and such hearings are not subject to the prior information or consent of the legal representative, especially when the hearing according to the Barnahus model takes place as an investigative procedural act.

In general, Section 11 (6) of Government Decree 149/1997 (IX.7) on guardianship authorities and child protection and guardianship procedures provides that the guardianship authority may hear the child without the presence of his legal representative or other interested parties, if it is in the child's best interest.

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?](#)<sup>[24]</sup> 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)

(As our answer to question 7a.)

Since January 1st 2018, the investigation of child abuse cases in institutions providing specialized child protection services and in correctional institutions must take place on the basis of the methodology prepared by the then Ministry of Human Resources (now: Ministry of Interior), which is published on the website of the

ministry with the title “ Institutional and sectorial methodology for the investigation and handling of cases of abuse of children and young adults in institutions providing child protection services, foster parents’ networks and in correctional institutions”. This regulatory material requires the hearing of the abused child as an immediate measure in case of detected or reported child abuse in such institutions - irrespective of the identity of the alleged perpetrator -, in addition to simultaneously informing the legal representative (or child protection guardian): this way the information is not provided in advance and the hearing is not subject to the consent of the legal representative.

Hearing and therapy of neglected and abused children (including primarily sexually abused children) are conducted by the Hearing and Therapy Services operated by the child protection services. They apply the Barnahus method and such hearings are not subject to the prior information or consent of the legal representative, especially when the hearing according to the Barnahus model takes place as an investigative procedural act.

In general, Section 11 (6) of Government Decree 149/1997 (IX.7) on guardianship authorities and child protection and guardianship procedures provides that the guardianship authority may hear the child without the presence of his legal representative or other interested parties, if it is in the child's best interest.

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?**<sup>[25]</sup> 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)

Act LXXII of 2009 on restraining orders due to violence among relatives defines domestic violence as any act of the perpetrator being harmful to the abused person which seriously and directly threatens the dignity, life, right to sexual self-determination or physical and mental health of the abused person [Section 1(1)a]. The Act defines an abused relative as a relative who is the victim of domestic violence [Section 1(3) of Act LXXII of 2009].

Temporary preventive restraining orders and preventive restraining orders temporarily restrict the abuser's freedom of residence, the right to choose his or her place of residence, parental custody and contact with his or her child. Simultaneously to the issuance of a temporary preventive restraining order, the police shall initiate the issuing of a preventive restraining order at the competent district court by sending the temporary preventive restraining order and the protection certificate at the same time. [Sections 5(1) and 7(2)of the Civil Protection Act] The court may issue a preventive restraining order for a maximum of sixty days [Section 16 (2) of the Civil Protection Act].

A person who is subject to a temporary preventive restraining order or preventive restraining order shall:

- keep his/her distance from the abused person,
- keep himself/herself away from the place of habitual residence of the abused person,

- c) keep himself/herself at a distance from the person specified in the temporary preventive restraining order or the preventive restraining order; and
- d) refrain from having direct or indirect contact with the abused person [Section 5. § (2) of the Civil Protection Act].

Section 280 of Act XC of 2017 on the Criminal Procedural Code sets out the rules for the application of restraining orders in order to separate the offender from the victim as follows:

Restraining order  
Section 280

- (1) A restraining order shall restrict the defendant in freely keeping contact and shall to this end, restrict his right to move, and to choose a place of residence or place of domicile, freely.
- (2) When a restraining order is issued, a court shall impose, as a rule of behaviour, that the defendant may not contact, directly or indirectly, and is to stay away from a specified person (hereinafter “person protected by restraining order”).
- (3) To achieve the objective specified in paragraph (2), the court may impose as a rule of behaviour that the defendant is to
  - a) leave, and stay away from, a specified home, or
  - b) stay away from the actual place of residence or workplace of, or any institute or other establishment regularly visited by, the person protected by restraining order, including, in particular, any upbringing or upbringing-educational institution, or healthcare institution visited for the purpose of medical treatment, or a building visited in the course of practicing a religion.
- (4) When applying paragraph (3) b), rules of behaviour shall be imposed in a manner that does not render it impossible for the defendant to exercise such rights that are, with respect to the person protected by restraining order, subject to the rules of behaviour.
- (5) When issuing a restraining order, the court shall serve the decision on its issuance that reached administrative finality on
  - a) the person who filed the motion,
  - b) the person protected by restraining order, and
  - c) the prosecution service if the aggrieved party moved for the restraining order.
- (6) The protected person shall be notified when the restraining order is terminated or lifted.

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?**<sup>[26]</sup> 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)

Section 7 (1) of Act XXXI of 1997 on the protection of children and guardianship administration guarantees in line with the provisions of the Convention on the Rights of the Child that children may only be separated from

their parents or other relatives if that is in their best interest, and solely in cases and in the framework of procedures defined by law.

Section 72 of the Child Protection Act- in line with Section 95 (1) of the Government Decree on guardianship authorities and child protection procedures - regulates that if a child is left unattended, or if his/her physical, intellectual, emotional or moral development is seriously endangered by the family environment or himself /herself and as a consequence of which his/her immediate placement seems to be necessary, the guardianship authority, the police, the immigration authority, the asylum authority, the prosecutor's office, the court or the penitentiary institution temporarily places the child by its immediately enforceable decision with the other parent or any further relative who is suitable for his/her care and upbringing.

If the above placement is not possible, children under the age of 12 will be placed temporarily with the nearest foster parent unless their physical or mental health does not allow this, or they pose a threat of harm to self or others or if any further reason makes their institutional placement necessary. Children above the age of 12 are placed - if possible - with the nearest foster parent unless their physical or mental health does not allow this, or they pose a threat of harm to self or others. In the latter cases, children above the age of 12 will be placed in either a children's home, in a special group of a children's home, in a special residential home, or in a home for disabled persons or psychiatric patients.

Any type of abuse or neglect of a child that puts his/her life in direct danger or may cause significant and irreparable damage to his/her physical, intellectual, emotional or moral development is considered serious endangerment any may serve as the basis of temporary placement.

An administrative lawsuit may be initiated against the decision ordering the temporary placement within 15 days following its issuance, based on Section 72 (5) of the Child Protection Act. The competent court decides on the case within 30 days following the receipt of the claim.

The decision may be executed on the basis of Section 97 (1) f) of the Government Decree on guardianship authorities and child protection procedures regardless of an appeal.

The justification of the temporary placement is subject to a mandatory review by the guardianship authority within 30 days following its issuance based on Section 73 of the Child Protection Act. Similarly, according to Section 76 (1) of the Child Protection Act, the guardianship authority may decide on the termination of the temporary placement.

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?](#)<sup>[27]</sup> 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)

Pursuant to Section 17 (3) of the Child Protection Act, members of the child protection alert system are obliged to cooperate with each other and to inform each other in order to promote the upbringing of the child in the family and to prevent and to eliminate any situation of danger. According to § 111 of Act XC of 2018 on criminal proceedings, if the court, the prosecutor's office or the investigative authority establishes a fact in the course of its proceedings, or notices a circumstance due to which the initiation of further judicial or administrative proceedings or other proceedings seem to be necessary, it informs the body authorized to initiate or conduct the procedure.

In the institutional system of child protection, the IT system called "In the protection of our children" must be used, which ensures the recording of personal and professional data and data related to child services offered in a central register as well as their accessibility by all relevant bodies and institutions.

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:

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- 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?<sup>[28]</sup> 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)

According to Section 4:186(1) of Act V of 2013 on the Civil Code, parental custody rights shall be suspended if:

- a) the parent has no capacity to act;
- b) the parent of minor age has limited capacity to act, except the right and obligation of a parent of minor age who has reached the age of sixteen to care for and bring the child up;
- c) the parent's capacity to act is partially limited in terms of exercising parental custody rights;
- d) the parent's whereabouts are unknown, or the parent is prevented from discharging parental custody;
- e) the guardianship authority granted consent for the child to be taken in nominated fostering;
- f) the parent granted consent to the adoption of his child younger than six weeks of age;
- g) the child has been taken into care by the guardianship authority, and the parent's parental custody rights have not ceased or been terminated by the court;
- h) the court has placed the child with a third party; or
- i) the parent is subject to a restraining order for an act committed against the child or a relative of the child living in the same household with the child.

This means that parental rights are suspended under point (i).



