

# 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

The present questionnaire has been filled in by the Department for Family Policies of the Presidency of the Council of Ministers, with key contributions of Arma dei Carabinieri, Postal and Communications Police Service and Ministry of Labour and Social Policies- Italy.

\* Name of the contact person/coordinator

Alfredo Ferrante

\* Email address of the contact person/coordinator

a.ferrante@governo.it

## 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)

Italian law provides for the punishment of anyone who, abusing a recognised position of trust, authority or influence, commit a sexual offence against children, both as a separate sexual offense and as an aggravating circumstance.

Indeed, under article 609-quater of the Italian criminal code ("Sexual acts with children"), it is possible to apply the penalty provided for sexual assault, as recognised in article 609-bis, to "anyone who, outside of the cases provided for in that article, performs any sex act with a person who is, when the assault occurs: 1) younger than fourteen years of age; 2) younger than sixteen years of age when the offender is the ascendant, parent, including an adoptive parent, or his/her live-in partner, the guardian, or other person entrusted with the child's care, education, instruction, supervision or custody or with whom the child lives. Apart from the cases foreseen by article 609-bis, the ascendant, parent, including an adoptive parent, or his /her live-in partner, the guardian, or other person entrusted with the child's care, education, instruction, supervision or custody or with whom the child lives, who, with the abuse of the powers connected with his position, performs sexual acts with a minor who has reached the age of sixteen, is punished with imprisonment by three to six years. Except where provided for in the previous paragraphs, anyone who engages in sexual acts with a minor who has reached the age of fourteen, abusing the trust gained from the minor or the authority or influence exercised over him by reason of his own position or the office held or family, domestic, work, cohabitation or hospitality relationships, is punished with up to four years' imprisonment. The punishment is increased: 1) if sexual acts with a minor who has not reached the age of fourteen take place in exchange for money or any other benefit, even if only promised; 2) if the crime is committed by more people together; 3) if the offense is committed by a person who is part of a criminal association and in order to facilitate its activity; 4) if it leads to a severe injury of the child due to the repetition of the conduct; 5) if the minor's life is in danger from the fact. A minor who, apart from the hypotheses provided for in article 609-bis, engages in sexual acts with a minor who has reached the age of thirteen is not punishable, if the difference in age between the subjects does not exceed four years. In less serious cases, the penalty is reduced by no more than two-thirds. The punishment set forth in article 609-ter, second paragraph, shall be applied if the offended person has not reached the age of ten years".

In addition to the penalties provided by article 609-quater, the Italian Criminal Code provides in article 609-ter, "sexual abuse of children by someone in a recognised position of trust, authority or influence" as an aggravating circumstance of sexual assault (article 609-bis). According article 609-ter, "the punishment established in article 609-bis shall be increased by one third if the acts provided for therein are committed: 1) against a person of whom the perpetrator is the ascendant, parent, including adoptive parent, or guardian" (...) The punishment established in article 609-bis shall be increased by half if those acts are committed against a person who has not reached the age of fourteen years. The punishment shall be doubled if the facts referred to in article 609-bis are committed against a person who has not reached the age of ten years".

According to article 602-ter, in the cases provided for in articles 600-bis (child prostitution) first paragraph, and 600-ter (child pornography), as well as, if the act is committed to the detriment of a minor under eighteen years of age, in articles 600, 601, and 602, the punishment shall be increased by one-half to two-thirds if the act is committed "by an ascendant, adoptive parent, or his/her spouse or partner, by the spouse or relatives up to the second degree, by relatives up to the fourth degree, by the guardian or by the person to whom the minor has been entrusted for reasons of care, education, instruction, supervision, custody, employment or by public officials or people in charge of public service in the exercise of their functions or against a child in a state of infirmity or natural or provoked mental disability".

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

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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)

The specific categories of adults in contact with children holding a recognised position of trust, authority or influence are: “the ascendant, parent, including an adoptive parent, or his/her live-in partner, the guardian, or other person entrusted with the child’s care, education, instruction, supervision or custody or with whom the child lives” (see article 609-quater of the Italian criminal code). In addition, the same article provides also “Except what provided for in the previous paragraphs, anyone who engages in sexual acts with a minor who has reached the age of fourteen, abusing the trust gained from the minor or the authority or influence exercised over him by reason of his own position or the office held or family, domestic, work, cohabitation or hospitality relationships, is punished with up to four years’ imprisonment”.

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

[9] *Ibid.*

- Yes  
 No

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

The Italian criminal code does not provide for a specific definition of “circle of trust”; however, article 609-quater includes and punishes all the categories that fall under the notion of circle of trust.

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)

The Italian legal framework protects every child up to 18 years old against sexual abuse (sexual assault, but also child prostitution and child pornography) by someone in a recognized position of trust, authority or influence. Criminal offences of child sexual abuse - committed also by someone in a recognised position of trust, authority or influence - are provided in articles 609-bis, 609-ter, 609-quater of the Italian criminal code. Moreover, according to article 602-ter, in the cases provided for in articles 600-bis (child prostitution), first paragraph, and 600-ter (child pornography), the punishment shall be increased by one-half to two-thirds if the act is committed by a person who belongs to the child's circle of trust. Please see answer to question 1a. and 1c.

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

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)

Italian legislation, under article 609-quater (“Sexual acts with children”), punishes anyone who, outside of the cases provided for sexual assault (609-bis) performs any sex act with a person who is, when the assault occurs, younger than fourteen years of age; the same penalty is provided for anyone who performs any sex act with a child “younger than sixteen years of age when the offender is the ascendant, parent, including an adoptive parent, or his/her live-in partner, the guardian, or other person entrusted with the child’s care, education, instruction, supervision or custody or with whom the child lives”.

As highlighted in answer given to 1a. and 1c., article 609-quater of the Italian criminal code also punishes cases of abuse of a recognized position of influence: “Apart from the cases foreseen by article 609-bis, the ascendant, parent, including an adoptive parent, or his/her live-in partner, the guardian, or other person entrusted with the child’s care, education, instruction, supervision or custody or with whom the child lives, who, with the abuse of the powers connected with his position, performs sexual acts with a minor who has reached the age of sixteen, is punished with imprisonment by three to six years” and that “Except where provided for in the previous paragraphs, anyone who engages in sexual acts with a minor who has reached the age of fourteen, abusing the trust gained from the minor or the authority or influence exercised over him by reason of his own position or the office held or family, domestic, work, cohabitation or hospitality relationships, is punished with up to four years’ imprisonment”.

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

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

[13] *Ibid.*, Recommendation 7

- Yes  
 No

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

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

[14] *Ibid.*, Recommendation 8

- Yes

No

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

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

a. [criminalise sexual abuse of children for acts other than sexual intercourse and equivalent actions?](#)<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)

According to the most recent case law, in addition to sexual intercourse and equivalent actions, sexual abuse can be committed when the abuser forcibly forces the victim into genital self-stimulation or when the abuser shows genitals to the child by inviting the child to initiate sexual activity regardless of the outcome (see Court of Cassation, Sez. III, 26.10-12.12.2011, n. 45950). Recently the Italian judicial authority ruled that the exchange of sexually explicit messages where the abuser sent pictures of his/her genitals requiring a comment from the victim and forcefully made the minor take nude pictures under the blackmail of publishing the conversation on the social media, would also be considered sexual assault (see Court of Cassation, Sez. III, 2.7-8.9.2020, n. 25266). Another caselaw included under the notion of sexual assault both the contact without consent and with erogenous area of the victim even with clothes on (see Court of Cassation, Sez. III, 24.1-13.5.2019, n. 20459).

The violation of a child's "sexual integrity" is punished under article 609-quater of the Criminal Code ("sexual acts with a minor"), which protects the physical-psychic integrity of the minor and the proper development of the sexual personality through an absolute intangibility in the hypothesis of a minor under the age of fourteen years (first paragraph, no. 1) or with reference to specific situations of kinship or custody of the child itself under the age of sixteen (first paragraph, n. 2). According to article 609-quater "a minor who, apart from the hypotheses provided for in article 609-bis, engages in sexual acts with a minor who has reached the age of thirteen is not punishable, if the difference in age between the subjects does not exceed four years".

Moreover, article 609-quater of the Criminal Code protects every minor between the age of sixteen and eighteen from the sexual abuse committed by "the ascendant, parent, including an adoptive parent, or his /her live-in partner, the guardian, or other person entrusted with the child's care, education, instruction, supervision or custody or with whom the child lives, who, with the abuse of the powers connected with his position, performs sexual acts" with him/her. Italian legal framework under article 609-sexies of the Criminal Code (Ignorance of the age of the offended person) states that "when the crimes provided for in articles 609 bis, 609 ter, 609 quater, 609 octies and 609 undecies are committed to the detriment of a minor under the age of eighteen, and when the crime referred to in article 609 quinquies is committed, the guilty party cannot invoke ignorance of the age of the offended person is an excuse, unless it is unavoidable ignorance"; thus, the articles regarding child sexual abuse offences apply even if the alleged perpetrator is unaware about the age of the minor.

