

# 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

Portugal

\* Name of the contact person/coordinator

\* Email address of the contact person/coordinator

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

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

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

- Yes  
 No

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

Article 172 of the Penal Code (PC) on sexual abuse of dependent minors or minors in a particularly vulnerable situation states that :

1 - Whoever commits or causes to be committed an act described in paragraphs 1 or 2 of the previous Article, in relation to a minor between 14 and 18 years of age:

- a) In relation to whom they exercise parental responsibilities or who has been entrusted to them for education or care; or
  - b) Abusing a position of manifest trust, authority or influence over the minor; or
  - c) Abusing another situation of particular vulnerability of the minor, namely for reasons of health or disability;
- shall be punished with imprisonment from 1 to 8 years.

2 - Anyone who commits an act described in paragraph 3 of the previous Article, in relation to a minor included in the previous paragraph of this Article and under the conditions described therein, shall be punished with imprisonment of up to one year.

3 - Anyone who carries out the acts described in the previous paragraph with the intention of making a profit shall be punished with imprisonment for up to 5 years.

4 - Attempts are punishable.

In order to understand this Article it is necessary to mention Article 171 on Sexual abuse of children, that states that:

1 - Anyone who commits a significant sexual act with or on a child under the age of 14, or causes them to commit it with another person, shall be punished with imprisonment of one to eight years.

2 - If the relevant sexual act consists of copulation, anal intercourse, oral intercourse or the vaginal or anal introduction of body parts or objects, the perpetrator shall be punished with imprisonment of three to ten years.

3 - Whoever:

- a) Harasses a minor under the age of 14 by carrying out an act provided for in Article 170; or
  - b) Acts on a minor under the age of 14 by means of a pornographic conversation, writing, performance or object;
  - c) Enticing a minor under the age of 14 to watch sexual abuse or sexual activities;
- shall be punished with imprisonment of up to three years.

4 - Anyone who carries out the acts described in the previous paragraph with the intention of making a profit shall be punished with imprisonment from six months to five years.

5 - Attempts are punishable.

Also Article on pimping of minor (Article 174) states that:

1 - Anyone who encourages, favours or facilitates the prostitution of a minor or entices a minor for this purpose shall be punished with imprisonment from 1 to 8 years.

2 - If the perpetrator commits the offence provided for in the previous paragraph:

- a) By means of violence or serious threat;
  - b) By means of a ruse or fraudulent manoeuvre;
  - c) With abuse of authority resulting from a family relationship, guardianship or trusteeship, or hierarchical, economic or labour dependence;
  - d) Acting professionally or for profit; or
  - e) Taking advantage of the victim's psychological incapacity or situation of special vulnerability;
- shall be punished with imprisonment of between two and ten year

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

[7] *Ibid.*, Recommendation 2

- Yes  
 No

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

Yes, as quoted in a) .

On aggravation article 177 stands as follows:

1 - The penalties provided for in Articles 163 to 165 and 167 to 176 shall be increased by one third, in their minimum and maximum limits, if the victim:

a) Is an ascendant, descendant, adoptee, adopted person, relative or family member up to the second degree of the perpetrator; or

b) Is in a family relationship, cohabitation, guardianship or trusteeship, or hierarchical, economic or labour dependence on the perpetrator and the crime is committed taking advantage of this relationship.

c) Is a particularly vulnerable person due to age, disability, illness or pregnancy.

2 - The aggravations provided for in the previous paragraph shall not apply in the cases of Article 169(2)(c) and Article 175(2)(c).

3 - The penalties provided for in Articles 163 to 167 and 171 to 174 shall be increased by one third, in their minimum and maximum limits, if the perpetrator is a carrier of a sexually transmitted disease.

4 - The penalties provided for in Articles 163 to 168 and 171 to 175, Article 176(1) and (2) and Article 176a shall be increased by one third, in their minimum and maximum limits, if the offence is committed jointly by two or more persons.

5 - The penalties provided for in Articles 163 to 168 and 171 to 174 shall be increased by half, in their minimum and maximum limits, if the behaviour described therein results in pregnancy, serious harm to physical integrity, transmission of a pathogenic agent that creates a danger to the life, suicide or death of the victim.