Furthermore the court may order the termination of parental custody as a provisional measure, especially if the child is at serious risk (Section 485 of Act CXXX of 2016 on the Code of Civil Procedure).

According to Section 4:191(1) of the Civil Code, the court shall terminate parental custody if:

- a) the parent is at fault in seriously harming or jeopardising the interests of the child, in particular the physical well-being, mental or moral development of the child; or
- b) the child has been placed with another person or has been taken into care, and the parent whose parental custody rights are suspended, is at fault in not changing his lifestyle and circumstances giving rise to placing the child with another or taking the child or into care.

If the court has sentenced the parent to imprisonment due to an intentional crime committed against one of his/her children, the court may terminate parental custody in respect of all of that parent's children. The court may order that the termination also applies to as yet unborn children. Those subject to a final and enforceable judgment terminating parental custody shall not be eligible to adopt children, to be a guardian, and no child shall be placed with them, and, unless otherwise provided by the court or the guardianship authority, they shall not be entitled to keep contacts with their children.

The prosecution service, before the indictment, or the court, after the indictment, may disqualify the statutory representative from the proceeding if it is reasonable to assume that the statutory representative committed the criminal offence together with the defendant, or person reasonably suspected of having committed the criminal offence, represented by him, or if there is a conflict between the interests of the statutory representative and the person represented by him.

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:

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- a. [automatic suspension of parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of own child are pending](#)?<sup>[29]</sup> 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

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (9.a Yes)

According to Section 4:149 of the Civil Code, the parent's parental custody rights may be restricted or withdrawn by the court or other authorities only in exceptionally justified cases and as set out by an Act, to the extent required to ensure the interests of the child.

According to Section 4:184 of the Civil Code, the guardianship authority or, in a marital action or in an action for settling parental custody, the court may restrict or withdraw the contact rights of the parent or another person entitled to exercise contact rights who was at fault.

Temporary preventive restraining orders and preventive restraining orders temporarily restrict the abuser's freedom of residence, the right to choose his or her place of residence, parental custody and contact with his or her child. [Section 5(2) of Act LXXII of 2009]

Those subject to a final and enforceable judgment terminating parental custody shall not be eligible to adopt children, to be a guardian, and no child shall be placed with them, and, unless otherwise provided by the court or the guardianship authority, they shall not be entitled to keep contacts with their children. [Section 4:191(3) of the Civil Code].

Parental custody is a legal relationship between a parent and a child arising from a family bond, which usually arises from biological descent or adoption. In all cases, a court decision is required for its termination.

If a child is left unattended, or if his/her physical, intellectual, emotional or moral development is seriously endangered by the family environment or himself/herself and as a consequence of which his/her immediate placement seems to be necessary, the guardianship authority, the police, the immigration authority, the asylum authority, the prosecutor's office, the court or the penitentiary institution temporarily places the child by its immediately enforceable decision with the other parent or any further relative who is suitable for his/her care and upbringing. In such cases, the parent's custody rights are suspended.

Section 30/E of the Government Decree on guardianship authorities and child protection procedures guarantees that while setting rules for contact between children removed from their family and their parents or relatives, special attention must be paid to the child's right to maintain family relationships, to the child's opinion, and to the best interests of the child. However, as a general rule, a suspension of the parent's custody must be ordered in the event that the parent has seriously abused the child.

The guardianship office rejects the request to arrange contact if the person entitled to contact the child has seriously endangered the physical, intellectual, emotional and moral development of the child, and restricts, suspends or withdraws the already established right of contact for the best interest of the child - upon request or ex officio - if the person entitled to contact the child abuses his/her right to the detriment of the child or the person raising the child.

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?](#)<sup>[30]</sup> Please provide details.

[30] *Ibid*

- Yes  
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (9.b Yes)

According to Section 4:149 of the Civil Code, the parent's parental custody rights may be restricted or withdrawn by the court or other authorities only in exceptionally justified cases and as set out by an Act, to the extent required to ensure the interests of the child.

According to Section 4:184 of the Civil Code, the guardianship authority or, in a marital action or in an action for settling parental custody, the court may restrict or withdraw the contact rights of the parent or another person entitled to exercise contact rights who was at fault.

Temporary preventive restraining orders and preventive restraining orders temporarily restrict the abuser's freedom of residence, the right to choose his or her place of residence, parental custody and contact with his or her child. [Section 5(2) of Act LXXII of 2009]

Those subject to a final and enforceable judgment terminating parental custody shall not be eligible to adopt children, to be a guardian, and no child shall be placed with them, and, unless otherwise provided by the court or the guardianship authority, they shall not be entitled to keep contacts with their children. [Section 4:191(3) of the Civil Code].

Parental custody is a legal relationship between a parent and a child arising from a family bond, which usually arises from biological descent or adoption. In all cases, a court decision is required for its termination.

If a child is left unattended, or if his/her physical, intellectual, emotional or moral development is seriously endangered by the family environment or himself/herself and as a consequence of which his/her immediate placement seems to be necessary, the guardianship authority, the police, the immigration authority, the asylum authority, the prosecutor's office, the court or the penitentiary institution temporarily places the child by its immediately enforceable decision with the other parent or any further relative who is suitable for his/her care and upbringing. In such cases, the parent's custody rights are suspended.

Section 30/E of the Government Decree on guardianship authorities and child protection procedures guarantees that while setting rules for contact between children removed from their family and their parents or relatives, special attention must be paid to the child's right to maintain family relationships, to the child's opinion, and to the best interests of the child.

However, as a general rule, a suspension of the parent's custody must be ordered in the event that the parent has seriously abused the child.

The guardianship office rejects the request to arrange contact if the person entitled to contact the child has seriously endangered the physical, intellectual, emotional and moral development of the child, and restricts, suspends or withdraws the already established right of contact for the best interest of the child - upon request or ex officio - if the person entitled to contact the child abuses his/her right to the detriment of the child or the person raising the child.

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

## GUARANTEES OF PROTECTION FOR PERSONS REPORTING SUSPECTED OFFENCES Question 10.

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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?<sup>[31]</sup>

[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.

The Child Protection Act introduced on 15 March 2014 the closed management of data, according to which the child protection services and the guardianship authorities must handle the data of institutions or persons reporting child abuse or neglect confidentially, even in lack of a special request. The purpose of the measure was to promote the prevention and early recognition of cases of child abuse and to ensure the application of immediate interventions to protect children.

In connection with the obligation to report the child's endangerment and according to Act CXC of 2011 on national public education and Act CXXXIII of 2015 on health care services, teachers, medical doctors and pediatricians are not bound to confidentiality.

According to Section 270 of the Criminal Code on the offence of false accusations, before the main case is finished, criminal proceedings may only be launched regarding the criminal offence of false accusation, only upon a crime report filed by the authority proceeding in the main case.

In relation to defamation or libel, the Criminal Code does not include such a provision.

Section 270

(1) If proceedings were launched based on the false accusation, before this main case is finished, criminal proceedings may only be launched regarding the criminal offence of false accusation, upon a crime report filed by the authority proceeding in the main case. Except for such a crime report, the statute of limitations regarding a false accusation shall commence on the day when the main case is finished.

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

## ASSISTANCE TO THIRD PARTIES Question 11.

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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?<sup>[32]</sup>

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

Under the personal scope of Act CXXXV of 2005 on Crime Victim Support and State Compensation, victim is who as a natural person becomes victim of a crime or an offence against property committed in the territory of Hungary, or to who as a direct consequence of a crime or an offence against property committed in the territory of Hungary suffered a disadvantage, in particular bodily or mental injury, emotional shock, or property damage if he or she is

- a) a Hungarian citizen,
- b) a citizen of any Member States of the European Union,
- c) a citizen of a state outside the European Union legally residing in the European Union,
- d) a stateless person legally residing in the territory of Hungary,
- e) a person identified as a victim of human trafficking; and
- f) entitled to do so on the basis of an international agreement or reciprocity concluded among his state and Hungary.

Services provided according to the Victim Support Act:

- a) assertion of interest
    - aa) information,
    - ab) legal advice,
    - ac) emotional support; and
    - ad) other assistance,
  - b) immediate financial assistance,
  - c) certification on victim status,
  - d) witness care,
  - e) protected shelter
- + state compensation

All victims of crime or offences against property are eligible for state victim support (not only for the victims, but also his/her relatives too), and the Victim Support Act does not distinguish between the services available based on the type of crime committed.

