

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

Fields marked with * are mandatory.

Introduction

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

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

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

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

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

The notion of the circle of trust

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

The previous and current monitoring rounds on the circle of trust

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

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

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

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

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

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

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

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

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

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

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

9. In addition, Parties are kindly requested to:

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

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

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

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

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

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

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

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

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

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

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

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

IDENTIFICATION OF THE RESPONDER

* Name of the Party responding or concerned by your response

Poland

* Name of the contact person/coordinator

[REDACTED]

* Email address of the contact person/coordinator

[REDACTED]

KEY NOTIONS Question 1. Does your national legal framework:

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

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

- Yes
 No

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

Article 199 [Sexual exploitation of the relationship of dependency or vulnerable position]

§ 1. Anyone who, by abusing a relationship of dependency or taking advantage of a vulnerable position, causes another person to engage in a sexual intercourse or to submit to, or to perform, another sexual act, shall be liable to imprisonment for a maximum term of three years.

§ 2. If the act specified in § 1 was committed to the detriment of a minor, the offender shall be liable to imprisonment for a term going between 3 months and 5 years.

§ 3. The penalty specified in § 2 shall be imposed on anyone who engages in a sexual intercourse or another sexual act with a minor, or who causes a minor to submit to or to perform such an act by an abuse of his/her trust or by giving or promising him/her a pecuniary or personal benefit in return.

It should be noted that in Polish criminal law, the minors under the age of 15 are absolutely protected under Article 200(1) of the Penal Code, regardless of the factual situation and the relationship with the perpetrator. Therefore, the provision of Article 199 § 2 and 3 of the Penal Code will be the basis for penalising the reprehensible behaviour of the perpetrator indicated therein, when his act is directed at a minor aged between 15 and 18 years (the Court of Appeal in Poznań in its judgment of 22.12.2021 II AKa 214/21, LEX no. 3308407).

Article 200 § 1 stipulates that anyone who engages in a sexual intercourse or another sexual act with a minor under 15 years of age, or causes the minor to submit to or to perform such an act, shall be liable to imprisonment for a term going between 2 and 15 years.

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

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

[7] *Ibid.*, Recommendation 2

- Yes
 No

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

With respect to question 1b, again reference should be made to Article 199 §§ 1 to 3 and Article 200 § 1 of the Criminal Code, as described above.

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

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

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

- Yes
 No

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

Polish criminal law does not explicitly provide for a list of such persons. This issue is each time reviewed by the court in the course of criminal proceedings.

Abuse of trust occurs when the perpetrator, by virtue of his profession, his function (team leader, family assistant), social position (a significant, influential person, enjoying universal respect and authority) or a special arrangement in a given family (a cohabitant of one of the parents, the so-called friend of the house), takes advantage of the trust placed in him by the minor victim and undertakes certain sexual acts towards him/her, which she agrees to or does not dare to oppose, because she trusts the perpetrator that what she is doing is not wrong, that he will not harm her (V. Konarska-Wrzosek [w:] A. Lach, J. Lachowski, T. Oczkowski, I. Zgoliński, A. Ziółkowska, V. Konarska-Wrzosek, The Penal Code Commentary, LEX/el. 2023, art. 199).

Abuse of trust, as provided for in Article 199(3) of the Penal Code, is understood as the use of the minor's belief that the perpetrator can be trusted, his intentions can be believed, and such behaviour of the perpetrator is the only reason why the minor consented to sexual intercourse or other sexual activity or to perform such an act (cf. the justification for the judgment of the Supreme Court of 2 June 2010, V KK 369 /09, OSNKW 2010, No. 9, item 80).

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

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

[9] *Ibid*

- Yes
 No

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

See the answer to point 1c.

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

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

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

[10] *Ibid.*, Recommendation 6

- Yes
 No

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

Article 199 §§ 1 to 3 of the Criminal Code, as described above, which sanctions the offences of sexual exploitation of a relationship of dependency or vulnerable position, by its scope covers all victims of such offences. Article art. 200 § 1 of the Criminal Code covers victims under 15 years old.

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

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

[1] *Ibid.*, Recommendation 5

- Yes
 No

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

Polish criminal law affords protection to all children under 18 years of age (Article 199 §§ 1 to 3 of the Criminal Code). This protection is enhanced for children under 15 years of age, i.e. below the age of consent (Article 200 § 1 of the Criminal Code).

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

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

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

[12] *Ibid.*, Recommendation 1

- Yes
 No

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

Regarding question 3a, reference should be made to the answer given in questions 1 a to b.

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

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

[13] *Ibid.*, Recommendation 7

- Yes
 No

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

Polish criminal law does not contain separate provisions in this regard. General provisions relating to sexual offences (Articles 197 to 204 of the Criminal Code) apply. Those provisions protect all persons.

It must be add that in polish law according to the article 191 § 1 of the Criminal Code, Whoever, by violence, unlawful threat, or by abuse of a relationship of dependence or exploitation of a critical position, induces another person to enter into a marriage or a union that corresponds to a marriage in the religious or cultural circle of the perpetrator, shall be punished by imprisonment from 3 months to 5 years.

§ 2. The same punishment shall be imposed on anyone who, for the purpose of committing the crime specified in § 1, using deception or abusing a relationship of dependence or exploiting a critical position, induces another person to leave the territory of the Republic of Poland.

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

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

[14] *Ibid.*, Recommendation 8

- Yes
 No

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

Under Polish criminal law, i.e., Article 199 of the Criminal Code, the use of coercion, force or threat does not constitute the elements of the offence of causing another person to engage in a sexual intercourse or to submit to or perform another sexual act while:

- abusing a relationship of dependency (§ 1),
- taking advantage of a vulnerable position (§ 1)
- abusing trust (§ 3),
- giving or promising a pecuniary or personal benefit (§ 3)

Nor does the use of force, coercion or threat constitute the elements of the offence under Article 200 § 1 of the Criminal Code.