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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

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

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)

Investigation of child sexual abuse and exploitation will start as soon as the Police taskforce is aware of the criminal offence. Sexual abuse and exploitation of children by someone in a recognised position of trust, authority or influence is prosecuted ex officio, as stipulated by article 609-septies, of the Criminal Code. Article 609-septies of Italian criminal code, “Complaint by party”, provides that “the crimes envisaged by articles 609-bis and 609-ter are punishable upon complaint by the offended person. Except for the provisions

of article 597, third paragraph, the deadline for filing a lawsuit is twelve months. The proposed lawsuit is irrevocable. However, the procedure is ex officio: if the act referred to in article 609-bis (“sexual assault”) is committed against a person who at the time of the act is under the age of eighteen; if the fact is committed by the ascendant, by the parent, even adoptive, or by their cohabitant, by the guardian or by another person to whom the minor is entrusted for reasons of care, education, supervision or custody or who have a relationship of coexistence with it; if the fact is committed by a public official or by a person in charge of a public service in the exercise of his duties; if the fact is connected with another crime for which official proceedings must be taken”.

Under Italian law, all public officials and persons in charge of a public service (e.g. members of law enforcement and judicial authorities, physicians, health care workers, pediatricians, nurses, teachers, school workers, social and health service workers, social workers, psychologists, as well as community workers, foster caregivers, and individuals/entities performing a function delegated by the public body) are obliged to report to the judicial authority (public prosecutor or a judicial police officer) crimes prosecutable ex officio (including mistreatment, trafficking, sexual violence against minors under the age of 18, sexual exploitation, sexual acts with a minor if committed by the relative, parent, including adoptive parent, or cohabiting parent, guardian or other person to whom the minor is entrusted for reasons of care, education, instruction, supervision or custody or who has a cohabiting relationship with the minor), of which they have become aware in the exercise or because of their functions or service (art. 331 of the Code of Criminal Procedure ). Failure to do so constitutes a crime (Articles 361 and 362 of the Criminal Code). Article 332 of the Code of Criminal Procedure describes the content that the complaint must have.

Article 157 of the Italian Criminal Code establishes that for criminal offences such as slavery/servitude (article 600), child prostitution (art 600-bis), child pornography (art 600-ter), sexual tourism (art 600-quinquies), human trafficking (art 601), 572 (mistreatment of family and cohabitants), 609-bis (sexual violence), 609-quarter (child sexual abuse), 609-quinquies (corruption of minors) and 609-octies (group sexual violence) the limitation period is doubled. Article 158 of the Italian Criminal Code establishes that in certain violent and all sexual abuse crimes, committed against children, described in art 392, paragraph 1-bis of the Italian Criminal Procedural Code (which applies to articles 572, 600, 600-bis, 600-ter, 600-quarter, 600-quinquies, 601, 602, 609-bis, 609-quarter, 609-quinquies, 609-octies, 609-undecies and 612 bis of the Italian Criminal Code) the statute of limitations is suspended until the victim reaches the age of majority.

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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)

If proceedings have been instituted ex officio, its withdrawal plainly has no effect on the continuation of the proceedings.

Also, article 609-septies of Italian criminal code provides for the irrevocability of the complaint for sexual crimes, to prevent the victim and the procedural dynamics from being altered by pressure from the defendant or from the social context.

Please see also answer to question 5a.

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)

The minor is not legally responsible for crimes committed up to the age of 14, presuming that until that age, for whatever crime, he or she is not sufficiently capable of forming the necessary criminal intent (article 97, Italian criminal code). The Italian criminal code states that a minor, under the age of 14, and therefore not criminally liable, who has committed an act provided for by law as a "crime" and has been deemed "dangerous," is subject to the security measure of judicial reformatory or of "libertà vigilata" (article 224, Italian criminal code). Pursuant article 36 of Presidential Decree, September 22, 1988, No. 448: "1. The security measure of probation applied against juveniles shall be executed in the forms provided for in Articles 20 and 21. 2. The security measure of judicial reformatory shall be applied only in relation to the crimes provided for in Article 23 paragraph 1 and shall be executed in the forms of Article 22". The measure of judicial reformatory is to be carried out in the forms of "community placement".

Generally speaking, for juvenile offenders (who are 14 or older), the Italian legal system provides for the following non-criminal measures: probation ("messa alla prova") (see article 28 of Presidential Decree 448/1988 "after hearing the parties, the judge may order the suspension of the trial when he deems he can evaluate the personality of the minor following the outcome of the test set out in accordance with article 2" and "with the suspension order, the judge entrusts the minor to the juvenile services of the administration of

justice for carrying out, also in collaboration with the local services, the appropriate observation, treatment and support activities" in order to evaluate the personality of the minor at the outcome of the trial. In the event of a positive outcome of the trial, the judge declares the crime extinguished with a sentence, pursuant to the following art. 29) and the juvenile criminal mediation (provided for by our legal system within the regulatory provisions offered by the articles 9, 27, 28 of the D.P.R. no. 448 of 1988. The assumption of a path of mediation, as a responsible method, within the juvenile criminal trial, can be very useful in view of the re-educational purpose that this pursues. Juvenile penal mediation can be proposed both in a pre-trial phase and in the actual trial phase. Art. 9 of the Presidential Decree 448/88 offers a first application space to mediation in the pre-trial phase. The cited provision imposes verifications on the personality of the minor, establishing that "the public prosecutor and the judge acquire elements regarding the personal, family, social and environmental conditions and resources of the minor, in order to ascertain the imputability and the degree of responsibility, assess the social relevance of the fact as well as order the appropriate penal measures and adopt any civil measures").

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 Italian legal system provides for differentiation in the judicial process and punishment according to the age of the offender. In Italy, Juvenile Court has jurisdiction over the offences committed by minors under the age of eighteen. If it is considered that a minor aged under 18, but over 14, can be charged, criminal proceedings are instituted against him for the offence committed; he nevertheless receives a reduced penalty. Article 98 of the criminal code, states that "anyone who has reached the age of 14 years, but not 18, at the time of the commission of the act may be held responsible if he has capacity of understanding and intent, but the punishment may be reduced. When the prison sentence imposed is less than five years, or it is a fine, the conviction is not followed by accessory penalties. If it is a more serious penalty, the conviction only implies disqualification from public office for a term not exceeding five years, and, in cases established by law, suspension from exercising parental responsibility".

The provisions on the criminal procedure applicable to juvenile offenders are contained in Presidential Decree No. 448 of 22 September 1988, at the end of the proceedings the Court can also issue the following types of measures in addition to a conviction or acquittal for not having committed the crime: Judicial pardon; No need to proceed due to irrelevance of the fact; No need to proceed due to non-imputability due to inability of understanding and will, immaturity; No need to proceed due to non-imputability for children under the age of fourteen.

Judgment No. 13267 of the Supreme Criminal Court, Section III, Feb. 19, 2021, provides that the applicability of the ancillary penalties set forth in article 609-nonies of the Criminal Code, while being provided for "in any case" by law, is excluded, pursuant to Article 98, second paragraph, of the Criminal

Code, with respect to minors, under the age of eighteen, sentenced to a term of imprisonment of less than five years: the need to diversify the disciplinary treatment of the minor from the general punitive discipline is prevalent due to the educational function recognized to the punishment in juvenile proceedings.

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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.

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

- Yes  
 No

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

The Italian legal system provides for the possibility for child protection professionals to conduct exploratory interviews of a child without informing in advance the parents/legal guardians, as part of the judicial police investigations delegated by the Judicial Authority, in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognized 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.

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)

The Italian legal system provides for the possibility for child protection professionals to conduct exploratory interviews of a child without acquiring the parents/legal guardians' prior consent, as part of the judicial police investigations delegated by the Judicial Authority. Also, in the case of protected hearing, is not necessary to acquire parental consent. As established by article 398, paragraph 5-bis of the criminal procedure code, in case of investigations regarding child abuse offences, if there are minors involved in the gathering of evidence, the court shall set the place, time and specific procedures for the special protected hearing by issuing a summons order that does not require parental consent.