Effective from 1st of January 2021, all assistance are available to victims free of charge, without means testing.

The regional Victim Support Services which are operating in the county and capital government offices decide on the forms of support that require an official decision, while the competence of the Victim Support Centres and the Victim Support Hotline is limited to so-called soft services (assertion of interest). These soft services are available already before criminal proceedings are initiated (before a complaint is made) and are provided to victims until their situation is resolved after the crime. Complementing the existing network of regional victim support services and implementing a holistic approach, these Victim Support Centres provide practical, psychological support tailored to the needs of victims. The provided assistance can range from emotional assistance by a psychologist, over organizing and conducting an actual crisis intervention, guiding and following up victims up to sharing a wide range of information and conducting prevention activities in a more victim friendly manner. It is also an important task for the Centres to focus on groups of victims with special needs (e.g children, victims of human trafficking). The staff of the Centres also performs coordination tasks, making it easier for victims to access to various services. The Victim Support Hotline (+36 80 225 225), a free 24/7 victim support call center (funded by the Ministry of Justice) which primarily aims to ensure that victims can get personalized information and advice about available services anytime.

Although witness care and protected shelter are also covered by the Victim Support Act, they are not provided by the victim support service.

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

## ASSISTANCE TO THIRD PARTIES Question 12.

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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?<sup>[33]</sup>

[33] *Ibid.*, Recommendation 31

According to Section 98 of Act XC of 2017 on the Criminal Procedural Code, the court, the prosecution service and the investigating authority shall ensure that no protected data processed during the criminal proceeding is published or disclosed to an unauthorized person unnecessarily and that the protection of personal data is ensured.

Pursuant to Section 99 of the Criminal Procedural Code, the court, the prosecution service, and the investigating authority shall order, upon a motion, the name, birth name, place and date of birth, mother's name, nationality, ID number, home address, contact address, the actual place of residence, service address, and electronic contact details of the aggrieved party, the party with a pecuniary interest, the other interested party, and the aide to any such person, to be processed confidentially. The aggrieved party, the party with a pecuniary interest, the other interested party, and the aide to any such person may file such a motion.

Only the proceeding court, the prosecution office, and the investigating authority may process personal data processed confidentially; such data may only be transferred to the proceeding court, prosecution office, and investigating authority, to the victim support service to perform victim support tasks, and to the probation service to conduct a mediation procedure, to the extent absolutely necessary for carrying out such tasks, without the consent of the data subject. The court, the prosecution service, and the investigating authority shall ensure that no confidentially processed personal data may become known based on any other data of the proceeding.

The court, the prosecution service, and the investigating authority shall refuse to provide information or deny permission to make an image, sound, or audio-visual recording if

- it would directly endanger the life, physical integrity, health, or right to privacy of a person participating in a criminal proceeding, including in particular a person requiring special treatment,
- doing so is indispensable for protecting the personal data of a person participating in the criminal proceeding, including in particular a person requiring special treatment,
- doing so is indispensable for a person participating in the criminal proceeding, including in particular a person requiring special treatment, to exercise his rights and perform his obligations under this Act without any influence or intimidation,
- doing so is indispensable for protecting any classified data or, in case of a closed trial, the interests justifying the exclusion of the public from the trial,
- failure to do so would interfere with either the effectiveness of the criminal proceeding or an individual procedural act, or the continuity or uninterrupted performance of the procedural act.

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

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

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- 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?<sup>[34]</sup>

Please provide details.

[34] *Ibid.*, Recommendation 33

- Yes  
 No

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

No one may be employed in the child protection services who has a criminal record or who does not have a criminal record, but his/her criminal liability has been legally established by the court for certain crimes exhaustively listed in the Child Protection Act or who is under criminal investigations in connection with such crimes, or who is under the scope of a disqualification from a profession with regard to the occupation to be taken into account during the examination of the existence of professional practice, whose right of parental custody has been terminated by a final judgment of the court or whose right of parental custody is suspended due to taking the child under protection.

Section 15 (9)a) of the Child Protection Act further stipulates that, with regard to the managers of foster care networks, children's homes, regional child protection services and correctional institutions, the exerciser of the power of appointment is obliged to request a professional opinion from the previous employer of the candidate in order to check their suitability. In the case of foster parents, in order to exclude the re-employment of foster parents who have proven to be unfit, the applicant must declare whether he/she has previously been a foster parent or professional foster parent. The exerciser of the power of appointment requests a professional opinion on the performance of the foster parent's professional duties and on the reasons of termination of the foster parent's previous legal relationship.

According to Section 52 (3) of Act C of 2012 on the Criminal Code, the perpetrator of a criminal offence against the freedom of sexual life and sexual morality who committed the criminal offence against a person who has not attained the age of eighteen years and the perpetrator of child pornography shall be disqualified permanently from exercising any profession or performing any other activity that involves the education, supervision, care, or medical treatment of a person who has not attained the age of eighteen years, or in the context of which he is in a position of power or influence over a person who has not attained the age of eighteen years.

According to Section 52 (4) of Act C of 2012 on the Criminal Code he perpetrator of the criminal offence of endangering a minor shall be disqualified from exercising any profession or performing any other activity that involves the education, supervision, care or medical treatment of a person who has not attained the age of eighteen years, or in the context of which he is in a position of power or influence over a person who has not attained the age of eighteen years. In cases deserving special consideration, the mandatory application of disqualification from a profession may be dispensed with.

Since January 1st 2020, the government offices authorizing the operation of child welfare and child protection services, institutions and networks may request data from the official criminal record for the purpose of examining the existence of any grounds for exclusion of employees working in child protection services as well as job applicants. Thus, a disqualification from a profession may be examined by the government office as well.

The retrieval of data on offenders of sexual crimes committed against children is in effect since 1 February 2022 in line with Act XLVII of 2009 on the criminal record system, the registration of judgments handed down by courts of the Member States of the European Union against Hungarian citizens and the recording of criminal and law enforcement biometric data of third-country nationals.

The service is available through the Central Identification Agent online-service.

The data may be collected on the interface if, according to the opinion of the person wishing to access it, it is necessary for the purpose of ensuring the protection of children or the prevention of crimes against sexual morality to examine the person concerned, who might get into direct contact with children, and obtaining the relevant data in another way would cause a disproportionate difficulty. The service may be accessed after an electronic identification.

Those adults are entitled to access the data who are relatives of the person under the age of 18 (the child to be protected) or are in charge of their upbringing, supervision or care.

While accessing the register, it is mandatory to declare whether the person wishing to retrieve data is entitled to use the interface. Following that, the person also needs to make a statement about the purpose

for which the access to data is necessary.

To initiate a data request, the family name and surname of the person concerned must be entered character-accurately, which will be recorded by the system and may later be retrieved.

A copy of the data obtained through the interface - especially a screenshot, extract or other summary - cannot be made, cannot be made public, duplicated, registered or included in other databases.

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?**<sup>[35]</sup> 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)

Exchange of information may take place through the European Criminal Records Information Services (ECRIS) in line with the provisions of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States. Provisions of the Framework Decisions have been implemented to the Hungarian legal system by Act XLVII of 2009 on criminal records, records of court sentences issued against Hungarian citizens by the courts of European Union member states, and on biometric criminal and law enforcement records.

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?**<sup>[36]</sup> 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)

The immediate (extraordinary) termination of an employment or service contract due to the commission of sexual or other types of abuse is primarily a matter of labor law, for which the employee's incapacity to



perform his/her duties creates a legal basis. In the case of foster parents, Section 66/D (8) of the Child Protection Act states that the foster parent relationship is terminated with immediate effect - among other things - in the event that the foster parent abuses the child in care. Based on Section 10/A of the Child Protection Act, the grounds for termination with immediate effect also extend to those being volunteers in the child protection system.

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”<sup>[37]</sup> settings are held liable?<sup>[38]</sup>** 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)

Pursuant to Section 17 (4) of the Child Protection Act, if the person obliged to report the endangerment of children fails his/her duties to report and to cooperate, the guardianship authority - upon request or ex officio - notifies the disciplinary authority and proposes the initiation of disciplinary actions against the person concerned.

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?<sup>[39]</sup>** Please provide details.