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

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

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

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

[15] *Ibid.*, Recommendation 9

- Yes
 No

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

The scope of the offences under Article 199 § 2 of the Criminal Code in conjunction with Article 199 § 1 of the Criminal Code, Article 199 § 3 of the Criminal Code, and Article 200 § 1 of the Criminal Code encompasses “other sexual acts.” The Criminal Chamber of the Supreme Court, in its decision of 8 September 2016, III CC 292/16, ruled that “another sexual act also encompasses situations in which the offender, aiming at arousal or satisfaction of his/her sexual urge, not only touches the genitals of the victim (even if only through underwear or clothing), but also undertakes another act in contact with the victim’s body (e.g., fondling, kissing).

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

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

[16] *Ibid.*, Recommendation 11

- Yes
 No

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

Polish criminal law provisions criminalising offences against sexual freedom and decency (Articles 197 to 204 of the Criminal Code) do not differentiate the situation of persons based on their sexual orientation.

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

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

[17] *Ibid.*, Recommendation 12

- Yes
 No

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

As indicated above, Polish criminal law provisions against sexual freedom and decency (Articles 197 to 204 of the Criminal Code) do not differentiate the situation of persons based on their sexual orientation.

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

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

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

[18] *Ibid.*, Recommendation 57

- Yes
 No

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

Offences against sexual freedom and decency, including those specified in Articles 199 §§ 1 to 3 of the Criminal Code, Article 200 § 1 of the Criminal Code, are prosecuted ex officio, i.e., without the need for the victim or his/her legal representative to file an appropriate request.

The Article 10 § 1 of the Code of Criminal Procedure stipules: The authority established for the prosecution of crimes is obligated to initiate and conducting the preliminary proceedings, and the public prosecutor is also obligated to filing and supporting a charge - for an act prosecuted ex officio.

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

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

[19] *Ibid*

- Yes
 No

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

As already indicated above, offences against sexual freedom and decency, including those specified in Articles 199 §§ 1 to 3 of the Criminal Code and 200 § 1 of the Criminal Code, are prosecuted ex officio, i.e. without the need for the victim or his/her legal representative to file an appropriate request.

If the offender is the victim's relative or partner, the victim has the right to refuse to testify, but this does not release law enforcement and judicial authorities from the obligation to prosecute. However, this can result in the absence of evidence of the offence (for example, if the victim's testimony is the only evidence).

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

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

[20] *Ibid.*, Recommendation 56

- Yes
 No

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

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

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

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

- Yes
 No

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

Children under the age of criminal responsibility are referred to as juveniles. The Act of 9 June 2022 on the Support and Rehabilitation of Juveniles apply to juveniles.

The provisions of the Act apply in the following situations:

- 1) proceedings concerning delinquent acts - against persons who have attained 10 years of age as a minimum and have not attained the age of majority;
- 2) proceedings concerning punishable acts - against persons who committed such an act after having attained 13 years of age but before attaining 17 years of age;

A juvenile may be subject to educational measures, a therapeutic measure and a corrective measure.

Educational measures include:

- 1) admonition;
- 2) requirement to behave in a certain way, in particular, to redress the harm caused in whole or in part, to redress moral loss, to perform community service, to apologize to the victim, to take up education or work, to participate in appropriate educational classes, therapeutic classes, especially addiction therapy, psychotherapy, psychoeducation, or training, to refrain from staying in certain environments or places, to refrain from contacting the victim or other persons in a certain manner, or to refrain from using a psychoactive substance;
- 3) responsible supervision of the parents or guardian of the juvenile;
- 4) supervision of a social organisation, including a non-governmental organisation whose statutory purpose is to work with juveniles in terms of education, therapy or training, to prevent minors from becoming delinquent or to assist in the social readaptation of minors, an employer or a trustworthy person providing surety for a minor;
- 5) supervision of a probation officer;
- 6) referral to a probation centre, as well as to a social organisation, including a non-governmental organisation or institution engaged in work with juveniles in terms of education, therapy or training, upon prior agreement with the organisation or institution;
- 7) disqualification from driving any vehicle or a certain type of vehicle;
- 8) forfeiture of items derived from a prohibited act, forfeiture of items that served or were intended to commit a prohibited act, forfeiture of the equivalent of items derived from a prohibited act or items that served or were intended to commit a prohibited act, forfeiture of items that are prohibited from manufacture, possession, trading, transmitting, carrying, transporting or storing, forfeiture of an enterprise or its equivalent, forfeiture of financial gain or its equivalent, or forfeiture of items of prohibited acts;
- 9) placement in a specialized professional foster family that has been trained and prepared to take care of a juvenile, hereinafter referred to as "professional foster family";
- 10) placement in a youth educational centre;
- 11) placement in a district educational centre.

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

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

[22] Question included for capacity-building purposes

- Yes
 No

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

The age of criminal responsibility under Polish law is 17 (Article 10 § 1 of the Criminal Code).

Pursuant to Article 10 § 1 of the Criminal Code, a person who has attained 17 years of age and commits a prohibited act is subject to the principles of liability set out therein.