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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)

In the Italian legal system, there are civil and criminal protective measures that provide tools for the protection of victims of intra-family violence (introduced by Law 154/2001): the protection order against family abuse (Articles 342-bis, 342-ter of the Civil Code) and the precautionary measure of removal from the family home and prohibition to approach the places frequented by the offended person (282-bis and 282-ter of the Code of Criminal Procedure). The main objective of these provisions is to provide timely protection in the event of harmful behavior by both parents and other cohabiting partners, through measures aimed at interrupting the "cycle of violence" with respect to the facts themselves, removing the perpetrator of violence from the family home (and instructing him or her not to approach places habitually frequented by the victim) and thus preventing victims from being subjected to the additional trauma of leaving their homes. See the attachment for relevant legal provisions.

Finally, it should be noted that the realization of certain hypotheses of crimes of sexual abuse or exploitation leads to the arrest of the perpetrator and the adoption of measures of precautionary prison custody. From the civil law perspective, during the separation or divorce proceeding or for child custody regulation, the Court may take every measure as it deems most appropriate for the best interests of the child, including the removal of the perpetrator of violence or abuse or removal of the child from the family home.

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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)

Italian legislation is inspired by the principles set forth in the Italian Constitution (articles 29-30-31), Law 184 /1983 and Law 149/2001 (article 1 “The minor has the right to grow up and be educated within his own family”), in line with what is in any case provided for by the European Convention on Human Rights (article 8). Therefore, the minor has the right to live in his/her family when he/she may rely on a parent or protective family member. Therefore, the removal of the child from the family environment when the behaviors of family members are detrimental to him/her is possible only when it is the last and only solution that could ensure his /her protection.

Many laws provide for mechanisms of child protection, providing for the suspension of parental responsibility and the possible removal of the minor from the family home; in these cases, judicial decisions are always accompanied by measures of support, protection and assistance to the minor from Social Services.

Articles 330 and 333 of the civil code refers to the removal of the child from the family and suspension of parental custody of the parent whose behavior is threatening the child’s wellbeing. Article 330 of the civil code states that “the Court may declare the loss of parental authority if a parent contravenes or neglect the obligations deriving from such a role or abuses the powers related thereto thus causing serious harm to the child. In such a case, due to serious grounds, the Court may order the child’s removal from the family home or the parent’s or live-in partner’s removal if he/she mistreats or abuses the child”.

Article 403 of the Civil Code aims to ensure strong and timely protection for minors in a state of abandonment even in cases of extreme necessity and urgency, in which the intervention of the public authority may exceptionally precede that of the judicial authority. According to the first paragraph of article 403: “When the minor is morally or materially abandoned or is exposed, in the family environment, to serious harm and danger to his or her psycho-physical safety and there is therefore an emergency to provide for it, the public authority, through the child protection organs, shall place him or her in a safe place until a final provision can be made for his or her protection”. The second paragraph of article 403 of the Civil Code states that: “The public authority that adopted the provision issued pursuant to the first paragraph shall immediately give oral notice to the public prosecutor at the juvenile court, in whose district the minor has his habitual residence within twenty-four hours following the placement of the minor in safety, with the removal from one or both parents or persons exercising parental responsibility, transmit the provision to the public prosecutor accompanied by all useful documentation and a summary report describing the reasons of the intervention to protect the minor”. The same article provides clearly defined procedures for the adoption of these and subsequent measures to protect the minor. See the rest of the answer in the attachment.

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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)

Article 609-bis of the Italian Criminal Code prescribes that when a criminal trial is initiated for the crimes of slavery, child prostitution, child pornography, sex tourism, trafficking in persons, sexual violence, solicitation of minors, or mistreatment, sexual acts with a minor and persecutory acts committed against a minor or by the parent of a minor against the other, the Public Prosecutor shall notify the Juvenile Court so that this specialized authority can take appropriate measures to protect the minor. The same rule prescribes that the affective and psychological assistance of the minor victim shall be ensured, at all stages and levels of the proceedings, by the presence of the parents or other appropriate persons indicated by the minor, as well as groups, foundations, associations or nongovernmental organizations with proven experience in the field of assistance and support for victims of the crimes referred to in the first paragraph and registered in the special list of persons entitled to this purpose, with the consent of the minor, and admitted by the prosecuting judicial authority.

In addition, Law No. 69/2019 (the so-called Red Code) prescribes the mandatory transmission of measures adopted in the criminal sector to the civil judge who is in charge of the proceedings for the personal separation of spouses or cases relating to under-age children, or exercising parental responsibility for the purpose of decision (Art. 64 bis of the Implementation, Coordination and Transitory Rules of the Code of Criminal Procedure) to ensure that, in any case, the judge of the Juvenile Court or ordinary court (where a personal separation or divorce of the parents is underway) may have any useful element to decide with respect to the care and assignment of minors, in cases in which a form of violence, abuse or mistreatment to the detriment of a minor has been reported.

"Articles 473-bis" of the Civil Procedure Code and the followings introduced by the recent "Cartabia reform" regulate the procedure in which family abuse or domestic or gender-based violence is committed by one party against the other or a minor, providing for the procedure for coordination with other judicial authorities, including police.

The Cartabia Reform also amended article 64-bis of the Implementation Provisions of the Code of Criminal Procedure, providing that: "When proceeding for offenses committed against a spouse, cohabitee or person bound by an affective relationship, even if it has ceased, and it results in the pendency of proceedings relating to the personal separation of spouses, the dissolution or termination of the civil effects of marriage, the dissolution of a civil union or parental responsibility, the public prosecutor shall notify the prosecuting judge without delay, unless the acts are covered by the secret referred to in Article 329 of the Code of Criminal Procedure. Similarly, it shall take the same action when it proceeds for offenses committed against minors by parents, other family members or persons otherwise cohabiting with them, as well as by the person linked to the parent by an affective relationship, even if it has ceased, and proceedings concerning parental responsibility, its exercise and maintenance of the child are pending. 1-bis. In the cases referred to in Paragraph 1, the public prosecutor shall transmit to the civil judge or the proceeding juvenile court a copy of the orders applying personal precautionary measures or ordering their replacement or revocation, as well as a copy of the notice of the conclusion of the preliminary investigation and of the investigative acts not covered by the secrecy referred to in Article 329 of the Code. The same judge shall also be provided with a copy of the judgment defining the trial or the decree of dismissal by the clerk."

Please, see also answer to question 11.

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## 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)

Italian legal framework provides for cases of suspension and withdrawal of parental rights to protect the child victim of sexual abuse, both as a provisional measure to protect the child before a court decision on the conviction of the concerned parent is taken and both once the court has convicted the said parent.

Before the conviction of the concerned parent, pursuant article 288 "Suspension of parental rights" of the Italian criminal procedure code, "by the order ordering the suspension of parental rights, the court shall temporarily deprive, in whole or in part, the accused of the powers related to such authority. If the prosecution concerns a crime against sexual freedom (609 ss. cp), or one of the crimes provided for in articles 530 and 571 of the criminal code, committed to the detriment of close relatives, the measure may also be ordered outside the sentence limits provided for in article 287(1)".

Within the civil procedure, the Court may decide for the suspension or revocation of parental rights pursuant to article 330 and 333 of the Italian civil code "The Court may declare the loss of parental authority if a parent contravenes or neglect the obligations deriving from such a role or abuses the powers related thereto thus causing serious harm to the child" and "Where the conduct of one or both of the parents is not such as to give rise to the judgment of forfeiture provided for in article 330, but nevertheless appears prejudicial to the child, the court shall, in the circumstances, may take appropriate measures and may also order the removal of him from family residence or the removal of the parent or partner who abuses or abuses the child".

Pursuant to article 34 of the Italian criminal code, "conviction for crimes committed with abuse of parental rights shall result in the suspension of parental rights for a period of time equal to twice the sentence imposed".

Pursuant article 609-novies of the Italian criminal code, for the crimes of sexual assault, child sexual abuse "Conviction or imposition of punishment at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure for any of the offenses provided for in Articles 609 bis, 609 ter, 609 quater, 609 quinquies, 609 octies and 609 undecies entails: 1) the loss of parental responsibility, when parental status is a constituent element or aggravating circumstance of the offense; 2) perpetual disqualification from any office pertaining to guardianship, curatorship, and support administration; 3) loss of the right to alimony and exclusion from the succession of the offended person 4) temporary disqualification from public office; disqualification from public office for a term of five years upon conviction to imprisonment for a term of three to five years, subject, however, to the application of Article 29, first paragraph, as to perpetual

disqualification; 5) suspension from the practice of a profession or art. Conviction or imposition of punishment at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure, for any of the offenses provided for in Articles 609 bis, 609 ter, 609 octies and 609 undecies, if committed against a person who has not attained the age of eighteen years, 609 quater and 609 quinquies, shall in any case entail perpetual disqualification from any position in schools of any order and degree as well as from any office or service in institutions or other public or private facilities attended predominantly by minors. Conviction for the crimes provided for in Article 600 bis, second paragraph, Article 609 bis, in the aggravated cases referred to in Article 609 ter, Articles 609 quater, 609 quinquies and 609 octies, in the aggravated cases referred to in the third paragraph of the same article, entails, after the execution of the sentence and for a minimum duration of one year, the application of the following personal security measures: 1) the possible imposition of restriction of movement and freedom of movement, as well as a ban on approaching places habitually frequented by minors; 2) the prohibition of performing work involving habitual contact with minors; 3) the obligation to keep the police bodies informed of one's residence and any movements. Anyone who violates the provisions of the third paragraph shall be subject to imprisonment for up to three years.”. See the rest of the answer in the attachment.