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

- Yes  
 No

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

The Hungarian legal system establishes criminal liability of legal entities as follows. According to Section 2 (2) of Act CIV of 2001 on measures applicable to legal entities under criminal law, the measures defined in the act shall be applicable if committing the criminal offence resulted in the legal entity gaining benefit, and the legal entity’s executive officer, its member, employee, officer, manager entitled to represent it, or its supervisory board member had a knowledge on the commission of the criminal offence.

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:

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

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

Pursuant to Section 73 (2) of Act XC of 2017 on the Criminal Procedural Act, only attorneys-at-law are allowed to be appointed as guardians ad litem.

Section 73 (2)

The court, the prosecution service, or the investigating authority shall appoint an attorney-at-law as guardian ad litem. To the scope of appointment, in the cases specified in paragraph (1) a) to c), the provisions of section 48 (1), and, in a situation described in paragraph (1) d), the provisions of section 49 (5) shall apply.

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?](#)<sup>[41]</sup>

[41] Ibid., Recommendation 36

Guardians ad litem have during the criminal proceedings the same legal standing as statutory representatives. Section 72 (1) of the Criminal Procedural Act also sets out that statutory representatives have the very same rights in the course of criminal proceedings as a defense counsel.

While it is mandatory to appoint a guardian ad litem in case there is a conflict of interest between the child as a victim and his/her statutory representative, the guardian ad litem and a legal representative do not necessarily need to be the same person. The guardian ad litem –however he/she needs to be an attorney-at-law- may seek the legal assistance of further attorneys to participate in the criminal proceeding.

According to Section 61 (1) of the Criminal Procedural Code, unless acting in person is required under this Act, a representative authorised by an aggrieved party, a party with a pecuniary interest, an other interested party, or their statutory representative may also act in their place.

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

According to Section 73 (10) of Act XC on the Criminal Procedural Code, guardians ad litem shall be entitled to a fee for their involvement.

(10) A guardian ad litem shall be entitled to a fee and the reimbursement of his costs in consideration of his involvement.

According to Decree 32/2017 of the Ministry of Justice, for the fees and costs of guardians ad litem, the provisions of officially appointed defense counsel apply. In such cases, the costs and fees are advanced by the state (Sections 6/A and 9).

National legislation provides free legal aid for child victims of sexual abuse who have been abused in a recognised position of trust, authority/respect or influence, under less restrictive conditions than those available to adults.

Legal aid in criminal procedures is provided only by advancing the fees of the assistance. The criminal court, the prosecutor's office, or the investigating authority declare in their decision who would be the cost bearer, which could be the accused person, the offender, or the cost could stay at the expense of the state as well. The eligibility of the support of legal aid depends on the financial status of the applicant.

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)

Pursuant to Section 73 (1) of Act XC of 2017 on the Criminal Procedural Code, guardians ad litem shall be appointed in the following cases:

The court, the prosecution service, or the investigating authority shall appoint a guardian ad litem if

- a) a defendant, a person reasonably suspected of having committed the criminal offence, an aggrieved party, a party with a pecuniary interest, or an other interested party does not have full capacity to act under civil law, and he does not have a statutory representative, or the statutory representative cannot be identified,
- b) a defendant, a person reasonably suspected of having committed the criminal offence, an aggrieved party, a party with a pecuniary interest, or an other interested party does not have a statutory representative who is not affected by a ground for disqualification,
- c) the statutory representative is prevented from exercising his rights, or

d) the whereabouts of the aggrieved party, the party with a pecuniary interest, or the other interested party are unknown at the time of performing a procedural act that affects him, and he does not have a statutory representative or an authorised representative.

According to Section 73 (5) on the Criminal Procedural Code, guardians ad litem shall be appointed in case of a conflict between the interests of the statutory representative and the person represented by him/her as follows:

The prosecution service, before the indictment, or the court, after the indictment, may disqualify the statutory representative from the proceeding if

- a) it is reasonable to assume that the statutory representative committed the criminal offence together with the defendant, or person reasonably suspected of having committed the criminal offence, represented by him,
- b) there is a conflict between the interests of the statutory representative and the person represented by him.

The disqualification of the statutory representative of the child automatically has the consequence that according to Section 73 (1) -in lack of a statutory representative-, a guardian ad litem shall be appointed.

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

b. **Is this person allowed to be present throughout the criminal proceedings?**<sup>[44]</sup>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)

According to Section 73 (8) on the Criminal Procedural Code, guardians ad litem have the same legal standing as a statutory representative.

Section 73 (8)

In the criminal procedure, a guardian ad litem shall have the same legal standing as a statutory representative.

Section 72 of Act XC of 2017 on the Criminal Procedural Code summarizes the legal standing of statutory representatives as follows:

Section 72

(1) The statutory representative of a defendant or the person reasonably suspected of having committed the criminal offence may participate in the criminal proceeding as an aide and the rules on the rights of the defence counsel shall apply to his right to attend, make observations, request information, file motions, inspect case documents, and seek legal remedy.

(2) The statutory representative of the defendant or the person reasonably suspected of having committed the criminal offence shall be informed about all summonses and notifications to the defendant or the person reasonably suspected of having committed the criminal offence, respectively, and all decisions communicated to the defence counsel shall also be communicated to the statutory representative.

(3) The statutory representative of an aggrieved party, a party with a pecuniary interest, or an other interested party may exercise the rights of the represented person under this Act.

(4) If an aggrieved party, a party with a pecuniary interest, or an other interested party has the capacity to act in the criminal proceeding under section 69, but he does not have full capacity to act under the rules of civil law, his statutory representative may exercise his right to attend, inspect case documents, and be informed to provide adequate representation in matters exceeding the represented person's capacity to act under the rules of civil law.

(5) If a person participating in a criminal proceeding has multiple statutory representatives, the acting statutory representative shall be the statutory representative that acted first in the proceeding, unless otherwise agreed.

According to Section 42 on Act XC of 2017 on the Criminal Procedural Code, defense counsels have the following rights in criminal proceedings:

#### Section 42

(1) Unless otherwise provided in this Act, the defence counsel may exercise all rights of the defendant that are not by nature related to the person of the defendant exclusively. A defence counsel may exercise these rights independently as rights of the defence counsel.

(2) In addition to the provisions laid down in paragraph (1), a defence counsel shall also be entitled to

- a) attend procedural acts the defendant may, or is obliged to, attend,
- b) attend, in cases specified in this Act, procedural acts the defendant may not attend or where the attendance of the defendant may be restricted,
- c) obtain and collect data for the defence within the framework of statutory possibilities and conditions, and, for this purpose, engage a private investigator under the Act on the rules of personal and property protection and private investigation activities.

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:

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- a. [protection measures are available to all children irrespective of their age](#)?<sup>[45]</sup> Please provide details.

[45] *Ibid.*, Recommendation 38

Pursuant to Section 82 of the Criminal Procedural Code, persons, who have not attained the age of 18 years as well as victims of sexual offences qualify as persons requiring special treatment.

#### Section 82

The following persons shall qualify as persons requiring special treatment even without a specific decision:

- a) persons who have not attained the age of eighteen years,
- b) disabled persons as defined by the Act on the rights of and ensuring equal opportunities for disabled persons, as well as persons who might qualify as such persons,
- c) aggrieved parties of criminal offences against the freedom of sexual life and sexual morality.

The court, the prosecution service, and the investigating authority examine ex officio after getting into contact with, or upon a motion by, the person concerned if he qualifies as a person requiring special treatment (Section 81 (3) a)).

In relation to persons who has not attained the age of 18, their age at the time of initiation of criminal proceedings or at the time of the execution of the respective procedural act matters as regards the possible application of the special treatment. If the victim or the witness reaches the age of 18 or 14 during the criminal proceedings, the application of such measures is no longer mandatory, however, for children who attain the age of 14 during the criminal proceedings, measures applicable to children below the age of 18 during the further duration of the criminal proceeding apply.

Sections 85 and 86 of Act XC of 2017 on the Criminal Procedural Code include provisions to ensure that persons requiring special treatment during criminal proceedings are protected from people and situations that might have a negative effect on their well-being.

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?](#)<sup>[46]</sup> Please provide details.