A juvenile who has attained 15 years of age and commits certain serious prohibited acts provided for in Article 148 §§ 1, 2 or 3 (homicide), Article 156 §§ 1 or 3 (causing grievous bodily harm), Article 197 §§ 1, 3, 4 or 5 (rape), Article 280 (robbery) may be subject to the principles of liability set out in the Criminal Code if this is deemed appropriate given the circumstances of the case and the degree of the offender's development, characteristics and personal situation, and in particular if previously applied educational or corrective measures have proved ineffective (Article 10 § 2 of the Criminal Code).

A juvenile who, having attained 14 years of age and before attaining 15 years of age, commits a prohibited act specified in Article 148 §§ 2 or 3, may be subject to the principles of liability set out in the Criminal Code if this is deemed appropriate given the circumstances of the case and the degree of the offender's development, characteristics and personal situation, and if there is a reasonable suspicion that the use of educational or corrective measures cannot ensure the rehabilitation of the juvenile (Article 10 § 2 a of the Criminal Code).

Article 148 § 2. Anyone who kills a human:

- 1) with particular cruelty,
- 2) in connection with hostage-taking, rape or robbery,
- 3) for motivation deserving particular condemnation,
- 4) with the use of explosives,

shall be liable to imprisonment for a minimum term of 15 years or life imprisonment. 109

§ 3. The penalty specified in § 2 shall be imposed on a person who kills more than one person with a single act or has previously been convicted for homicide by a final and non-appealable judgment, or who has killed a public official during or in connection with the performance of his official duties related to the protection of people's safety or the protection of public safety or order.

In the case set out in Article 10 § 2 of the Criminal Code, the imposed sentence may not exceed two-thirds of the maximum sentence prescribed for the offence attributed to the offender, which is not punishable by life imprisonment. In the cases specified in Article 10 § 2 and 2a of the Criminal Code, the court may apply extraordinary mitigation of penalty.

If an offender commits a prohibited act after having attained 17 years of age, but before attaining 18 years of age, the court shall, instead of a penalty, apply educational, therapeutic or corrective measures prescribed for juveniles if it is deemed appropriate given the circumstances of the case and the degree of the offender's development, characteristics and personal situation.

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

CHILD VICTIMS' RIGHT TO PROTECTION AND PARENTAL RIGHTS

Question 7. Does your national legal framework:

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

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

- Yes
 No

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

In any situation, a child can report or talk to a school counsellor, teacher, police officer. In addition, the Act of 28 July 2023 introduced new solutions that will take effect as of 15 February 2024.

Consequently:

- 1) the governing body of the educational system unit referred to in Articles 2.1 to 2.8 of the Education Law Act and other educational, welfare, rehabilitation, religious, artistic, medical, recreational, sports or interest development facility attended by minors or in which minors reside or may reside;
- 2) organiser of educational, welfare, rehabilitative, religious, artistic, medical, recreational, sports activities or activities related to the development of interests by minors, will be required to put in place standards for the protection of minors.

In particular, the standards, in a manner adapted to the nature and type of facility or activity, will need to specify:

- 1) principles ensuring safe relations between a minor and the staff of the facility or organiser, in particular, prohibited types of behaviour towards minors;
- 2) principles and procedure for intervening in situations where a minor is suspected or known to be harmed;
- 3) procedures and persons responsible for filing notices of suspected crimes against a minor, notifying the guardianship court and, in the case of institutions that have such powers, persons responsible for initiating the "Blue Cards" procedure;
- 4) persons responsible for receiving reports of incidents threatening the minor and providing support;
- 5) method of documenting and principles for storing disclosed or reported incidents or events that threaten the welfare of a minor;
- 6) principles for establishing a plan to support a minor after the disclosure of 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?^[24] Please provide details.

[24] *Ibid*

- Yes
 No

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

See the answer to question 7a.

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

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

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

- Yes
 No

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

Criminal procedure:

If the evidence indicates a high probability that the suspect has committed an offence, it is possible to apply a preventive measure against him/her, in order to secure the proper course of the proceedings, and exceptionally to prevent the accused from committing a new, serious offence.

Preventive measures include:

- a) pre-trial detention;
- b) if there are grounds for applying pre-trial detention with regard to a person suspected of an offence committed with the use of violence or an illegal threat against a relative or partner or another household member, Police supervision may be ordered instead of pre-trial detention, provided that within the prescribed period of time the accused leaves the residential unit occupied together with the victim and indicates his/her place of stay.
- b) ordering the accused charged with a violent offence committed to the detriment of a household member to periodically leave the unit occupied jointly with the victim and its immediate surroundings or prohibiting the accused from approaching the victim at a specified distance, if there is a reasonable fear that the accused will commit another violent offence against such person, especially if he/she has threatened to do so.

Procedure outside criminal proceedings:

Pursuant to the Domestic Violence Act, "domestic violence" should be understood as a single or repeated intentional act or omission, using physical, psychological or economic advantage, violating the rights or personal interests of the person suffering domestic violence, including violating his/her dignity, bodily

integrity or freedom, including sexual freedom.

If a perpetrator of domestic violence occupying a jointly occupied unit by his/her conduct involving domestic violence makes it particularly burdensome for the victim to live together, the latter may demand that the court require the perpetrator to leave the jointly occupied unit and its immediate surroundings or prohibit the perpetrator from approaching the unit and its immediate surroundings (Article 11a of the Act on Prevention of Domestic Violence).

A court order is effective and enforceable as soon as it is handed down. The court should examine the case within 30 days. However, a victim of violence (his/her legal representative in the case of a minor) filing an application with the court may demand that he/she be granted security and that the perpetrator of domestic violence be ordered to leave the unit pending proceedings. A motion for injunction shall be examined without delay, but no later than three days of being received by the court.