6 - The penalties provided for in Articles 163 to 165, 168, 174, 175 and in Article 176(1) shall be increased by one third, in their minimum and maximum limits, when the offences are committed in the presence of or against a victim under the age of 16;

7 - The penalties provided for in Articles 163 to 165, 168 and 175 and in Article 176(1) shall be increased by half, in their minimum and maximum limits, if the victim is under 14 years of age.

8 - If more than one of the circumstances referred to in the previous paragraphs occur in the same behaviour, only the one with the strongest aggravating effect shall be considered for the purpose of determining the applicable penalty, and the other or others shall be assessed in the measure of the penalty.

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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)

Yes. Please see previous answers and Article 177 §1b on aggravation

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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)

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## 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)

Yes please see previous answers .

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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

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## 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?** <sup>[12]</sup> 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)

Yes, according to Article 172 §1b) , and 174 § of the Penal Code as mentioned in 1 a) .

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

[13] *Ibid.*, Recommendation 7

- Yes  
 No

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

[14] *Ibid.*, Recommendation 8

- Yes  
 No

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## 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)

The Portuguese national legal framework criminalizes sexual abuse of children for acts other than sexual intercourse and equivalent actions.

Article 18 (Sexual abuse) of the Convention:

The current Penal Code typifies the conduct by reference to Article 18 of the Convention in the following Articles: (i) 171 (sexual abuse of children); (ii) 172 (Sexual abuse of dependent minors); 173 (sexual acts with adolescents); 163 (1) and (2) (sexual coercion), 164 (1) and (2) (rape), 165 (sexual abuse of a person incapable of resistance), 166 (1) and (2) (sexual abuse of an interned person).

Article 19 (Child prostitution) of the Convention

The conducts described by reference to Article 19 of the Convention fall within the scope of Articles 171 (4) (sexual abuse of children), 174 (recourse to child prostitution) and 175 (pimping of minors) of the PC.

Article 20 (Child pornography), of the Convention

The conducts described with reference to Article 20 of the Convention, are included in the scope of the provision of Articles 176 (Pornography of minors), of the PC.

It should be noted that Article 176 (4) of the PC provides for the punishment of situations of realistic representation of minors, with reference to the conduct provided for in subparagraphs c) and d) of (1), a provision that the Convention, in Article 20 (3), leaves at the disposal of States.

Article 21 (Offences concerning the participation of a child in pornographic performances), of the Convention  
The conduct described Article 21 of the Convention is provided for in Article 176 (1) (a), (2), (3) and (6) of the PC.

Article 22 (Corruption of children) of the Convention

The conduct described related to Article 22 of the Convention is provided for in Article 171 (3) (c) and Article 172 (2) of the PC.

Article 23 (Solicitation of children for sexual purposes) of the Convention

The conduct referred to Article 23 of the Convention is provided for in Article 176-A (1) and (2) of the PC.

It should be noted that the mere intentional proposal, addressed to a minor, practiced with recourse to information and communication technologies, for an encounter aiming at (i) the practice of a relevant sexual act, with you or another person, or (ii) its use in a pornographic show, or in a pornographic photograph, film or recording, or (iii) the production, distribution, importation, exportation, disclosure, exhibition, cession or availability of pornographic photograph, film or recording with the purpose of committing sexual abuse or the production of child pornography, constitutes the crime of enticement of minors for the purpose of prosecution, provided for in Article 176-A (1) of the PC, even if such enticement is not followed by material acts leading to the encounter, the crime of enticement of minors for the purpose of prosecution, as provided for in Article 176-A (1) of the PC, shall be committed.

If acts leading to the encounter have been carried out, the crime is punished with a more serious penalty (no. 2 of the PC).

Article 24 (Aiding or abetting and attempt), of the Convention

Regarding aiding and abetting, referring to Article 24 of the Convention has a correspondence in Article 27 of the Penal Code, which punishes as an accomplice anyone who, maliciously and by any means, provides material or moral aid to the practice by another of an intentional act.