[46] *Ibid.*, Recommendation 39

Sections 85 and 86 of Act XC of 2017 on the Criminal Procedural Code include provisions to ensure that persons requiring special treatment during criminal proceedings are protected from people and situations that might have a negative effect on their well-being. The following protective measures may be applied:

#### Section 85

(1) The court, the prosecution service, and the investigating authority shall contribute to facilitating the exercise of rights and the performance of obligations of, and to treating carefully, a person requiring special treatment, having regard to the interests of the proceeding, preferably by the following measures:

- a) ensuring that the person concerned may exercise his rights and perform his obligations specified in this Act despite all obstacles that may arise from the circumstances serving as grounds for his special treatment,
- b) proceeding with special care during communication,
- c) proceeding with special care to protect the privacy of the person concerned in the course of conducting the criminal proceeding,
- d) providing enhanced protection for personal data of the person concerned that serve as grounds for his special treatment, in particular data concerning his health,
- e) facilitating the use of an aide by the person concerned,
- f) taking into account the personal needs of the person concerned in the course of planning and performing procedural acts, and carrying out without delay the particular procedural acts that require the presence of the person concerned,
- g) preparing each procedural act requiring the presence of the person concerned in a manner that allows for it to be carried out without any repetition,
- h) ensuring that the person concerned does not meet unnecessarily any other person participating in the criminal proceeding in the course or at the location of a procedural act, especially if the ground for special treatment is his relationship to that person,

- i) carrying out the procedural act in a room used or made suitable for such acts provided that no other means or measures would ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,
  - j) making audio-visual recordings at procedural acts requiring the participation of the person concerned,
  - k) securing the attendance of the person concerned at a procedural act by using a telecommunication device.
- (2) To facilitate the exercise of the rights and the performance of the obligations of the person requiring special treatment, as well as to treat him carefully, the court may exclude the public from the trial or a specific part of the trial.
- (3) The court, the prosecution service, and the investigating authority may also apply other measures specified in this Act to treat carefully the person requiring special treatment and to facilitate the exercise of his rights and the performance of his obligations.

#### Section 86

(1) The court, the prosecution service and the investigating authority shall protect a person requiring special treatment

- a) if his life, physical integrity, or personal freedom is in jeopardy due to his participation in the criminal proceeding, or
- b) to ensure that he can exercise his rights and perform his obligations under this Act without intimidation or influence.

(2) To protect a person requiring special treatment, the court, the prosecution service and the investigating authority may, in addition to the measures specified in section 85,

- a) order to distort all identifying personal features of the person concerned by technical means when using a telecommunication device,
- b) order the production of a copy of a sound recording or an audio-visual recording of a procedural act where all identifying personal features of the person concerned are distorted by technical means,
- c) restrict, under this Act, the right of a defendant or a defence counsel to attend a procedural act,
- d) restrict the right to ask questions of a person, who attends a procedural act involving the person concerned, by permitting that motions for questions be submitted,
- e) refrain from confrontation involving a witness requiring special treatment,
- f) order, ex officio, to process the personal data of the person concerned confidentially,
- g) initiate ordering personal protection for the person concerned,
- h) declare the person concerned to be a specially protected witness, or initiate such a declaration,
- i) initiate the conclusion of an agreement for including the person concerned in a Protection Programme.

(3) If a measure protecting the person requiring special treatment is applied, all case document relating to the initiation and examination of providing special treatment shall be handled confidentially.

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**?<sup>[47]</sup> Please provide details.

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

Pursuant to Section 87 of Act XC of 2017 on the Criminal Procedural Code, persons under the age of 18 may upon the order of the court, the prosecution service or the investigating authority be supported by a judicial psychologist expert or a consultant performing a service according to Act XXXI of 1997 (the Child Protection Act) as follows:

## Section 87

(1) If a procedural act requires the participation of a person who has not attained the age of eighteen years, the court, the prosecution service and the investigating authority

a) shall prepare an audio-visual recording as possible,

b) may order

ba) the procedural act to be attended also by a judicial psychologist expert,

bb) the procedural act to be carried out with assistance from a consultant performing a service specified in section 61 (2) of Act XXXI of 1997 on the protection of children and guardianship administration or another consultant specified by law. The consultant shall carry out its activities under the guidance of the person in charge of the procedural act; in doing so, he shall convey the questions put to the person who has not attained the age of eighteen years and any other communications by the authority,

c) shall ensure that the rights of children, enshrined in the Fundamental Law, the convention on the rights of the child promulgated by Act LXIV of 1991, the Act on the protection of children and guardianship administration, and other Acts, are enforced effectively concerning the criminal proceeding.

The Criminal Procedural Code refers to the term “person”, hence, it applies to victims, witnesses and perpetrators similarly, as long as they are under the age of 18.

Judicial psychologist experts must hold a degree in psychology, while consultants according to the Child Protection Act may hold a degree in psychology or psychiatry. If the court, the prosecution service or the investigative authority orders the participation of a psychologist expert or a consultant, Child Protection Services on the county level (or in the capital city) will be contacted to ensure the participation of an expert.

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

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

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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?<sup>[48]</sup> 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)

Until 2018, Act XIX of 1998 on the Code of Criminal Procedure was in effect, which already included certain provisions on the special treatment of victims of criminal offences in the framework of criminal proceedings.

Following the adoption of Directive 2012/29/EU of the European Parliament and of the Council of 25 October



2012 on the establishment of minimum standards for the rights, support and protection of victims of crime (Victim Protection Directive), Act CLI of 2015 introduced the term of “persons requiring special treatment” to the Criminal Procedural Act.

Act XC of 2017 on the Criminal Procedural Code replaced the previous Act XIX of 1998 in 2018 and introduced a more complex regime of protection for people requiring special treatment.

Chapter XIV of the Criminal Procedural Code established a unified system of protection measures by collecting all respective provisions related to special treatment, provisions concerning children who have not attained the age of 14 years or 18 years, as well as witness protection. Measures ensuring special treatment shall be provided by the court, prosecution service and the investigating authority throughout the entire duration of the criminal proceeding.

Provisions of the Criminal Procedural Code primarily apply to victims and witnesses, certain measures however may also be applied - in cases defined by law - without the need of a specific decision, for example in case of defendants.

Pursuant to Section 82 of the Criminal Procedural Code, persons, who have not attained the age of 18 years as well as victims of sexual offences qualify as persons requiring special treatment.

#### Section 82

The following persons shall qualify as persons requiring special treatment even without a specific decision:

- a) persons who have not attained the age of eighteen years,
- b) disabled persons as defined by the Act on the rights of and ensuring equal opportunities for disabled persons, as well as persons who might qualify as such persons,
- c) aggrieved parties of criminal offences against the freedom of sexual life and sexual morality.

The court, the prosecution service, and the investigating authority examine ex officio after getting into contact with, or upon a motion by, the person concerned if he qualifies as a person requiring special treatment (Section 81 (3) a)).

In relation to persons who has not attained the age of 18, their age at the time of initiation of criminal proceedings or at the time of the execution of the respective procedural act matters as regards the possible application of the special treatment. If the victim or the witness reaches the age of 18 or 14 during the criminal proceedings, the application of such measures is no longer mandatory, however, for children who attain the age of 14 during the criminal proceedings, measures applicable to children below the age of 18 during the further duration of the criminal proceeding apply.

Pursuant to Section 85 of Act XC of 2017 on the Criminal Procedural Code, the following measures may be applied when a person requiring special treatment participates in the criminal proceedings. (Please find attached).

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

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**INVESTIGATION Question 19. In the investigation phase:**

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***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. 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?<sup>[49]</sup> 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)

Section 89 (4) of Act XC of 2017 on the Criminal Procedural Code lays down special rules for the hearings (interviews) of victims of sexual offences to ensure that these procedural acts take place in a child-friendly manner. Section 89 (4) refers to Section 82 c) of the Criminal Procedural Code, which sets out that aggrieved parties of criminal offences against the freedom of sexual life qualify as persons requiring special treatment without a specific decision as follows:

Section 82

The following persons shall qualify as persons requiring special treatment even without a specific decision:

- a) persons who have not attained the age of eighteen years,
- b) disabled persons as defined by the Act on the rights of and ensuring equal opportunities for disabled persons, as well as persons who might qualify as such persons,
- c) aggrieved parties of criminal offences against the freedom of sexual life and sexual morality.