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

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

[26] *Ibid.*, Recommendation 27

- Yes
 No

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

Protection of a child should be a priority, and measures should always be taken that are appropriate to the situation and that allow for this objective to be achieved:

1. If a child's life or health is endangered due to domestic violence, the social worker shall provide protection to the child by placing the child with another non-cohabitating relative or partner that guarantees the child's safety and proper care, in a foster family, a family orphanage or institutional foster care. This decision is made by the social worker together with a police officer, as well as a doctor, paramedic or nurse. The social worker shall notify the guardianship court about protection granted to the child immediately, no later than within 24 hours, and the court shall immediately initiate guardianship proceedings. In the course of such proceedings, the court shall immediately, after hearing the social worker, but no later than within 24 hours of hearing the same, issue a decision on the placement of the child in foster care or on the return of the child to the child's parents, legal or de facto guardians. (Article 12 a of the Act on Prevention of Domestic Violence and 579 of the Civil Procedure Code).

If violence is perpetrated by one of the parents or guardians and there is a threat to the life or health of the victim of violence (including a child), a police officer has the right to order the perpetrator of violence to immediately leave the jointly occupied unit and its immediate surroundings (such order to be valid for 14 days) and issue a restraining order to stay away from the jointly occupied unit and its immediate surroundings. Such order is immediately enforceable and the person is removed from the house. However, the Police must notify the guardianship court that the order and restraining order have been issued, and the court shall verify the child's situation. The order and restraining order can be extended if an application is

filed with the court under Article 11a of the Act on Prevention of Domestic Violence with an application for security.

2. If the child's best interests are at risk, the guardianship court may, among other things:

- 1) require the parents and the minor to behave in a certain way, in particular to work with a family assistant, carry out other forms of work with the family, refer the minor to a day care centre, as specified in the regulations on family support and the system of foster care, or refer the parents to a facility or specialist dealing with family therapy, counselling or providing other appropriate assistance to the family, while indicating how to monitor the implementation of the orders issued;
- 2) submit the exercise of parental authority to the permanent supervision of a probation officer;
- 3) refer the minor to a facility exercising partial custody over children;
- 4) order the placement of a minor in a foster family, a family foster home or in institutional foster care, or temporarily entrust spouses or a person who does not meet the conditions for foster families to act as a foster family in terms of the necessary training, as specified in the regulations on family support and the foster care system, or order the placement of a minor in an institution for care and treatment, in a nursing and care facility or in a therapeutic rehabilitation facility.

The guardianship court has a broad set of options and should choose a measure that will protect the child from harm. The Act does not specify in advance the duration of placement outside the family environment. It should be applied as long as the child has no safe conditions guaranteed.

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

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

[27] *Ibid.*, Recommendation 25

- Yes
 No

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

Art. 304. Report of an offence.

§ 1. Anyone who has knowledge that an offence prosecuted ex officio was committed has a citizen's duty to notify thereof the public prosecutor or the Police. (...)

§ 2. Public and local government institutions that, in connection with their activity, learn of the perpetration of an offence prosecuted ex officio, immediately report the same to the public prosecutor or the Police and, until the arrival of the authority appointed to prosecute offences or the issue by this authority of an appropriate order, undertake actions necessary to prevent the loss of traces and evidence.

The Civil Procedure Code

Art. 572. Notification to the family and guardianship court.

§ 1. Anyone who is aware of an event which could give rise to proceedings initiated ex officio shall notify the family and guardianship court thereof.

§ 2. The obligation referred to in § 1 rests mainly on register offices, courts, public prosecutors, notaries, court enforcement officers, government and local authorities, the Police, educational institutions, social workers and organisations and institutions which take care of children or mentally ill persons.

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

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 8. Does your national legal framework clearly distinguish:

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

[28] *Ibid.*, Recommendation 32

- Yes
 No

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

The issue of suspension and deprivation of parental authority is regulated by the Family and Guardianship Code.

In the event of a passing obstacle to the exercise of parental authority the guardianship court may rule on its suspension. The suspension shall be lifted when the reason for its application ceases to exist (Article 110 of the Family and Guardianship Code)

If parental authority cannot be exercised due to a permanent obstacle, or if the parents abuse parental authority or grossly neglect their duties towards the child, the guardianship court shall deprive the parents of parental authority. Deprivation of parental authority can also be ordered against one parent. The court may deprive parents of parental authority if, despite the assistance provided, the reasons for the application of Article 109 § 2(5) have not ceased, and in particular, if the parents are permanently disinterested in the child. If the reason that was the basis for deprivation of parental authority ceases to exist, the guardianship court may restore parental authority. (Article 111 of the Family and Guardianship Code).

In addition, in the case of an offence committed to the detriment of a minor, in concert with a minor or under circumstances that may indicate delinquency of a minor or an indecent influence on him/her, the court, and in pre-trial proceedings the public prosecutor, shall notify the family court in order to consider the measures provided for in the provisions on juvenile proceedings and the Family and Guardianship Code (Article 23 of the Criminal Procedure Code)

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

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 9. Does your national legal framework provide for:

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

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

- Yes
 No

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

There is no automatism in the above-mentioned circumstances. Upon application or ex officio, the court may order the suspension of parental authority, or prohibit contact in the circumstances specified in the question.

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

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

[30] *Ibid*

- Yes
 No

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

There is no automatism in the above-mentioned circumstances. Upon application or ex officio, the court may order the deprivation of parental authority against parents convicted of sexual exploitation of a child. Conviction for such an offence meets the conditions for deprivation of parental authority - i.e. gross abuse of parental authority

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

GUARANTEES OF PROTECTION FOR PERSONS REPORTING SUSPECTED OFFENCES

Question 10.