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## 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

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

Suspension of parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of own child are pending is never automatic, but must be decided by the judicial authority. Please see also article 288 “Suspension of parental rights” of the Italian criminal procedure code in answer to question 8. Article 473 bis of the civil procedure code introduced by the Cartabia reform also provides for measures that can be adopted by the judge regarding visitation, and child hosting rights of parents, in all cases where there may be a suspected abuse.

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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)

The forfeiture of parental responsibility automatically follows a conviction for one of the crimes for which it is expressly provided by law. According to article 34 of the Italian criminal code, "conviction for crimes committed with abuse of parental rights shall result in the suspension of parental rights for a period of time equal to twice the sentence imposed". Pursuant article 609-novies of the Italian criminal code, "a conviction in respect of the offences provided for in 609 bis, 609 ter, 609 quater, 609 quinquies, 609 octies e 609 undecies entail the loss of parental responsibility where the status of parent is a constituent element or aggravating circumstance of the offence"; the same provision is provided for the under article 600 septies 2 of the Criminal Code, for the conviction for crimes of child pornography and child prostitution (please see answer to question 8).

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## 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.

According to Italian legislation, under article 333 of the Code of Criminal Procedure, "any person who has knowledge of a crime which may be prosecuted ex officio may report it". The Italian legal framework does not provide for specific protection and the alleged perpetrator of child sexual abuse could sue the person who reported him/her for defamation, libel or similar offences. However, the legal framework ensures that any person, including those bound by professional confidentiality rules, does not get punished for defamation, libel or similar offences if the report was made in good faith for the child protection and is based on elements that supported the legitimate suspicion. For example, the crime of libel occurs only in the case the person accuses someone he knows is innocent of a crime, or simulates the traces of a crime against him (article 368 of the Criminal Code); the crime of disclosure of professional secret (article 362 of the Criminal Code) occurs only when the person reveals a secret without good cause or uses it for its own or another's profit.

Moreover, under Italian law, all public officials and persons in charge of a public service (e.g. members of law enforcement and judicial authorities, physicians, health care workers, pediatricians, nurses, teachers, school workers, social and health service workers, social workers, psychologists, as well as community

workers, foster caregivers, and individuals/entities performing a function delegated by the public body) are obliged to report to the judicial authority (public prosecutor or a judicial police officer) crimes prosecutable *ex officio* (including mistreatment, trafficking, sexual violence against minors under the age of 18, sexual exploitation, sexual acts with a minor if committed by the relative, parent, including adoptive parent, or cohabiting parent, guardian or other person to whom the minor is entrusted for reasons of care, education, instruction, supervision or custody or who has a cohabiting relationship with the minor), of which they have become aware in the exercise or because of their functions or service (art. 331 of the Code of Criminal Procedure). Article 332 of the Code of Criminal Procedure describes the content that the complaint must have.

Pursuant to article 334 of the criminal procedure code, “whoever is to draft a medical report must send it within forty-eight hours or immediately, if any delay may pose a danger, to the Public Prosecutor or any criminal police official of the place where the service or assistance has been provided or, in their absence, to the closest criminal police official”. Failure to do so constitutes a crime (articles 361, 362 and 365 of the Criminal Code).

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

Art. 609-decies of the Italian criminal code provides for the psychological assistance of the child victim at every stage and level of the proceedings (please see answer to question 17 c.).

Psychological and psychotherapeutic assistance to children who have experienced or witnessed any form of abuse and /or violence is also included in the Essential Levels of Assistance (LEA), namely the benefits and services that the National Health Service is required to provide to all citizens through public resources, for free or upon payment of a participation fee (ticket). By supporting the child, assistance can also be provided to the whole family, which is taken over by Social Services.

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

The Italian legal framework provides that the investigations are classified, and that after child's disclosure the judicial authority can take appropriate measures (e.g. the child's and the other non-offending parent's removal from the family home, the removal of the alleged perpetrator from the family home) to protect the minor and his or her non-offending family members, also in cooperation with Social Services and other local services or associations that support victims of abuse and violence. Please see answers to question 7 b., 7 c., 7 d, 7. e, 11 and 17 c.

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)

Pursuant article 609-novies of the Italian criminal code, "Conviction for the crimes provided for in Article 600 bis, second paragraph, Article 609 bis, in the aggravated cases referred to in Article 609 ter, Articles 609 quater, 609 quinquies and 609 octies, in the aggravated cases referred to in the third paragraph of the same article, entails, after the execution of the sentence and for a minimum duration of one year, the application of the following personal security measures: 1) the possible imposition of restriction of movement and freedom of movement, as well as a ban on approaching places habitually frequented by minors; 2) the prohibition of performing work involving habitual contact with minors; 3) the obligation to keep the police bodies informed of one's residence and any movements. Anyone who violates the provisions of the third paragraph shall be subject to imprisonment for up to three years".

The Red Code (Law 69/2019) provides for the subordination of the applicability of the conditional suspension of the sentence to the adherence to rehabilitation programs by the perpetrator of sexual crimes (art. 165 paragraph 5 of the criminal code). Law 69/2019 provides also for the evaluation of participation in recovery and support programs by the author of sexual crimes against minors for the granting of legal benefits and the possibility for such subjects, to be admitted to follow paths of reintegration into society and recovery at bodies or associations that deal with prevention, psychological assistance and recovery of subjects convicted for the same crimes (Art. 17 - Amendments to article 13-bis of the law of 26 July 1975, n. 354 – so-called Penitentiary Act, regarding psychological treatment for those convicted of sexual crimes, mistreatment of family members or cohabitants and persecutory acts).

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)

The sharing of data relating to persons convicted of child sexual abuse falls within the scope of Schengen Information System (SIS) in the area of police cooperation and judicial cooperation in criminal matters. When someone is convicted of the criminal offence of child sexual abuse some details related to the committed abuse are shared with the agencies dedicated to international police cooperation so that other countries can cross-reference any element referred to the investigation.

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

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

For the mere suspicion of having committed the crime, there are no national rules on the removal or suspension of the worker; however, reference is made to specific regulations for each category of workers (see Legislative Decree 297/1994 for employees in the education sector and in the CCNL, specifically art. 495: suspension of the teacher from one to six months).  
Legislative Decree No. 39 of 2014, implementing a European Union directive - no. 93 of 2011 on combating the sexual abuse and sexual exploitation of children and child pornography -, prescribes that the "person who intends to employ at work a person for the performance of professional activities or organized voluntary activities that involve direct and regular contact with minors," must request, before entering into the employment contract and then before employment at work, the criminal record certificate of the person to be employed, "for the purpose of verifying the existence of convictions for any of the offenses referred to in Articles 600-bis, 600-ter, 600-quater, 600-quinquies and 609-undecies of the Criminal Code, or the imposition of disqualification sanctions on the exercise of activities involving direct and regular contact with minors".  
However, after conviction for the crimes of sexual assault and child sexual abuse, according to article 609-novies of the Italian criminal code, "the conviction or the application of the penalty at the request of the

parties pursuant to article 444 of the code of penal procedure for any of the crimes envisaged by articles 609 bis, 609 ter, 609 quater, 609 quinquies, 609 octies and 609 undecies involves: (...) 2) perpetual disqualification from any office pertaining to guardianship, guardianship and support administration; (...) 4) temporary disqualification from public office; disqualification from public office for a period of five years following a sentence of three to five years' imprisonment, without prejudice, in any case, to the application of article 29, first paragraph, as regards perpetual disqualification; 5) the suspension from the exercise of a profession or an art" and "the conviction or application of the penalty upon request by the parties pursuant to article 444 of the code of penal procedure, for any of the crimes envisaged by articles 609 bis, 609 ter, 609 octies and 609 undecies, if committed against a person who has not completed the age of eighteen, 609 quater and 609 quinquies, in any case involves the perpetual disqualification from any position in schools of any order and level as well as from any office or service in institutions or other public or private structures frequented mainly by minors. See the rest of the answer in the attachment.