As far as the punishment of attempt is concerned, in respect of the crimes under Articles 171 (sexual abuse of children); 172 (sexual abuse of minors who are dependent or in a vulnerable situation); 174 (recourse to child prostitution) and 176 (child pornography). In the case of Article 175 (pimping of minors) an attempt to commit the crime foreseen in in this Article is also punishable, due to the general rules of Article 23 of the PC .

Article 23

Punishability of attempts

- 1 - Unless otherwise stipulated, an attempt shall only be punishable if the consummated offence carries a penalty of more than 3 years in prison.
- 2 - An attempt shall be punishable by the penalty applicable to the completed offence, with special mitigation.
- 3 - An attempt shall not be punishable if the means employed by the perpetrator are clearly unsuitable or if the object essential to the commission of the offence does not exist.

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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

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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

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## 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

If appropriate, please provide more information (5.a No)

No. Article 172 of the Penal Code does not require a complaint from the victim or his legal representative to investigate and prosecute sexual abuse and exploitation of children by someone in a recognized position of trust, authority or influence

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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

If appropriate, please provide more information (5.b No)

Portugal uses a legislative technique which consists of placing the mention that "criminal proceedings depend on a complaint" after the definition of the basic type and before the qualified type, or else in an autonomous Article when it intends to define the private or semi-public nature of several offences of the same kind.. Within the limited exception of article 173 Penal Code ( and within the possibilities mentioned in

the next answer) all crimes against sexual self determination and sexual freedom are public  
According to Article 116§2 of the Penal Code "The complainant may withdraw the complaint, provided there is no opposition from the defendant, until the 1st instance judgement is published. Withdrawal prevents the complaint from being renewed."

This means that in crimes of a public procedural nature, the withdrawal of a complaint, without opposition from the defendant, does not have the effect of extinguishing the criminal proceedings (for more information please see Court of Appeal of Évora, case no. 16/11.1 GAMAC.E1, accessed at [www.dgsi.pt](http://www.dgsi.pt))

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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

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

In the Portuguese legal system, with the exception of the crime provided for in Article 173 (Sexual acts with adolescents), and unless it results in suicide or death of the victim, as provided for in Article 178 (3), all the criminal offences referred to in respect of Articles 18, 19, 20 and 21 of the Convention are of a public nature, and the mere acquisition of the news of the crime is enough for the criminal proceedings to be initiated and continue, regardless of any manifestation or declaration of will by the victim to the contrary.

Article 178 (3) needs to be complemented with Article 113 (5) of the same Code which establishes that when the criminal procedure depends on a complaint, the Public Prosecution Service can initiate the procedure within six months from the date it has knowledge of the fact and its authors, whenever the interest of the victim so advises and (i) the victim is a minor or lacks the discernment to understand the scope and the meaning of the exercise of the right to complain, or (ii) the right to complain cannot be exercised because its ownership would fall only to the perpetrator of the crime.

So 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, it is always possible to Public Prosecution Service to initiate the procedure within six months from the date it has knowledge of the fact and its authors, whenever the interest of the victim so advises and (i) the victim is a minor or lacks the discernment to understand the scope and the meaning of the exercise of the right to complain, or (ii) the right to complain cannot be exercised because its ownership would fall only to the perpetrator of the crime ( Article 113 §5 PC ).

This "tertium genus" kind of solution, was duly discussed by the Constitutional Court , case law 403/2007, to be found at <https://www.tribunalconstitucional.pt/tc/acordaos/20070403.html>

(in Portuguese), that decided : " Not to judge unconstitutional the rule contained in Articles 113, no. 6, and 178, no. 4, of the PC, interpreted in the sense that, initiated the criminal procedure by the Public Prosecutor's Office for crimes of sexual abuse of children and sexual acts with adolescents, regardless of a complaint by the offended or their legal representatives, because it understood, in a reasoned order, that this was imposed by the interest of the victims, the subsequent opposition of these or their legal representatives is not sufficient, in itself, to determine the termination of the procedure" .