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

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

Pursuant to Article 234 of the Criminal Code, anyone who, before an authority appointed for prosecuting or deciding cases involving an offence, including fiscal offence, petty offence, fiscal petty offence or disciplinary misconduct, falsely accuses another person of committing such criminal acts or disciplinary misconduct, shall be liable to imprisonment for a term going between 3 months and 5 years. However, it should be emphasized that this offence can only be committed intentionally i.e. the perpetrator must be aware that the accusation is false. Consequently, a person who makes a notification of a suspected offence, but does not act with the intent to make a false accusation, shall not be subject to criminal liability.

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

ASSISTANCE TO THIRD PARTIES Question 11.

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

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

In Poland, there is the possibility of providing therapeutic assistance, especially emergency psychological care, to people who have been harmed by crime, witnesses and their relatives or partners under the Justice Fund which is administered by the Minister of Justice.

One of the main tasks of the Fund for Victims' Assistance and Post-Penitentiary Assistance - the Justice Fund is to provide free assistance to victims of crime, witnesses and their relatives or partners. Victims of crime and their relatives or partners may approach one of over 300 assistance centres that make up the Victims' Assistance Network across the country. A list of addresses of the points making up the aforementioned Network is available on the Justice Fund website:

<https://www.funduszsprawiedliwosci.gov.pl/pl/znajdz-osrodek-pomocy/>

The Justice Fund also operates a 24-hour Victims Helpline +48 222 309 900, through which victims of crime, witnesses and their relatives or partners can get quick legal and psychological assistance.

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

ASSISTANCE TO THIRD PARTIES Question 12.

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

[33] *Ibid.*, Recommendation 31

Assistance under the Justice Fund is provided by professionals, i.e. psychologists, psychotherapists, psychiatrists and lawyers, who guarantee anonymity and discretion to any person seeking assistance, as well as to witnesses and relatives or partners of the victim. Psychological assistance can only be provided by a person authorised under special laws to practice as a psychologist, psychotherapist, psychiatrist.

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

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

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

Please provide details.

[34] *Ibid.*, Recommendation 33

- Yes
 No

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

The current regulations in Poland apply to all convicted persons.

Pursuant to the Act of 24 May 2000, the National Criminal Register (NCR) was established, which collects, among other things, data on persons with final and non-appealable convictions, including those convicted of sexual exploitation of children.

Based on the Act of 13 May 2016 on Countering the Threat of Sexual Crime, a Sex Offender Register (RSPTS) was established, which consists of three separate databases:

1. Register with restricted access;
2. Public Register;
3. Register of persons with respect to whom the State Commission for the prevention of sexual abuse of minors under 15 years of age has issued a decision on entry in the Register.

The Register collects information on convicted offenders for offences against sexual freedom listed in Chapter XXV of the Criminal Code, excluding those specified therein.

The Acts on the National Criminal Register and Sex Offender Register grant the entities listed therein the authority to obtain certain information.

The Sex Offender Register Act imposes obligations on a person convicted of crimes against sexual freedom whose data are included in the Register, such as the need to report the actual residence address and any change in it.

Data from the Public Register and the Register of persons with respect to whom the State Commission for the prevention of sexual abuse of minors under 15 years of age has issued a decision on entry in the Register is available without restriction.

Employers or other organisers in the field of activities related to the upbringing, education, recreation, treatment or care of minors, before entering into an employment relationship with a person or before allowing a person to engage in such activities, are obliged to obtain information on whether the data of the person are

included in the Register with restricted access or in the Register of persons for whom the State Commission for the prevention of sexual abuse of minors under 15 years of age has issued a decision on entry in the Register.

The Police Commander-in-Chief maintains a police sex crime threat map containing up-to-date information on places of particular risk for offences against sexual freedom listed in Chapter XXV of the Criminal Code (re. para. 13 of the Questionnaire).

Convicted persons accepted to serve imprisonment sentences for offences related to sexual exploitation of minors are verified for being entered in the National Sex Offender Register. This is an internal procedure for determining further directions of penitentiary and therapeutic interventions for the convicted person.

The provisions of the Act on the treatment of persons with mental disorders posing a threat to the life, health or sexual freedom of others may apply to persons convicted of offences against sexual freedom.

The Act concerns procedures for dealing with persons considered to be “posing a threat” thereunder. These procedures include:

indefinite preventive supervision - where there is a “high probability” of committing a criminal act, with the use of violence or threat of violence, against life, health or sexual freedom, with the maximum term being a minimum of 10 years or

indefinite compulsory therapy at the National Centre for the Prevention of Antisocial Behaviour - where there is a “very high probability” of committing a criminal act, with the use of violence or threat of violence, against life, health or sexual freedom, with the maximum term being a minimum of 10 years.

A person posing a threat to whom preventive supervision has been applied is required to inform the Police commander-in-chief exercising preventive supervision each time of a change of permanent residence, place of employment, forename or surname, and if the Police commander-in-chief so requests, also to provide information about the place of current and intended residence, as well as the dates and places of travel.

On the other hand, a person posing a threat placed in the Centre is subject to an appropriate therapeutic procedure aimed at improving his/her health and behaviour to the extent enabling him/her to function in society in a manner that does not pose a threat to the life, health or sexual freedom of others. The head of the Centre draws up an individual therapy plan for each person posing a threat placed in the Centre.