Section 89 (4) of Act XC of 2017 requires the following measures of special treatment to be applied in such cases:

Section 89

(4) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,

- a) the procedural act shall be carried out in a room used or made suitable for such acts, unless the procedural act cannot be carried out in that room or other means or measures are available to ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,
- b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,
- c) the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party,
- d) unless otherwise provided by law, it shall be ensured that the aggrieved party can see only the proceeding judge, prosecutor, or member of the investigating authority when using a telecommunication device,
- e) after the indictment, a procedural act requiring the participation of the aggrieved party shall be carried out by the court through a delegate judge or a requested court,
- f) the right to ask questions of persons who attend the procedural act requiring the participation of the aggrieved party shall be restricted, and such persons may only move for asking questions,
- g) the public shall be excluded from parts of the trial where participation for the aggrieved party at the

procedural act is mandatory.

Since these are general rules of the Act on the Criminal Code, they apply throughout the territory of Hungary.

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?](#)<sup>[50]</sup>  
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)

Act XC of 2017 on the Criminal Procedural Code lays down the rules of hearings (interviews) of children below the age of 18 as follows.

Special rules of measures qualifying as special treatment  
Section 87

(1) If a procedural act requires the participation of a person who has not attained the age of eighteen years, the court, the prosecution service and the investigating authority

a) shall prepare an audio-visual recording as possible,  
b) may order

ba) the procedural act to be attended also by a judicial psychologist expert,

bb) the procedural act to be carried out with assistance from a consultant performing a service specified in section 61 (2) of Act XXXI of 1997 on the protection of children and guardianship administration or another consultant specified by law. The consultant shall carry out its activities under the guidance of the person in charge of the procedural act; in doing so, he shall convey the questions put to the person who has not attained the age of eighteen years and any other communications by the authority,

c) shall ensure that the rights of children, enshrined in the Fundamental Law, the convention on the rights of the child promulgated by Act LXIV of 1991, the Act on the protection of children and guardianship administration, and other Acts, are enforced effectively concerning the criminal proceeding.

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?](#)<sup>[51]</sup> 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)

Besides the answers given to questions 19 a) and 19 b) of the questionnaire, Section 89 (5) sets out that once the child was interviewed and there is a video recording of it, there is no need for a further hearing, and that recording may be used throughout the whole criminal proceeding:

#### Section 89

(1) If the aggrieved party requires special treatment under section 82 c) during the investigation,

a) he may be interrogated only by a person of the same sex, and a person, who is of the same sex as the aggrieved party, shall also be present from the proceeding investigating authority at all other procedural acts attended by the aggrieved party, and

b) the investigating authority shall ensure that all procedural acts requiring the presence of the aggrieved party are carried out by the same person each time.

(2) The investigating authority may deviate from the provisions laid down in paragraph (1)

a) upon a motion by or with the consent of the aggrieved party,

b) if doing so is indispensable to ensure the success of the proceeding.

(3) The confrontation of an aggrieved party requiring special treatment under section 82 c) may not be ordered without the consent of the aggrieved party.

(4) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,

a) the procedural act shall be carried out in a room used or made suitable for such acts, unless the procedural act cannot be carried out in that room or other means or measures are available to ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,

b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,

c) the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party,

d) unless otherwise provided by law, it shall be ensured that the aggrieved party can see only the proceeding judge, prosecutor, or member of the investigating authority when using a telecommunication device,

e) after the indictment, a procedural act requiring the participation of the aggrieved party shall be carried out by the court through a delegate judge or a requested court,

f) the right to ask questions of persons who attend the procedural act requiring the participation of the aggrieved party shall be restricted, and such persons may only move for asking questions,

g) the public shall be excluded from parts of the trial where participation for the aggrieved party at the procedural act is mandatory.

(5) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, ex officio or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) b). In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

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?<sup>[52]</sup>

[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?<sup>[53]</sup> 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)

Act XC of 2017 on the Criminal Procedural Code ensures that the same person conducts the interviews with the child victim as follows:

Section 89

- (1) If the aggrieved party requires special treatment under section 82 c) during the investigation,
- a) he may be interrogated only by a person of the same sex, and a person, who is of the same sex as the aggrieved party, shall also be present from the proceeding investigating authority at all other procedural acts attended by the aggrieved party, and
  - b) the investigating authority shall ensure that all procedural acts requiring the presence of the aggrieved party are carried out by the same person each time.
- (2) The investigating authority may deviate from the provisions laid down in paragraph (1)
- a) upon a motion by or with the consent of the aggrieved party,
  - b) if doing so is indispensable to ensure the success of the proceeding.

Section 89 (5)

(5) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, ex officio or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) b). In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

All respective provision of Act XC of 2017 on the Criminal Code do not differentiate whether the interview conducted happens for the first time or is a repeated one, hence, no distinctions are made on the protective measure to be applied.

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?<sup>[54]</sup> 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)

Act XC of 2017 on the Criminal Procedural Code ensures that child victims of sexual offences do not have to be present at any procedural acts (unless the collection of evidence makes it inevitable).

Special rules of measures qualifying as special treatment

Section 87

(1) If a procedural act requires the participation of a person who has not attained the age of eighteen years, the court, the prosecution service and the investigating authority

a) shall prepare an audio-visual recording as possible,

b) may order

ba) the procedural act to be attended also by a judicial psychologist expert,

bb) the procedural act to be carried out with assistance from a consultant performing a service specified in section 61 (2) of Act XXXI of 1997 on the protection of children and guardianship administration or another consultant specified by law. The consultant shall carry out its activities under the guidance of the person in charge of the procedural act; in doing so, he shall convey the questions put to the person who has not attained the age of eighteen years and any other communications by the authority,

c) shall ensure that the rights of children, enshrined in the Fundamental Law, the convention on the rights of the child promulgated by Act LXIV of 1991, the Act on the protection of children and guardianship administration, and other Acts, are enforced effectively concerning the criminal proceeding.

(2) A witness testimony made by a person who has not attained the age of eighteen years may not be subject to instrumental credibility examination.

(3) The confrontation of a witness who has not attained the age of eighteen years may not be ordered without his consent.

Special rules of measures qualifying as special treatment

Section 88

(1) If a procedural act requires the participation of a person who has not attained the age of fourteen years,

a) the procedural act may not be carried out, unless there is no alternative to the expected evidence,

b) the procedural act shall be carried out in a room used or made suitable for such acts, provided that no other means or measures would ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,

c) the investigating authority shall ensure that the procedural act is carried out by the same person each time during the investigation unless doing so would jeopardise the success of the procedural act,

d) the court, the prosecution service and the investigating authority shall prepare an audiovisual recording of the procedural act.

(2) The confrontation of a witness who has not attained the age of fourteen years may not be ordered.

(3) If the procedural act requires the participation of a person who has not attained the age of fourteen years, the defendant and the defence counsel shall not be allowed to be present at the location of the procedural

act in person.

(4) If the interrogation of a witness who has not attained the age of fourteen years was motioned by a defendant or a defence counsel, the court, the prosecution service and the investigating authority may ensure that the defendant, who filed the motion, and his defence counsel are present in person at the procedural act requiring the participation of the witness.

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

## JUDICIAL PROCEEDINGS Question 20. In the judicial proceedings:

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

a. **is systematic use of video equipment made in order to record interviews of child victims or enable him or her to testify remotely during the proceedings?**<sup>[55]</sup> 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)

Act XC of 2017 on the Criminal Procedural Code requires that an audio-visual recording be prepared in case a person who has not attained the age of 18 participates in the criminal proceedings.

### Section 87

(1) If a procedural act requires the participation of a person who has not attained the age of eighteen years, the court, the prosecution service and the investigating authority

a) shall prepare an audio-visual recording as possible,

b) may order

ba) the procedural act to be attended also by a judicial psychologist expert,

bb) the procedural act to be carried out with assistance from a consultant performing a service specified in section 61 (2) of Act XXXI of 1997 on the protection of children and guardianship administration or another consultant specified by law. The consultant shall carry out its activities under the guidance of the person in charge of the procedural act; in doing so, he shall convey the questions put to the person who has not attained the age of eighteen years and any other communications by the authority,

c) shall ensure that the rights of children, enshrined in the Fundamental Law, the convention on the rights of the child promulgated by Act LXIV of 1991, the Act on the protection of children and guardianship administration, and other Acts, are enforced effectively concerning the criminal proceeding.

Section 89 (4) b) of the Criminal Procedural Code set out that if the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,

b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service,

and the investigating authority.