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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)

According to the national legal system, professionals working in the public, private or voluntary sector have the obligation to report the crimes of sexual abuse of minors, even when occurring in "out-of-home care" by virtue of the art. 331 of the criminal procedure code "Report by public officials and persons in charge of a public service": "1. Without prejudice to the provisions of Article 347, public officials and persons in charge of a public service who receive information about an offence subject to prosecution of the Public Prosecutor's motion, while carrying out or because of their functions or their service, must report it in writing, even if the alleged perpetrator of the offence is not identified. 2. The report shall be submitted or forwarded without delay to the Public Prosecutor or a criminal police official. 3. If several persons are to report the same offence, they may also draft and sign one single document. 4. If, during civil or administrative proceedings, an act emerges which may constitute an offence subject to prosecution of the Public Prosecutor's motion, the proceeding authority shall draft and forward the report to the Public Prosecutor without delay". Article 332 of the Code of Criminal Procedure describes the content that the complaint must have. Pursuant to article 334 of the criminal procedure code, "whoever is to draft a medical report must send it within forty-eight hours or immediately, if any delay may pose a danger, to the Public Prosecutor or any criminal police official of the place where the service or assistance has been provided or, in their absence, to the closest criminal police official". Failure to do so constitutes a crime (articles 361, 362 and 365 of the Criminal Code).

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)

Art. 25-quinquies of Legislative Decree (D.lgs.) 8 june 2001, n. 231 on liability ex crimine of legal persons stipulates that a legal person may be held liable for offences about child prostitution and child pornography. Legislative Decree 231/2001, Article 25 quinquies (Offences against individual personality): "1. In relation to the commission of the offences set out in Section I, Chapter III, Title XII, Book II of the Criminal Code the following pecuniary sanctions shall be imposed on corporate entities: a) a pecuniary sanction from four hundred to a thousand quotas for the offences as per Articles 600, 601 and 602; b) a pecuniary sanction from three hundred to eight hundred quotas for the offences as per Articles 600-bis, paragraph one, 600-ter, paragraphs one and two and 600-quinquies; c) a pecuniary sanction from two hundred to seven hundred quotas for the offences as per Articles 600-bis, paragraph two, 600-ter, paragraphs three and four and 600-quer. 2. In case of conviction for one of the offences set out in paragraph 1, letters a) and b), the disqualification sanctions under Article 9, paragraph 2 shall apply for at least one year. 3. If a corporate entity or one of its organisational units is constantly used to the sole or main purpose of allowing for, or facilitating, the commission of the offences laid down in paragraph 1, the definitive disqualification from carrying on the relevant business activity shall apply in compliance with Article 16, paragraph 3".

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

Often the guardian ad litem is also a lawyer. Art. 11 c. 1 of the professional law (law 247/2012) provides that "the lawyer has the obligation to ensure the continuous and constant updating of his professional competence in order to ensure the quality of professional services and to contribute to the better exercise of the profession in the interest of clients and the administration of justice". The "forensic code of conduct"

(codice deontologico forense) prescribes the duty of continuing education and training (article 15), the duty of competence and the duty of diligence, not accepting tasks that he/she is not able to carry out, ensuring the quality of professional performance (article 12 and 14). The National Forensic Council (CNF) published the "Regulation for continuing education" (n.6/2014), which provides under article 25, paragraph 10, that "the verification of the violation of the duty of training and professional development and the failure or unfaithful certification of fulfillment of the obligation constitute disciplinary infringements pursuant to the code of ethics". Thus, Bar Associations monitor the fulfillment of training obligations by registered members.

Following the entry into force of the provisions of the reform of the civil process, (Cartabia Reform), the National Forensic Council (CNF) published the "Recommendations for special representatives and guardians ad litem of minors", highlighting that to prepare for the role of "curatore speciale", the CNF recommends the acquisition of professional training and updating in the subjects of family, personal and children's law. A list of lawyers available to serve as "guardian ad litem" for the child is kept at each Tribunal. To hold this position, certain requirements must be met, such as professional seniority, having successfully attended the training course for guardians ad litem organized by Bar Associations, and comply with the prescribed training and continuing professional education requirements.

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

There is no incompatibility between the functions of lawyer and guardian ad litem: article 18 of the law n. 247 /2012 provides that the profession of lawyer is incompatible exclusively with that of notary, with the exercise of commercial business activities, the qualification of shareholder with unlimited liability or director of partnerships carrying out commercial activities, the qualification of director or chief executive officer of joint-stock companies, the position of chairman of the board of directors with managerial powers. As it has been established by the Constitutional Court and the 1996 Strasbourg Convention (ratified by Italy with the Law 77/2003), the same person can be both the guardian ad litem and the lawyer of the child.

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

c. [are provided free of charge for the child victim?](#)<sup>[42]</sup>

[42] Ibid., Recommendation 37

There is no rule that expressly provides for a fee for the guardian ad litem or for the special curator of the minor. If the guardian ad litem is also a lawyer and performs the legal representation and defense of the minor in the context of a civil or criminal trial, he/she may request admission to legal aid for the activity of defense, if he/she is registered in the special lists provided for in Article 81 of Presidential Decree 115/2002. For the child's defense, in civil proceedings where the child has a conflict of interest with the parents, the special curator may apply for legal aid based on the child's "income". With reference to criminal proceedings, according to the provisions of Articles 74 et seq. of the Presidential Decree 30 May 2002, no. 115: "the person offended by one of the crimes listed therein can be admitted to legal aid also in derogation of the income limits set by the same article" and art. 76, paragraph 4-ter specifies

the conditions and the following admitted categories: "(...) where committed to the detriment of minors, by the crimes referred to in articles 600, 600-bis, 600-ter, 600-quinquies, 601, 602, 609-quinquies and 609-undecies of the penal code, can be admitted to legal aid also in derogation the income limits established by this decree".

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

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

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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?<sup>[43]</sup> Please provide details.

[43] *Ibid.*, Recommendation 34

- Yes  
 No

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

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

[44] *Ibid*

- Yes  
 No

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

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

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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

Under Italian law, protective measures (such as the removal of the abuser/suspected perpetrator from the family, the removal of the child victim of sexual abuse from the family environment, the withdrawal of parental rights as well as the special procedures for the protected hearing of the child) are available to all children irrespective of their age. Assistance and support of the social services and of the juvenile justice department is also assured for person minors under 18. Please see answers 7c., 7d., 8., 9, 11 and 17 b.

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

In order not to aggravate the traumatic condition of the child who has suffered violence and sexual abuse, the national legal system provides for a whole series of measures to ensure and protect the child victim, measures that are also applicable in the case of sexual abuse committed in respect of a child by someone in a recognized position of trust, authority or influence. Please see answers to question 7 c., 7 d., 8, 9.

During criminal investigations and proceedings, the Italian justice system ensures assistance and accompaniment to the child victim of sexual abuse and exploitation at every stage of criminal proceedings (please see also answer to question 17 c.).

In this regard, reference is first made to the provisions of the Code of Criminal Procedure concerning the testimony of the minor victim (in technical terms: offended person).

At the preliminary investigation stage, including for crimes of sexual abuse and exploitation, the Judicial Police, when it must take summary information from minors, must make use of the assistance of an expert in psychology or child psychiatry, appointed by the Public Prosecutor. In any case, the Judicial Police ensures that the particularly vulnerable offended person, in case of the request for summary information, does not have contact with the person under investigation and is not called several times to give summary information, unless necessary for the investigation. A similar obligation is provided for the lawyer -both of the defendant and of the offended person -when during defense investigations, he or she wants to take information from minors (Article 391 bis of the Code of Criminal Procedure. Pursuant to article 351 criminal procedure code ("Other summary information"<sup>1-ter</sup>. In the proceedings for the crimes envisaged by articles 572, 600, 600-bis, 600-ter, 600-quater, 600-quater 1, 600-quinquies, 601, 602, 609-bis, 609 quater, 609-quinquies, 609-octies, 609-undecies and 612-bis of the penal code, the judicial police, when it has to obtain summary information from minors, makes use of the help of an expert in psychology or in child psychiatry, appointed by the public prosecutor") and article 362 of the criminal procedure code ("In proceedings for the crimes referred to in Article 351, paragraph 1bis, the prosecutor, when he has to take information from minors, shall use the assistance of an expert in child psychology or psychiatry" and "In any case, it shall ensure that the particularly vulnerable offended person, on the occasion of the request for summary information, shall not have contact with the person under investigation and shall not be called upon several times to give summary information, subject to the absolute necessity for the investigation").