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

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

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

- Yes
 No

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

The Office sends information on convicted persons, including those convicted of sexual exploitation to other countries, on the basis of:

- Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L.2009.93.23);
- Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child

pornography, and replacing Council Framework Decision 2004/68/JHA;
- European Convention on Mutual Assistance in Criminal Matters;
- international agreements in accordance with their content, among others, the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

However, in response to inquiries or requests for purposes other than criminal proceedings, the information prepared may not disclose a foreign conviction for child sexual abuse (Article 14a of the National Criminal Register Act). The pending bill on the National Criminal Register (No. UC 108 on the list of legislative works of the Council of Ministers) proposes an amendment to disclose foreign convictions for the purposes of activities related to the upbringing, education, recreation, treatment or care of minors, data on convictions for offences against sexual freedom and decency, if the victim was a minor and such information was included in the submitted document.

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

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

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

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

- Yes
 No

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

The Criminal procedure Code

Article 249. § 1. Preventive measures may be ordered in order to ensure the correct course of proceedings and, exceptionally, in order to prevent the accused from committing a new serious offence. They may be ordered only if, according to the evidence already collected, it is highly probable that that the accused committed the offence.

§ 2. In preparatory proceedings, preventive measures may be ordered only against a person, who was presented with the charges.

(...)

§ 4. Preventive measures may be ordered up until the commencement of the sentence. This provision applies to the detention on remand only if the accused was sentenced to the penalty of imprisonment

Article 276. As a preventive measure, the accused may be suspended in the execution of his official or professional duties or ordered to refrain from a certain activity or from driving vehicles of a certain type or prohibited from participatin in public procurement procedures for the period of duration of the proceedings.

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

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

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

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

Yes

No

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

The provisions of the Sex Offender Register Act criminalize the failure of persons required to do so to report their actual address of residence or any change thereof. Persons who allow a person to work or engage in other activities related to the upbringing, education, recreation, treatment or care of minors without obtaining the information prescribed by the Act are also subject to criminal liability.

In addition, pursuant to Article 240 of the Criminal Code, whoever, having credible knowledge of the criminal preparation or attempt to commit or commission of a criminal act specified, among others, in Article 197 § 3 -5 (rape together with another person, against a minor under 15 years of age, against an ascendant, descendant, adoptee, adopter, brother or sister, rape resulting in the death of a human being), Article 198 (sexual exploitation due to insanity or vulnerability), Article 200 (sexual exploitation of a minor) fails to promptly notify the prosecuting authority, shall be punished by imprisonment for up to 3 years. At the same time, a person who has omitted to file a notification, having sufficient grounds to believe that the authority knows of a criminal act being prepared, attempted or committed, shall not commit an offence. Neither shall commit an offence a person who has prevented the commission of a prepared or attempted criminal act. A person who has omitted to report an offence for fear of criminal liability threatening himself/herself or his/her relative or partner shall not be subject to penalty.

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

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

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

Yes

No

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

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

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

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

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

None of the parents may represent a child:

- 1) in legal transactions between children under their parental authority;
- 2) in legal transactions between a child and one of the parents or his/her spouse, unless the legal transaction consists in a gratuitous benefit of the child or unless it concerns the child's dues from the other parent for maintenance and upbringing.

These provisions shall apply mutatis mutandis in the proceedings before the court.

For a child under parental authority who may not be represented by either parent, the guardianship court shall appoint a representative for the child (Articles 98 and 99 of the Family and Guardianship Code)

a. In criminal proceedings, a child's representative may be an advocate or an attorney-at-law who demonstrates having special knowledge of cases involving a child, of the same type or of a type corresponding to the case in which representation of the child is required, or who has been trained on the principles of child representation, child's rights or needs. The training courses are organised by the self-governing bodies of advocates and attorneys-at-law.

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

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

[41] Ibid., Recommendation 36

In criminal proceedings, the child shall be represented by an appointed representative who is an advocate or an attorney-at-law (Article 99 (1) § 1 of the Family and Guardianship Code)

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

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

[42] *Ibid.*, Recommendation 37

Yes. The costs are settled in criminal proceedings, but are not borne by the minor victim. They are borne by the accused and, if the same is exempted from court costs, by the State Treasury

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

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

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

[43] *Ibid.*, Recommendation 34

- Yes
 No

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

Where one of the parents of the minor victim is the accused, the other parent may not exercise his/her rights. It becomes fully justifiable to appoint a representative for the child to exercise his/her rights in the proceedings subject to the rules of family law. (see answer to the question 15)

By the Act of 28 July 2023, which enters into force on 15 February 2024, Article 51 § 2a was added to the Criminal Procedure Code - the court, and in pre-trial proceedings, the public prosecutor shall immediately, no later than within 7 days following the occurrence of the circumstances referred to in Article 98 § 2 of the Family and Guardianship Code, apply to the guardianship court for the appointment of a representative for the child, as referred to in Article 99 § 1 of the Family and Guardianship Code.

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

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

[44] *Ibid*

- Yes
 No

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

The person representing the minor victim, in the course of the proceedings, shall ensure that his/her rights are duly represented. He/she shall have the authority for all transactions relating to the case.

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

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

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

[45] *Ibid.*, Recommendation 38

The currently applicable Polish Criminal Procedure Code provides for many guarantees of protection for victims, including minors, and on top of this, Polish legislation provides for numerous rights for victims in criminal proceedings. At the same time, some of these rights apply to all persons, and some to children, particularly those under 15 years of age. The issue of child protection in criminal proceedings is described in detail in the other answers.

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

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

[46] *Ibid.*, Recommendation 39

The national legal framework provides for a number of procedural guarantees for the child victim. These are described in detail in the answers to the questions below.

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

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

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

Pursuant to Article 52a of the Criminal Procedure Code, the authority conducting criminal proceedings establishes the facts of the case, in particular concerning the characteristics and personal conditions of the victim, as well as the nature and extent of the negative consequences of the offence. This allows the victim's needs to be identified quickly and efficiently. Notwithstanding the foregoing, it should be pointed out that it is commonly possible to be provided with psychological assistance within the health care system.