Further, Section 86 (2) of the Criminal Procedural Code set out that to protect a person requiring special treatment, the court, the prosecution service and the investigating authority may, in addition to the measures specified in section 85,

b) order the production of a copy of a sound recording or an audio-visual recording of a procedural act where all identifying personal features of the person concerned are distorted by technical means.

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?](#)<sup>[56]</sup> 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)

Act XC of 2017 on the Criminal Code makes the following exceptions in the requirement for victims of sexual offences to be physically present at procedural acts:

#### Section 88

(1) If a procedural act requires the participation of a person who has not attained the age of fourteen years,  
a) the procedural act may not be carried out, unless there is no alternative to the expected evidence,  
b) the procedural act shall be carried out in a room used or made suitable for such acts, provided that no other means or measures would ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,  
c) the investigating authority shall ensure that the procedural act is carried out by the same person each time during the investigation unless doing so would jeopardise the success of the procedural act,  
d) the court, the prosecution service and the investigating authority shall prepare an audiovisual recording of the procedural act.

(2) The confrontation of a witness who has not attained the age of fourteen years may not be ordered.

(3) If the procedural act requires the participation of a person who has not attained the age of fourteen years, the defendant and the defence counsel shall not be allowed to be present at the location of the procedural act in person.

(4) If the interrogation of a witness who has not attained the age of fourteen years was motioned by a defendant or a defence counsel, the court, the prosecution service and the investigating authority may ensure that the defendant, who filed the motion, and his defence counsel are present in person at the procedural act requiring the participation of the witness.

Further, Section 87 (3) of the Criminal Procedural Act ensures that the confrontation of witnesses may not be ordered without their consent.

(3) The confrontation of a witness who has not attained the age of eighteen years may not be ordered without his consent.



Section 89 (4) sets out that if the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,

- a) the procedural act shall be carried out in a room used or made suitable for such acts, unless the procedural act cannot be carried out in that room or other means or measures are available to ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,
- b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,
- c) the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party,
- d) unless otherwise provided by law, it shall be ensured that the aggrieved party can see only the proceeding judge, prosecutor, or member of the investigating authority when using a telecommunication device,
- e) after the indictment, a procedural act requiring the participation of the aggrieved party shall be carried out by the court through a delegate judge or a requested court,
- f) the right to ask questions of persons who attend the procedural act requiring the participation of the aggrieved party shall be restricted, and such persons may only move for asking questions,
- g) the public shall be excluded from parts of the trial where participation for the aggrieved party at the procedural act is mandatory.

(5) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, ex officio or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) b). In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

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?](#)<sup>[57]</sup>

Please provide details.

[57] *Ibid.*, Recommendation 60

- Yes
- No

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

The general protective measures apply to all children being under the age of 18, however, Act XC of 2017 on the Criminal Procedural Code adds further protecting measures for persons below the age of 14 as follows:

Special rules of measures qualifying as special treatment

Section 88

- (1) If a procedural act requires the participation of a person who has not attained the age of fourteen years,
  - a) the procedural act may not be carried out, unless there is no alternative to the expected evidence,
  - b) the procedural act shall be carried out in a room used or made suitable for such acts, provided that no other means or measures would ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,

c) the investigating authority shall ensure that the procedural act is carried out by the same person each time during the investigation unless doing so would jeopardise the success of the procedural act,

d) the court, the prosecution service and the investigating authority shall prepare an audiovisual recording of the procedural act.

(2) The confrontation of a witness who has not attained the age of fourteen years may not be ordered.

(3) If the procedural act requires the participation of a person who has not attained the age of fourteen years, the defendant and the defence counsel shall not be allowed to be present at the location of the procedural act in person.

(4) If the interrogation of a witness who has not attained the age of fourteen years was motioned by a defendant or a defence counsel, the court, the prosecution service and the investigating authority may ensure that the defendant, who filed the motion, and his defence counsel are present in person at the procedural act requiring the participation of the witness.

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?](#)<sup>[58]</sup> 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)

Section 89 (5) of Act XC on the Criminal Procedural Code sets out that once the child was interviewed and there is a video recording of it, there is no need for a further hearing, and that recording may be used throughout the whole criminal proceeding as evidence:

Section 89

(4) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,

b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,

(5) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, ex officio or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) b). In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

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](#)

Section 89 (4) c) clearly forbids the that the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party.

#### Section 89

- (1) If the aggrieved party requires special treatment under section 82 c) during the investigation,
- a) he may be interrogated only by a person of the same sex, and a person, who is of the same sex as the aggrieved party, shall also be present from the proceeding investigating authority at all other procedural acts attended by the aggrieved party, and
  - b) the investigating authority shall ensure that all procedural acts requiring the presence of the aggrieved party are carried out by the same person each time.
- (2) The investigating authority may deviate from the provisions laid down in paragraph (1)
- a) upon a motion by or with the consent of the aggrieved party,
  - b) if doing so is indispensable to ensure the success of the proceeding.
- (3) The confrontation of an aggrieved party requiring special treatment under section 82 c) may not be ordered without the consent of the aggrieved party.
- (4) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,
- a) the procedural act shall be carried out in a room used or made suitable for such acts, unless the procedural act cannot be carried out in that room or other means or measures are available to ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,
  - b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,
  - c) the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party,
  - d) unless otherwise provided by law, it shall be ensured that the aggrieved party can see only the proceeding judge, prosecutor, or member of the investigating authority when using a telecommunication device,
  - e) after the indictment, a procedural act requiring the participation of the aggrieved party shall be carried out by the court through a delegate judge or a requested court,
  - f) the right to ask questions of persons who attend the procedural act requiring the participation of the aggrieved party shall be restricted, and such persons may only move for asking questions,
  - g) the public shall be excluded from parts of the trial where participation for the aggrieved party at the procedural act is mandatory.
- (5) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, ex officio or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) b). In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

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?](#)<sup>[60]</sup> 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)

Section 89 (4) c) clearly forbids the that the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party.

#### Section 89

- (1) If the aggrieved party requires special treatment under section 82 c) during the investigation,
- a) he may be interrogated only by a person of the same sex, and a person, who is of the same sex as the aggrieved party, shall also be present from the proceeding investigating authority at all other procedural acts attended by the aggrieved party, and
  - b) the investigating authority shall ensure that all procedural acts requiring the presence of the aggrieved party are carried out by the same person each time.
- (2) The investigating authority may deviate from the provisions laid down in paragraph (1)
- a) upon a motion by or with the consent of the aggrieved party,
  - b) if doing so is indispensable to ensure the success of the proceeding.
- (3) The confrontation of an aggrieved party requiring special treatment under section 82 c) may not be ordered without the consent of the aggrieved party.
- (4) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,
- a) the procedural act shall be carried out in a room used or made suitable for such acts, unless the procedural act cannot be carried out in that room or other means or measures are available to ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,
  - b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,
  - c) the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party,
  - d) unless otherwise provided by law, it shall be ensured that the aggrieved party can see only the proceeding judge, prosecutor, or member of the investigating authority when using a telecommunication device,
  - e) after the indictment, a procedural act requiring the participation of the aggrieved party shall be carried out by the court through a delegate judge or a requested court,
  - f) the right to ask questions of persons who attend the procedural act requiring the participation of the aggrieved party shall be restricted, and such persons may only move for asking questions,
  - g) the public shall be excluded from parts of the trial where participation for the aggrieved party at the procedural act is mandatory.
- (5) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, ex officio or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) b). In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

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?](#)<sup>[61]</sup>

[61] *Ibid*

Section 89 (4) c) clearly forbids the that the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party.

#### Section 89

(1) If the aggrieved party requires special treatment under section 82 c) during the investigation,

a) he may be interrogated only by a person of the same sex, and a person, who is of the same sex as the aggrieved party, shall also be present from the proceeding investigating authority at all other procedural acts attended by the aggrieved party, and

b) the investigating authority shall ensure that all procedural acts requiring the presence of the aggrieved party are carried out by the same person each time.

(2) The investigating authority may deviate from the provisions laid down in paragraph (1)

a) upon a motion by or with the consent of the aggrieved party,

b) if doing so is indispensable to ensure the success of the proceeding.

(3) The confrontation of an aggrieved party requiring special treatment under section 82 c) may not be ordered without the consent of the aggrieved party.