Also in the preliminary investigation phase, article 392 paragraph 1 bis of the Criminal procedure code provides that when proceeding for certain crimes - including those of sexual abuse and exploitation - the minor can be heard in the so called "incidente probatorio" (a child friendly hearing with a special setting and procedure): the taking of the testimony of the minor, in that case, takes place in cross-examination between the parties (i.e. the suspect also has the right to participate, together with his or her defense counsel) and the evidence thus collected can then be used in the future trial. Regarding the hearing of the child in the trial, see also article 190 bis paragraph 1.bis of the Code of Criminal Procedure and answer to question 19c.

There are specific provisions regarding the so-called protected hearing: art. 398 paragraph 5 bis criminal procedure code and article 498 paragraph 4 of the Code of Criminal Procedure (please see answer to question 19a).

Paragraph 4 ter of art. 498 of the Criminal Procedure Code "Direct examination and cross-examination of witnesses" in order to prevent the minor from being faced with to the perpetrator of the crime, provides that "when proceeding for the crimes referred to in articles 572, 600, 600 bis, 600 ter, 600 quater, 600 quinques, 601, 602, 609 bis, 609 ter, 609 quater, 609 octies and 612 bis of the penal code, the examination of the minor victim of the crime or of the mentally ill adult victim of the crime is carried out, at his or her defense counsel's request, through the use of mirror glass together with an intercom system". See the rest of the answer in the attachment.

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

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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 article 609-decies of the criminal code, "the affective and psychological assistance of the minor offended person is ensured, in every state and level of proceedings, by the presence of parents or other suitable persons indicated by the minor, as well as groups, foundations, associations or nongovernmental organizations with proven experience in the field of assistance and support for the victims of the crimes referred to in the first paragraph and registered in the special list of persons entitled to this purpose, with the consent of the minor, and admitted by the prosecuting judicial authority. In any case the juvenile is assured the assistance of juvenile services of the Administration of Justice and services established by local authorities".

Regarding professional support in the case the minor comes into contact with the Police or the Judiciary, please see answer to question 17 b.

Please see also answer to question 11.

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)

With Legislative Decree 15 December 2015 n. 212, published in the Official Gazette no. 3 of 5 January 2016, Italy implemented directive 2012/29/EU on the rights, assistance and protection of victims of crime. The national criminal law doctrine, therefore, initially historically oriented on the study of the minor age as a connotation referring exclusively to the perpetrator of the crime, has shifted its attention focus on the minor as victims and witnesses "in conditions of particular vulnerability". See the rest of the answer in the attachment.

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

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

Italian legislation for the preliminary investigation phase, in article 398 paragraph 5 bis of the Code of Criminal Procedure "Provisions on the request for incidente probatorio" provides that "in the case of investigations concerning hypotheses of crime envisaged by articles 572, 600, 600 bis, 600 ter 600 quinquies, 601, 602, 609 bis, 609 ter, even if relating to pornographic material referred to in article 600 quater 1, 609 quater and 609 octies, 609 undecies and 612 bis of the penal code, the judge, where among the persons concerned to the taking of evidence there are minors, with the order referred to in paragraph 2, establishes the place, time and particular methods by which to proceed with the "incidente probatorio", when the needs for the protection of persons make it necessary or appropriate. To this end, the hearing can also take place in a place other than the court, making use of the judge, where they exist, of specialized assistance structures or, failing that, at the home of the person interested in taking the evidence. Witness statements must be fully documented by phonographic or audiovisual means of reproduction. When there is an unavailability of reproduction tools or technical personnel, the forms of expertise or technical advice are provided. A summary report of the interrogation is also drawn up".

As for the conduct of the witness examination during the trial, the reference norm is article 498 paragraph 4

of the Code of Criminal Procedure, which provides, as a general rule, that it is the judge who conducts the examination of the minor (upon application and objection proposed by the parties), with the possible assistance of a family member of the minor or an expert in child psychology. If the judge considers that the direct examination of the minor would not be detrimental to his or her peace of mind, having heard the parties, he or she may order that it be conducted in the ordinary forms (i.e., with questions addressed to the witness directly by the prosecutor and the defendant's counsel). The same rule also provides that, if the party so requests, or if the President deems it necessary, the examination shall take place in the forms of the protected hearing provided for the evidentiary incident by Article 398 paragraph 5 bis, thus extending the possibility of adopting the protected modalities to all proceedings in which a minor witness is to be heard (Article 498 paragraph 4 bis of the Code of Criminal Procedure). When prosecuting for certain crimes - including those of sexual abuse or exploitation - the examination of the child victim is carried out, at his or her request or that of his or her defense counsel, through the use of a glass mirror together with an intercom system (Article 498 paragraph 4 bis). The provisions inherent in the prohibition of questions that may harm the sincerity of answers and the prohibition of suggestive questions, which tend to suggest answers, also apply to the examination of the child, just as the obligation to conduct the examination without harming the respect of the person must be respected (Article 499 paragraphs 2, 3 and 4 of the Criminal Code).

Arma dei Carabinieri has always given maximum attention to particularly vulnerable victims. Indeed, in numerous territorial commands, special rooms have been created dedicated to the interview of minors, equipped with audio-video recording systems and furnishings designed to make them more welcoming. For this reason, the "Lanzarote room" (named after the homonymous convection) was created in 2014 in the "Raggruppamento Carabinieri Investigazioni Scientifiche" (Ra.C.I.S.) based in Rome, for listening vulnerable victims, an environment equipped with an audio-video recording system and a control room with unidirectional mirror.

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)

As already mentioned, from the very first moment, the minor's interview takes place at the presence of an expert in child psychology (please see answer to question 17b). The expert in psychology and/or psychiatry is a professional who has acquired this title after obtaining a specialist degree in the disciplines of psychology and medicine and consequent qualification to practice the profession.

Moreover, pursuant to Article 5 - Training of police officers of the Law 69/2019 "1. Within twelve months from the date of entry into force of this law, the State Police, the Carabinieri Corps and the Corps of Prison Police shall activate at their respective institutes of training specific courses intended for personnel exercising public security and judicial police functions in relation to the prevention and prosecution of the crimes" such as child abuse and violence "or who intervene in the penitentiary treatment of persons convicted for them. Attendance at the courses is mandatory for the personnel identified by the administration to which they

belong. 2. In order to ensure the homogeneity of the courses referred to in paragraph 1, its contents shall be defined by decree of the President of the Council of Ministers, in consultation with the Ministers for Public Administration, Interior, Justice and Defense”.

Arma dei Carabinieri carries out specific training and professional updating courses for all soldiers of all levels in terms of crimes related to gender-based violence and in particular to vulnerable victims such as minors. The thematic training modules take place at the Higher Institute of Investigative Techniques (I.S.T. I.), at the basic training Institutes and at the territorial departments.

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)

The presence of an expert in child psychology during the gathering of information makes it possible to take into account the different needs of children based on different ages, just as the special measures that the Judge can adopt during a protective hearing make it possible to take into account the needs of the individual minor in the specific case (please see answer to question 17 b, 19 a. and b.).

With regards to the fact that interviews with child victims are conducted as soon as possible after the offence, paragraph 1-ter of article 362 of the penal procedure code introduced by art. 2 of the Law of 19 July 2019, n. 69 (Amendments to the penal code, to the penal procedure code and other provisions regarding the protection of victims of domestic and gender-based violence) provides that when proceeding for child sexual abuse and violence “the public prosecutor shall acquire information by the offended person and by whoever filed a complaint, lawsuit or request, within three days of the registration of the news of the crime, unless there are essential needs for the protection of minors under the age of eighteen or for the confidentiality of the investigations, also in the interest of the offended person”. Law n. 122 of September 8, 2023 “Amendments to Legislative Decree No. 106 of February 20, 2006, concerning the powers of the Public Prosecutor's Office in cases of violation of Article 362, Paragraph 1-ter, of the Code of Criminal Procedure, regarding taking information from victims of domestic and gender-based violence” provides that in the cases envisaged by article 362 1-ter of the criminal procedure code, if the prosecutor fails to meet the three-day deadline for hearing the victim, the chief prosecutor may revoke the assignment of the case, assign it to another magistrate, and make arrangements without delay to hear the offended person.

In the Italian legal system, there are laws that establish that the minor must be heard as few times as possible. According to article 357 of the code of criminal procedure “Documentation of judicial police activity” “3-ter. The statements of minors, mentally ill or in conditions of particular vulnerability are documented in full, under penalty of uselessness, with audiovisual or phonographic means of reproduction, unless there is a contingent unavailability of reproduction tools or technical personnel and there are particular reasons of urgency that do not allow the deed to be postponed” therefore, this can reduce the need for the judicial

police to interview the minor several times. For the preliminary investigation phase, article 362 of the criminal procedure code, paragraph 1-bis (“assumption of information”) states that when the public prosecutor interviews people who can report circumstances useful to the investigation, in case of a particularly “vulnerable offended person”, he/she ensures that the victim “is not called upon several times to give summary information, except when absolutely necessary for the investigation”. Moreover, article 398 paragraph 5 bis of the Code of Criminal Procedure provides that when the so called “incidente probatorio” has been conducted during the preliminary investigations, the child's statements can be used as evidence in the trial, and therefore the child should not be heard again. According to article 190 bis paragraph 1 and 1. bis of the Code of Criminal Procedure - even in cases in which crimes of sexual abuse or exploitation of minors are being prosecuted - the trial examination of a witness under the age of 18 or an offended person in a particularly vulnerable condition, who has already made statements in an “incidente probatorio” or at trial, is allowed only if it concerns facts or circumstances different from those covered by the previous statements or if the Judge deems it absolutely necessary on the basis of specific needs.