Comprehensive reform of the child and adolescent mental health system has made it possible to offer care

to young people and their families earlier, as close to the patient's environment as possible. In addition, it should be noted that the interviews referred to in Articles 185a and 185c are held in the presence of an expert psychologist.

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

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

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

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

- Yes
 No

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

The Act of 13 January 2023 amending the Act - Civil Procedure Code and certain other acts (Journal of Laws, item 289, as amended) introduced a number of amendments to the Polish Criminal Procedure Code seeking to strengthen the position and increase the standard of protection of the interests of minors - victims and witnesses of offences, as well as adults - victims of offences against sexual freedom and decency.

An amendment was introduced explicitly stating that the instruction should be understood by persons who are not assisted by a defence attorney or attorney, persons who are vulnerable due to their age or health, persons who are under 18 years of age (separate instruction templates are provided for the latter group). In addition, based on the assumption that persons who are vulnerable due to their age or health and those who are under 18 years of age may need additional explanations, such as a descriptive presentation of the meaning of certain terms, it is envisaged to prepare templates for such explanations, while ensuring that they are widely available.

A prohibition to ask questions about a witness's sex life was introduced, unless asking such questions is necessary for the settlement of the case. If a question about sex life is not relevant to the settlement of the case, it shall be dismissed. Provisions were added to allow an interviewed person under 18 years of age to participate knowingly in the activity. Prior to the initiation of the activity, such person shall receive information as to the course, manner and conditions under which the activity will be conducted.

Article 185e of the Criminal Procedure Code was also added, introducing the principle of interviewing a victim or witness with mental disorders, developmental disorders, disturbances in the ability to perceive and reproduce perceptions, only if his/her testimony is relevant to the settlement of the case, and only once. It will be possible to deviate from this principle when new facts of the case are disclosed or when the request of the accused who was not assisted by a defence attorney during the first interview is granted. The first interview will be recorded so that it can be replayed later at the main hearing.

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

INVESTIGATION Question 19. In the investigation phase:

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

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

[49] *Ibid.*, Recommendation 41

- Yes
 No

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

The interviews referred to in Articles 185a to 185c should be conducted in rooms adequately adapted for this purpose, located in or outside the courthouse. The interview referred to in Article 185e of the Criminal Procedure Code shall be held in the same manner, but it can also be held elsewhere if so warranted by the individual needs of the witness and if it is possible to record the activity with an image or sound recording device.

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

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

[50] *Ibid.*, Recommendation 42

- Yes
 No

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

Since 15 August 2023 a provision has been in effect that a judge deciding in criminal cases should participate, every four years, in training and professional training organised by the National School of the Judiciary and Public Prosecution, in order to broaden know how and professional skills in interviewing persons under 18 years of age and those referred to in Articles 185c and 185e of the Criminal Procedure Code.

Training is underway for judges and public prosecutors, as well as attorneys-at-law on the principles of conducting procedural activities involving persons under 18 years of age (2-day training: day 1 of online lectures; day 2 of small group workshops. The workshops are held in 39 cities where regional courts have their registered offices. The training sessions are conducted in cooperation with the National School of Judiciary and Public Prosecution and UNICEF.

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

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

[51] *Ibid.*, Recommendation 43

- Yes
 No

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

When interviewed, minor victims under 15 years of age are afforded special protection in Polish criminal proceedings.

The legislator has provided for a special procedure for interviewing minors victimised by offences of a certain type:

Article 185a of the Criminal Procedure Code: a victim below the age of 15 or an underage victim 15 or older whenever there is justified concern that interrogation in any other circumstances could have an adverse impact on the victim's mental condition; in cases of crimes committed with the use of violence or unlawful threat or those defined in Chapters XXIII (crimes against liberty), XXV (crimes against sexual freedom and morality) and XXVI (crimes against the family and custody) of the Criminal Code;

Article 185c of the Criminal Procedure Code - a victim 15 or older; in cases of crimes from Article 197 CC (rape), Article 198 CC (abusing the helpless position, disability of another to induce sexual intercourse or submission to another sexual activity), Article 199 CC (abuse of dependence),

The main elements of the interview procedure, designed to afford special protection to interviewees, are

1. to ensure that the victim is interviewed only if his/her testimony is relevant to the settlement of the case and only once. It will be possible to deviate from this principle when new facts of the case are disclosed or when the request of the accused who was not assisted by a defence attorney during the first interview is granted;
2. to ensure the high probative value of a witness's interview by having the court participate in the interview regardless of the stage at which the interview is conducted;
3. the interview of the aforementioned victim shall be conducted with the participation of an expert psychologist promptly, no later than 14 days from the date of receipt of the request.

It is possible to interview a minor victim in a special procedure also if he/she has already attained 15 years of age at the time of the interview. Such a procedure may only be initiated provided that there is a justifiable fear that the interview under other conditions could have a negative impact on his/her mental state.

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

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

[52] *Ibid.*, Recommendation 54

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

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

[53] *Ibid.*, Recommendation 44

- Yes
- No

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

As already described, both in the answer to question 19c and question 18, the rule is that a child victim is interviewed only if his/her testimony is relevant to the settlement of the case, and only once. It will be possible to deviate from this principle when new facts of the case are disclosed or when the request of the accused who was not assisted by a defence attorney during the first interview is granted. The interview shall be conducted by the court before which the proceedings are pending. It could be the same judge, and the same expert psychologist,

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

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

[54] *Ibid.*, Recommendation 45

- Yes
- No

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

Pursuant to the provisions governing the Polish criminal procedure, a defence attorney has the right to attend the interview of a child victim (Article 185a § 2).