(4) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,

a) the procedural act shall be carried out in a room used or made suitable for such acts, unless the procedural act cannot be carried out in that room or other means or measures are available to ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,

b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,

c) the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party,

d) unless otherwise provided by law, it shall be ensured that the aggrieved party can see only the proceeding judge, prosecutor, or member of the investigating authority when using a telecommunication device,

e) after the indictment, a procedural act requiring the participation of the aggrieved party shall be carried out by the court through a delegate judge or a requested court,

f) the right to ask questions of persons who attend the procedural act requiring the participation of the aggrieved party shall be restricted, and such persons may only move for asking questions,

g) the public shall be excluded from parts of the trial where participation for the aggrieved party at the procedural act is mandatory.

(5) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, ex officio or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) b). In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

As further guarantee, Section 89 (3) of the Criminal Procedural code sets out that the confrontation of an aggrieved party requiring special treatment under section 82 c) may not be ordered without the consent of the aggrieved party.

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?](#)<sup>[62]</sup>

[62] *Ibid.*, Recommendation 49

Section 89 (4) g) of Act XC of 2017 on the Criminal Procedural Code lays down as a general rule that the public shall be excluded from parts of the trial where participation for the aggrieved party at the procedural act is mandatory.

Special rules of measures qualifying as special treatment

Section 89

- (1) If the aggrieved party requires special treatment under section 82 c) during the investigation,
- a) he may be interrogated only by a person of the same sex, and a person, who is of the same sex as the aggrieved party, shall also be present from the proceeding investigating authority at all other procedural acts attended by the aggrieved party, and
  - b) the investigating authority shall ensure that all procedural acts requiring the presence of the aggrieved party are carried out by the same person each time.
- (2) The investigating authority may deviate from the provisions laid down in paragraph (1)
- a) upon a motion by or with the consent of the aggrieved party,
  - b) if doing so is indispensable to ensure the success of the proceeding.
- (3) The confrontation of an aggrieved party requiring special treatment under section 82 c) may not be ordered without the consent of the aggrieved party.
- (4) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years,
- a) the procedural act shall be carried out in a room used or made suitable for such acts, unless the procedural act cannot be carried out in that room or other means or measures are available to ensure that the exercise of the rights and the performance of the obligations of the person concerned are facilitated, and the person concerned is treated carefully,
  - b) an audio-visual recording of the procedural act shall be prepared by the court, the prosecution service, and the investigating authority,
  - c) the defendant and the defence counsel may not be present in person at the location of the procedural act requiring the participation of the aggrieved party,
  - d) unless otherwise provided by law, it shall be ensured that the aggrieved party can see only the proceeding judge, prosecutor, or member of the investigating authority when using a telecommunication device,
  - e) after the indictment, a procedural act requiring the participation of the aggrieved party shall be carried out by the court through a delegate judge or a requested court,
  - f) the right to ask questions of persons who attend the procedural act requiring the participation of the aggrieved party shall be restricted, and such persons may only move for asking questions,
  - g) the public shall be excluded from parts of the trial where participation for the aggrieved party at the procedural act is mandatory.
- (5) If the aggrieved party requiring special treatment under section 82 c) has not attained the age of eighteen years, the court, to protect the aggrieved party, may refrain from, ex officio or upon a motion, interrogating the aggrieved party as a witness, provided that the aggrieved party was interrogated during the investigation under paragraph (4) b). In this event, the witness testimony made by the aggrieved party during the investigation may be used as a means of evidence.

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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?](#)<sup>[63]</sup> 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)

National legislation provides free legal aid for child victims of sexual abuse who have been abused in a recognised position of trust, authority/respect or influence, under less restrictive conditions than those available to adults.

Legal aid in criminal procedures is provided only by advancing the fees of the assistance. The criminal court, the prosecutor's office, or the investigative authority declare in their decision who would be the cost bearer, which could be the accused person, the offender, or the cost could stay at the expense of the state as well. The eligibility of the support of legal aid depends on the financial status of the applicant.

According to Article 19 paragraph (3) of the Act LXXX of 2003 on Legal Aid:

"The minor victim entitled to support regardless of their income and financial situation; however, support cannot be granted if the party received the costs of legal representation or the actual legal representation as support provided in another state support system".

Based on the above, victims are entitled to free legal assistance from lawyers through the government offices.

According to Article 28 paragraph (2) of the Act on Legal Aid):

"The legal aid service will inform the client, free of charge and without any assessment of their income and assets, which court or authority is competent to deal with their application, the costs of initiating and pursuing the procedure and brief information on legal issues in simple cases. The information will be given orally or by telephone to the party who approaches the legal aid service in person, without a record or formal note being taken, or the information will be given in writing to the client who asks the question in writing. Aggrieved parties and victims of crime shall be provided with information on criminal proceedings to be initiated or criminal proceedings in relation to the commission of the crime by the victim support service according to a specific law".

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?](#)<sup>[64]</sup> 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)

Pursuant to Section 73 (1) of Act XC of 2017 on the Criminal Procedural Code, guardians ad litem shall be appointed in the following cases:

The court, the prosecution service, or the investigating authority shall appoint a guardian ad litem if

- a) a defendant, a person reasonably suspected of having committed the criminal offence, an aggrieved party, a party with a pecuniary interest, or an other interested party does not have full capacity to act under civil law, and he does not have a statutory representative, or the statutory representative cannot be identified,
- b) a defendant, a person reasonably suspected of having committed the criminal offence, an aggrieved party, a party with a pecuniary interest, or an other interested party does not have a statutory representative who is not affected by a ground for disqualification,
- c) the statutory representative is prevented from exercising his rights, or
- d) the whereabouts of the aggrieved party, the party with a pecuniary interest, or the other interested party are unknown at the time of performing a procedural act that affects him, and he does not have a statutory representative or an authorised representative.

According to Section 73 (5) on the Criminal Procedural Code, guardians ad litem shall be appointed in case of a conflict between the interests of the statutory representative and the person represented by him/her as follows:

The prosecution service, before the indictment, or the court, after the indictment, may disqualify the statutory representative from the proceeding if

- a) it is reasonable to assume that the statutory representative committed the criminal offence together with the defendant, or person reasonably suspected of having committed the criminal offence, represented by him,
- b) there is a conflict between the interests of the statutory representative and the person represented by him.

(6) In a situation under paragraph (5) a), the investigating authority, before the indictment, may also disqualify the statutory representative from the proceeding.

The disqualification of the statutory representative of the child automatically has the consequence that according to Section 73 (1) -in lack of a statutory representative-, a guardian ad litem shall be appointed.

Pursuant to Section 73 (2) of Act XC on the Criminal Procedural Code, an attorney-at-law may be appointed as guardian ad litem as follows:

(2) The court, the prosecution service, or the investigating authority shall appoint an attorney-at-law as guardian ad litem. To the scope of appointment, in the cases specified in paragraph (1) a) to c), the provisions of section 48 (1), and, in a situation described in paragraph (1) d), the provisions of section 49 (5) shall apply.

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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?](#)<sup>[65]</sup>

[65] *Ibid.*, Recommendation 52



The Victim Support Service helps the victims - appropriate to their needs - to assert their basic rights, to access health, health insurance and social benefits and other public assistance. The assertion of interest victim support service include information, legal advice, emotional support and other assistance to all victims free of charge, without means testing. Legal advice as a service provided by the Victim Support Service is not the same as legal representation by a lawyer or drafting of pleadings. It is a service to answer more straightforward questions related to victimisation in practice. Compared to this, with the legal aid services operating since 1 April 2004, an institutional system has been established where socially disadvantaged beneficiaries may receive professional legal advice and procedural legal representation in the enforcement of their rights and the resolution of their disputes. According to the Act on Legal Aid, legal aid service provides assistance and other counselling services, while the Victim Support Service provides general information to victims and victims of crime on their rights and obligations in relation to criminal proceedings to be initiated or in progress as a result of a crime as well as on their rights and obligations in criminal proceedings. Under the current legal framework, the status of certified victim provides a more favourable treatment for the purposes of access to legal aid under the condition of social vulnerability. In the case of out-of-court assistance, where the victim of a crime needs the professional advice of a legal aid lawyer or the drafting of a pleading (claim, application, denunciation, indictment, etc.) to initiate proceedings to remedy the damage caused by the crime or the harm to rights or interests arising from the crime, he or she should be allowed to receive the assistance free of charge under more favourable conditions than under the general rules.

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