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

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

Based on the articles mentioned above, which regulate the hearing of the minor, the Judicial Authority, taking into account the specific needs of the minor, can establish which measures are deemed most effective to ensure the best interest of the child during the interviews. Within one procedural phase (for example preliminary investigations), the parties involved (police or public prosecutor) are normally the same, and then - even if there are no specific provisions – when there is the necessity of another interview of the child, it will be possible for the judicial police or the public prosecutor to designate the same professional expert in child psychology, who will support him/her for the hearing. In any case, please note that under article 609 decies, paragraph 3, of the criminal code: “The emotional and psychological assistance of the offended minor is ensured, in every state and level of proceedings, by the presence of parents or other suitable persons indicated by the minor, as well as groups, foundations, associations or non-governmental

organizations with proven experience in the sector of assistance and support to the victims of the crimes referred to in the first paragraph and registered in a specific list of subjects legitimized for this purpose, with the consent of the minor, and admitted by the prosecuting judicial authority”.

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)

Yes, the Italian system allows criminal defense the possibility to contest a child's disclosure during the interview through questions, obviating the need for the child to be present in the court room during the proceeding, though the “incidente probatorio” in the preliminary investigation phase (article 398 paragraph 5 bis of the Criminal Procedure Code "Provisions on the request for incidente probatorio”), and “the direct examination and cross-examination of witnesses” for the trial phase (articles 498 Criminal Procedure Code).

Under article 498 of the criminal procedure code, “4- The witness examination of the minor is conducted by the President on questions and objections proposed by the parties. In the exam, the President may avail himself of the assistance of a family member of the minor or of an expert in child psychology. The President, after hearing the parties, if he/she believes that the direct examination of the minor cannot harm the serenity of the witness, orders that the deposition continue in the forms provided for in the previous paragraphs”; “4-bis. If a party requests it or if the president deems it necessary, the procedures referred to in article 398, paragraph 5-bis apply”; “4-ter. When proceeding for the crimes referred to in articles 572, 600, 600 bis, 600 ter, 600 quater, 600 quinquies, 601, 602, 609 bis, 609 ter, 609 quater, 609 octies and 612 bis of the penal code, the examination of the minor victim of the crime or of the mentally ill adult victim of the crime is carried out, at his request or that of his defender, through the use of a mirror glass together with an intercom system”. Therefore, in the preliminary investigations and during the trial, the judge can establish particular times, places and methods for the protected hearing such as those of the “incidente probatorio”. And then, the minor may not be present in the courtroom and be heard in a protected place without the presence of the alleged author and defenders who will listen from a connected location and ask questions to the Judge via video intercom. The evidence thus acquired is no longer repeated, save in exceptional case (article 190 bis, paragraph 1 and 1 bis of the criminal procedure code).

Please see also answer to question 17 b., 19 a. and 19 c.

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)

The national legal system provides a whole series of guarantees and protection for minors who are victims of sexual abuse; among these, there is the use of audiovisual and phonograph equipment as required by art. 351 1-quater and art. 362 1-quater of the criminal procedure code provides that the Judicial Police and the public prosecutor must give notice to “the person called upon to provide summary information (...) has the right to obtain, upon request, that the statements made are documented by phonographic reproduction, save for the contingent unavailability of tools of reproduction or technical personnel”. According to art. 357 code of criminal procedure "Documentation of judicial police activity" (3-bis. When the investigations concern one of the crimes referred to in article 407, paragraph 2, letter a), or when the person informed of the facts requests it, the documentation of the information referred to in paragraph 2, letter c), we also proceed by means of phonographic reproduction by means of suitable technical instruments by the judicial police, except for the contingent unavailability of reproduction instruments or technical personnel; 3-ter The statements of a minor, mentally ill or in conditions of particular vulnerability are documented in full, under penalty of unusability, with audiovisual or phonographic means of reproduction, unless there is a contingent unavailability of reproduction tools or technical personnel and there are particular reasons of urgency that do not allow the deed to be postponed; 3-quater the transcription of the audiovisual or phonographic reproduction referred to in paragraphs 3-bis and 3-ter is ordered only if absolutely indispensable and can be carried out by the judicial police).

According to article 398, paragraph 5-bis, “Decisions on the request for incidente probatorio”, of the criminal procedure code provides that in case of investigations regarding child sexual abuse offences “the witnesses’ statements shall be integrally documented by means of audio or audiovisual recording. If there is no availability of recording tools or technical staff, the expert report or the technical consultancy shall be adopted. The questioning shall be recorded in summary form. The transcripts of the recording shall be ordered only upon request of the parties”. Article 498 paragraph 4bis of the criminal procedure code extends these arrangements to the trial stage as well.

See the rest of the answer in the attachment.

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

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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)

The Italian legal system establishes that the statements of the minor made during the investigation phases in the protected hearing, under article 398 paragraph 5bis of the criminal procedure code, form evidence for the trial and therefore the rule is that the minor in these cases does not have to be physically present in the courtrooms during the trial, as specified by article 190-bis of the criminal procedure code. Remote hearing is also provided. In order to avoid any further contact between a child victim of sexual abuse and the perpetrator of the crime, the examination of the minor, if it is deemed necessary by the judge, during the trial, can be carried out through the use of mirror glass together with an intercom system (article 498 paragraph 4 ter of the criminal procedure code).

Please see answer given to question 17 b., 19 f., 20 a.

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

c. [is there any difference in the scope of the application of this requirement based on the child's age?](#)<sup>[57]</sup>

Please provide details.

[57] *Ibid.*, Recommendation 60

- Yes  
 No

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

With reference to the previously mentioned law, the provisions apply to all minors under the age of 18 (please see answer to question 20b).

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)

Article 392 of the Criminal Procedure Code underlines how, during the preliminary investigations the Public Prosecutor, the person under investigation or the offended person can ask the Judge for Preliminary Investigations to proceed with the “incidente probatorio” in order to collect the testimony of the offended person, both a minor and an adult, who is in conditions of particular vulnerability in proceedings for sexual offenses and against the person (“1-bis. In the proceedings for the crimes referred to in articles 572, 600, 600 bis, 600 ter and 600 quater, even if relating to pornographic material referred to in article 600 quater 1, 600 quinquies, 601, 602, 609 bis, 609 quater, 609 quinquies, 609 octies, 609 undecies and 612 bis of the penal code, the public prosecutor, also at the request of the injured party, or the person under investigation can request that the testimony be taken with probative evidence of a minor or of the injured person of legal age, even outside the hypotheses envisaged by paragraph 1. In any case, when the injured person is in a particularly vulnerable condition, the public prosecutor, even at the request of the same, or the person subjected to the investigations may request that the taking of his testimony be proceeded with probative evidence”).

Regarding the possibility of video recordings of the child victims being admitted as evidence in the trial, reference is always made to the article 398, paragraph 5-bis of the criminal procedure code, which states the need to fully document the taking of evidence by providing phonographic and audiovisual reproductions as well as written reports, in case of investigations involving child sexual abuse offences, in the course of the aforementioned “incidente probatorio” (“witness statements must be fully documented by phonographic or audiovisual means of reproduction. When there is an unavailability of reproduction tools or technical personnel, the forms of expertise or technical advice are provided. A summary report of the interrogation is also drawn up. The transcription of the reproduction is provided only if requested by the parties”).

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

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

[59] *Ibid.*, Recommendation 48

According to article 362 of the criminal procedure code, paragraph 1-bis (“assumption of information”) when the public prosecutor interviews people who can report circumstances useful to the investigation, in case of a particularly “vulnerable offended person”, he/she ensures that the victim “does not have contact with the person under investigation”.

During the course of the criminal proceedings, the protection order against family abuse (articles 342-bis, 342-ter of the Civil Code) and the precautionary measure of removal from the family home and prohibition to approach the places frequented by the offended person (articles 282-bis and 282-ter of the Code of Criminal Procedure) serve to prevent the child victim of abuse from contact with the perpetrator of sexual violence (please see answer to question 7 c).