The defence attorney's right to ask questions stems directly from Article 171 § 2 of the Criminal Procedure:

In addition to the hearing authority, the parties, defence counsel, attorneys and experts have the right to ask questions. Questions shall be put to the person being questioned directly, unless otherwise ordered by the hearing authority.

Code (this provision is described in more detail in the answer to question 18).

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

JUDICIAL PROCEEDINGS Question 20. In the judicial proceedings:

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

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

[55] *Ibid.*, Recommendation 46

- Yes
 No

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

The interview of a child victim shall be recorded in the form of a video and audio recording and in an interview report (Article 143 § 1.2 of the Criminal Procedure Code and Article 147 § 2a of the Criminal Procedure Code).

The image and sound recording of the interview is played and the interview report is read out at the main hearing (Article 185a § 3 of the Criminal Procedure Code and Article 185c § 2 of the Criminal Procedure Code).

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

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

provide details.

[56] *Ibid.*, Recommendation 59

- Yes
 No

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

In Polish criminal proceedings, the presence of the victim at the main hearing is not mandatory - the victim may participate provided that he/she appears (Article 384 § 2 of the Criminal Procedure Code).

However, the victim should be notified of the hearing date.

As for interview activities see the answer to question 19c.

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

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

Please provide details.

[57] *Ibid.*, Recommendation 60

- Yes
 No

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

Victims of crimes under Articles 197 - 199 of the Criminal Code are always interrogated in a protective mode. Based on Article 185a of the Penal Code or 185c of the Penal Code. As a consequence, they do not have to testify in the courtroom.

The victim is not obliged to be present at the trial, it is their right, not an obligation.

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

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

[58] *Ibid.*, Recommendation 47

- Yes
 No

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

See the answer to question 20a. The interrogation shall be recorded and in the main hearing the audio-visual record of the interrogation is played and the transcript is read.

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

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

[59] *Ibid.*, Recommendation 48

Court proceedings see answer 20a.

During criminal proceedings, pursuant to Article 275 of the Criminal Procedure Code, as a preventive measure, the accused may be subject to Police supervision. The person placed under supervision is required to comply with the requirements of the court or public prosecutor's order. Such requirement may consist in prohibiting the accused from leaving a specified place of residence, reporting to the supervising authority at specified intervals, notifying the supervising authority of intended departure and the date of return, prohibiting the accused from contacting the victim or other persons, prohibiting the accused from approaching certain persons at a specified distance, prohibiting the accused from staying in certain places, as well as other restrictions on the accused's freedom necessary to carry out supervision.

When issuing a conviction, the court may impose on the offender a punitive measure in the form of, among other things, a disqualification from occupying a certain position, practising a certain profession or conducting a certain business, a prohibition on conducting activities related to the upbringing, treatment, education or care of minors, a prohibition on staying in certain environments or places, contacting certain persons, approaching certain persons or leaving a certain place of residence without the court's consent, or ordering the accused to periodically leave the unit occupied jointly with the victim (Article 39 of the Criminal Code).

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

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

[60] *Ibid*

- Yes
 No

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

The public prosecutor, defence attorney and attorney for the victim shall be entitled to attend the interview conducted in the manner set out in Article 185a of the Criminal Procedure Code and in Article 185c § 2 of

the Criminal Procedure Code (this applies to victims of the offence defined in Articles 197 to 199 of the Criminal Code who are 15 years of age or older at the time of interview). The above provision excludes the presence of the alleged offender.

In addition, as already indicated in the answer to question 19 c, it is possible to interview a minor victim in a special procedure also if he/she has already attained 15 years of age at the time of interview. Such a procedure may only be initiated provided that there is a justifiable fear that the interview under other conditions could have a negative impact on his/her mental state.

The victim interviewed in a special procedure does not participate in the main hearing, during which the recording of the interview is played.

If the interview is conducted under normal conditions, the accused has the right to attend all evidentiary activities, but in exceptional cases, when it is to be feared that the presence of the accused could have an embarrassing effect on the testimony of the witness, the judge may order the accused to leave the courtroom for the time the person in question is interviewed.

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

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

[61] *Ibid*

See answers to questions 19 c, 20a, and 20f.

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

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

[62] *Ibid.*, Recommendation 49

Pursuant to Article 360 of the Criminal Code Procedure, the court may close the main hearing to the public in whole or in part:

- 1) if openness might give rise to a public disturbance, offend common decency, disclose circumstances that should be kept secret due to important state interests, or violate important private interests;
- 2) if at least one of the accused persons is a juvenile or for the time of interviewing a witness who is below 15 years of age (since 15 February 2024 - 18 years of age);
- 3) at the request of the person who filed a request for prosecution.

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

[63] *Ibid.*, Recommendation 50

- Yes
 No

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

A victim or an auxiliary prosecutor or a private prosecutor who does not have an attorney of choice may request that an attorney be appointed ex officio if he/she duly demonstrates that he/she is unable to bear the costs of defence without compromising the necessary support of himself/herself and his/her family (Article 88 of the Criminal Procedure Code).

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

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

[64] *Ibid.*, Recommendation 51

- Yes
 No

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

Pursuant to Article 87 of the Criminal Procedure Code, a party other than the accused may appoint an attorney. In addition, a non-party may appoint an attorney if so required by his/her interests in the pending proceedings. Ex officio attorney may also be appointed (paid by the state). See answer 19i.

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

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

[65] *Ibid.*, Recommendation 52

Polish law does not differentiate victims in respect of the offender.

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