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## 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 justice system for children and young people in Portugal is based on Law no. 147/1999, of 1 September, which approved the Law for the Protection of Children and Young People in Danger (LPCJR) and Law 166/1999, 14 September on the Educational Guardianship Law

a) LPCJR is applied to all children in danger, including when the child engages in behavior or activities or consumption that seriously affect their health, safety, training, education or development without their parents, legal representative or de facto guardian opposing them in an appropriate way to remove this situation (Article 3, 2 g)). These measures aim to (Article 32) remove the danger, provide them with the conditions to protect and promote their safety, health, training, education, well-being and integral development; and ensure the physical and psychological recovery of children and young people who are victims of any form of exploitation or abuse. (Article 32). The promotion and protection measures are the following (Article 34):

- a) Support for parents;
- b) Support for another family member;
- c) Entrustment to a suitable person;
- d) Support for independent living;
- e) Family counselling;
- f) Residential care;

g) Entrustment to a person selected for adoption, a foster family or an institution with a view to adoption. Promotion and protection measures are carried out in the natural environment or in placement, depending on their nature, and can be decided on a precautionary basis, with the exception of the measure provided for in point g) of the previous paragraph.

Measures to be carried out in the natural environment are those provided for in points a), b), c) and d) of the previous paragraph and placement measures are those provided for in points e) and f); the measure provided for in point g) is considered to be carried out in the natural environment in the first case and placement in the second and third cases. for more complete information please see answer to question 7.

b) Law no. 166/1999, of 14 September applies to any young person aged between 12 and 16 who commits an act that is classified by law as a criminal offence and has legal education needs. The applicable measures aim to educate minors in the law and to integrate them into community life in a dignified and responsible manner (§1). According to Article 4 of the educational law (principle of legality), the

guardianship measures include :

- a) Admonition ;
- b) Deprivation of the right to drive mopeds or to obtain permission to drive mopeds ;
- c) Compensation for the offence ;
- d) The performance of economic benefits or tasks in favour of the community ;
- e) The imposition of rules of behaviour ;
- f) The imposition of obligations ;
- g) Attendance at training programmes ;
- h) Educational counselling ;
- i) Internment in an educational centre.

The measure provided for in point i) of the previous paragraph is considered institutional, while the remaining measures are non-institutional (§2) . The measure of internment in an educational centre is applied according to one of the following execution regimes :

- a) Open regime ;
- b) Semi-open regime ;
- c) Closed regime (§3).

Guardianship measures may be enforced until the young person reaches the age of 21, at which point they must cease (Article 5).

When choosing the applicable guardianship measure, the court shall give preference, among those that are suitable and sufficient, to the measure that represents the least intervention in the minor's autonomy to make decisions and lead their life and that is likely to obtain their greatest support and the support of their parents, legal representative or person who has de facto custody of them (Article 6§1)

The choice of the applicable guardianship measure is guided by the interests of the minor (Article 6§3).

Although the legal system differentiates between children in danger and young people who have committed an offence, there are links between the LTE and the Law for the Protection of Children and Young People in Danger. For instance, at any stage of the educational guardianship process, namely in the event of a case being closed, the Public Prosecutor's Office can require :the application of protection measures ( Article 43) or in case of post internment follow –up ( Article 158 B); It also provides rules for the interaction between sentences and guardianship measures: cumulative enforcement of measures and penalties (Article 23); sentencing to actual imprisonment: Article 24; sentence of internment in a detention center, placement for free days in a detention center or placement in a semi-internment detention center (Article 25) ; Sentence of a fine, community service or suspended prison sentence (Article 26); and Pre-trial detention ( Article 27)

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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)

Minors under 16 are criminally unaccountable (Article 19 of the PC).  
Article 173 PC (sexual acts with adolescents) Article 174 PC (pimping on minors) and Article 176A PC (grooming), provide for the criminalization of behaviours committed by adults.  
A special regime provided for in Decree-Law no. 401/1982, of 23 September, applies to young people between the ages of 16 and 21 who commit acts classified by criminal law as a crime. The application of the measures provided for in these Articles may not entail the loss of any civil, professional or political rights

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:

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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

If appropriate, please provide more information (7.a No)

We assume that this question is only related to child protection professionals in a non judicial proceeding, The answer will be spread in common with b. and will be spread in a) and b) due to text length limitataions .