In addition, article 398 paragraph 5 bis, with regards to “protected hearing” of the child, and article 498 paragraph 4 bis and 4 ter of the Code of Criminal Procedure, with regards to the testimony of the child during the trial, provides measures that can avoid direct contact between the child and the alleged perpetrator of violence and abuse (please see answer to question 19).

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)

In the national legal system, the alleged perpetrator has the right, but not the duty, to take part in all stages of the trial, and then it may happen that the child's testimony takes place without the presence of the alleged offender. According to article 362 of the criminal procedure code, paragraph 1-bis ("assumption of information") when the public prosecutor interviews people who can report circumstances useful to the investigation, in case of a particularly "vulnerable offended person", he/she ensures that the victim "does not have contact with the person under investigation".

In any case, it must be remembered that the provisions regarding the child's testimony, mentioned above, ensure that the minor may be heard in ways and places where the presumed sex offender and his/her lawyer are not directly present in the same room (please see answer to question 20 e. and article 398 paragraph 5-bis and 498 paragraph 4-bis and 4-ter of the criminal procedure code).

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*

Please see answer to question 19 f., 20 e. and 20 f. and article 398 paragraph 5-bis and 498 paragraph 4-bis and 4-ter of the criminal procedure code.

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

With reference to the violation of the procedural provisions, concerning the prohibition of publication and dissemination of images suitable for allowing the identification of the minor involved in the process, it must be remembered that the fact is punishable by law pursuant to art. 684 of the Criminal Code "Arbitrary publication of acts of a criminal proceeding", which punishes with the penalty of arrest up to thirty days or

with a fine from Euro 51 to 258, "anyone who publishes, in whole or in part, even for summary or by way of information, acts or documents of a criminal proceeding, the publication of which is prohibited by law". In order to protect the child and other non-offending members of the family from the disclosure of information, Italian legal system provides in paragraph 6 of the art. 114 of the code of criminal procedure "Prohibition on publication of documents and pictures" the prohibition of the "publication of personal data and pictures of witnesses, victims or injured persons who are under age is prohibited until they become of age. The Juvenile Court, acting in the exclusive interest of the minor, or the minor, who has turned sixteen, may allow the publication of such material. The publication of elements that, even indirectly, may lead to the identification of such minors is also forbidden".

The violation of the ban on publication constitutes a disciplinary offense, without prejudice to the sanctions provided for by the criminal law, when the fact is committed by "persons exercising a profession for which a state qualification is required", as, precisely, in the case of journalists (art. 114 and 115 of the Criminal Procedure Code).

Article 13 of the Decree of the President of Republic n.448/1988 "Approval of provisions on the criminal procedures applicable to juvenile offenders", provides for the prohibition of the publication of the name and images or other information that could directly or indirectly lead to the identification of a child involved in criminal proceedings. The Privacy Code (Article 50 of Legislative Decree No. 196, June 30, 2003, as amended) extended this prohibition to judicial proceedings in matters other than criminal matters and provided that violation of the prohibition is criminally punishable (under Article 684 of the Criminal Code). A special safeguard is provided for victims of particularly serious crimes (sexual violence, sexual abuse and sexual exploitation). In such cases, anyone who divulges -including through mass media- the image of the victim, without the victim's consent, shall be criminally punished (art. 734 bis of the Criminal Code - "Disclosure of personal details or image of person offended by acts of sexual violence").

Moreover, article 472 of the criminal procedure code states that: "The trials concerning the crimes provided for in Articles 600, 600-bis, 600-ter, 600-quinquies, 601, 602, 609-bis, 609-ter and 609-octies of the Criminal Code shall be held in open court. Nevertheless, the victim may request that the trial, or parts of it, be held in closed court. The trial shall always be held in closed court when the victim is a minor. In such proceedings questions on the victim's private life or sexuality are not allowed unless they are necessary for reconstruction of the criminal act" and "The court may order that the examination of minors be held in closed court".

Furthermore, in this case, the prohibition of filming or broadcasting is also foreseen by article 147, paragraph 4, disp. att. Code of Criminal Procedure.

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

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

Italian legal system generally provides for free legal assistance to child victims of sexual abuse, not limited to those who have suffered violence from someone recognized in a clear position of trust, authority or influence.

With reference to criminal proceedings, according to the provisions of Articles 74 et seq. of the Presidential Decree 30 May 2002, no. 115: "the person offended by one of the crimes listed therein can be admitted to legal aid also in derogation of the income limits set by the same article" and art. 76, paragraph 4-ter specifies the conditions and the following admitted categories: "(...) where committed to the detriment of minors, by the crimes referred to in articles 600, 600-bis, 600-ter, 600-quinquies, 601, 602, 609-quinquies and 609-undecies of the penal code, can be admitted to legal aid also in derogation the income limits established by this decree".

Furthermore, in reference to this, sentence n. 52822 Court of Cassation pen., section IV, 23 November 2018 affirmed the right of the person offended by one of the crimes indicated above to benefit from legal aid for the sole fact of holding said qualification, regardless of their income conditions.

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

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

In the context of civil proceedings, the Code of Civil Procedure, with respect to the procedural capacity of minors under the age of 18, establishes that they cannot stand trial unless they are represented, assisted or authorized in accordance with the rules governing their capacity, thus through their parents, guardian or special curator previously appointed (Articles 75, 78, 79 and 80 Code of Civil Procedure and Articles 320 and 321 Civil Code) by the Judicial Authority. If the person who is entitled to representation or assistance (parent or guardian of the child) is missing, or there are reasons of urgency, the Civil Judicial Authority may appoint a special curator to represent or assist them until the person who is entitled to representation or assistance takes over. A special curator shall also be appointed to the represented person when there is a conflict of interest with the representative (Article 78 Code of Civil Procedure). Pursuant to art. 473 bis 8 Code of civil procedure, "the judge appoints the special guardian of the minor, also ex officio and under penalty of nullity of the procedural documents in cases where the public prosecutor has requested the forfeiture of parental responsibility of both parents, or in which one of the parents has requested the forfeiture of the other; in case of adoption of measures pursuant to article 403 of the Civil Code or assignment of the minor pursuant to articles 2 and following of law 4 May 1983, n. 184; in the event that a situation of prejudice for the minor comes to light from the facts that emerged in the proceeding, such as to preclude adequate representation in the proceedings by both parents; when a fourteen-year-old minor requests it. In any case, the judge can appoint a special trustee when the parents appear temporarily inadequate to represent the minor's interests for serious reasons. The provision of appointment of the trustee must be succinctly motivated. Articles 78, 79 and 80 apply. The judge can assign to the special guardian of the minor, with the provision of appointment or with a non-challengeable provision adopted during the course of the trial, specific powers of substantial representation. The special curator of the minor proceeds to hear him pursuant to article 315 bis, third paragraph, of the civil code, in compliance with the limits set out in article 473 bis 4. The minor who has reached fourteen years of age, the parents exercising parental responsibility, the guardian or the public prosecutor can ask the president of the court or the

proceeding judge, who decides with a non-challengeable decree, with a reasoned request, for the revocation of the guardian for serious defaults or because the conditions for his appointment”.

In criminal proceedings, the Code of Criminal Procedure provides (art. 77 Code of Criminal Procedure) that in cases of urgency, the Public Prosecutor, in the absence of the person who is responsible for the representation or assistance of the injured party or if there is a conflict of interest between the two (for example, in cases where the offender is the parent of the minor), may ask the judge to appoint a special curator; the Public Prosecutor, in cases of urgency, may also bring the civil action himself in the interest of the injured person who is incapacitated by reason of insanity or minor age, pending the intervention of the person to whom the representation or assistance belongs, or of the special curator. Article 90 of the Code of Criminal Procedure provides for the rights and powers of the crime victim in the context of the trial, specifying that if the victim is a minor, these rights are exercised as provided in Article 120 and Article 121 of the Criminal Code, e.g., through a special curator.

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

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

[65] *Ibid.*, Recommendation 52

The Judicial Authority dealing with the child victim of sexual abuse can make decisions from the moment the abuse occurs; these decisions, when a criminal justice decision is made, can remain the same or be modified due to the need of greater protection of the minor. These measures can be: removal from the family home, measures affecting parental responsibility, appointment of special guardians, intra- or extra-family foster care, adoption of the minor. Furthermore, it is important to underline that the pronouncement of the forfeiture of parental responsibility does not in any way affect the obligation of both parents to maintain dependent children in relation to their working capacity. In any case, regardless of the fate of the criminal proceedings, the support and assistance from the local social services, health services and the agencies or associations that operate and have taken care of the child victim of sexual abuse is continued.

Please see answers to question 7 c. and d., 8 and 9 a. and 9. b.

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