In order to promote the rights and protection of children, the law to be considered is Law 147/99 of 1 September (LPCYPD), from which results three levels of intervention, under the remit of three different entities (entities with competence in matters of children and young people; commissions for the protection of children and young people (CPCJ) and courts with competence in family and minor's matters.

- Entities with competence in matters of children and young people

This universe comprises all those entities which, more or less directly, are responsible for promoting the children's rights and protecting them, in different areas (in particular, health, education, safety, well-being and full development). The kindergartens, day care centres, schools, health institutions, social work services, are some of these entities.

They represent an unambiguous resource in terms of signalling specific situations of risk and danger, but their intervention in a specific case is intrinsically and inevitably linked to the consent of the parents and/or legal representative of the child concerned.

They are responsible for (i) promoting primary and secondary prevention actions, namely through the definition of local action plans for children and young people, aimed at promoting, defending and

implementing the rights of the children and young people; (ii) assess, diagnose and intervene in situations of risk and danger, implement the necessary and appropriate intervention strategies to reduce or eradicate risk factors; accompany the child and his/her family in the execution of an intervention plan defined by the entity itself, or in collaboration with other similar bodies and carry out the material acts related to the promotion and protection measures applied by the protection commission or by the court, which are entrusted to them,

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

If appropriate, please provide more information (7.b No)

( continues from the previous answer)

- Commissions for the protection of children and young people

They are official non-judicial institutions, with functional autonomy, whose objective is to promote the rights of the children and young people and prevent or put an end to situations likely to affect their safety, health, training, education or full development.

Set up following an act of the Government, in the areas of justice and social solidarity, they are currently 311 in number and cover virtually the entire national territory.

With a plural and interdisciplinary composition, they work in two ways:

Extended – responsible for (i) developing actions to promote the rights and prevent situations of danger for the children and young people; (ii) inform the community about the rights of the children and the young people and raise awareness to support them whenever they experience particular difficulties; (iii) promote actions and collaborate with the competent authorities with a view to detecting facts and situations which, in the area of their territorial competence, affect the rights and interests of the children and the young people, endanger their safety, health, training or education or prove unfavourable to their development and social integration; (iv) inform and collaborate with the competent authorities in the identification and mobilisation of the necessary resources to promote the rights, well-being and full development of children and young people; (v) collaborate with the competent authorities in the study and development of innovative projects in the field of primary prevention of risk factors and in the support of children and young people in danger; (vi) collaborate with the competent authorities in the constitution, operation and preparation of local social development projects and initiatives in the area of childhood and youth; (vii) encourage and give advice on programmes for children and young people at risk.



Restricted – it operates on a permanent basis and is responsible for, among other things, (i) providing information to citizens; receive referrals of children in danger, appreciate them, collect elements to define the situation and decide on the need to apply a promotion and protection measure.

Their intervention following the referral of a child at risk is dependent on the existence of the express consent of the parents, legal representative or de facto guardian of the child and the non-opposition of the child, when he or she is 12 years of age or older — Articles 9 and 10 of Law 147/99 of 1 September.

The commission's intervention will cease if and as soon as the consent of those persons is withdrawn /revoked or the child expresses opposition; consequently, the case is referred to the Public Prosecution Service at the Court with jurisdiction in family and minor matters in order to judicially proceed with the procedure — Article 11(1)(c) and (3) of Law 147/99.

- Courts

In any event, are excluded from the jurisdiction of the commissions for the protection of children and young people, requiring judicial protection to be run at the court competent in family and minors matters, the situations in which the person who has to give consent has been indicted for committing a criminal offence against freedom or sexual self-determination that victimises the child or young person in need of protection, or a complaint has been filed against that person for the commission of any of those types of crime — Article 11(1)(b) of Law 147/99.

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

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

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

- Yes  
 No

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

Any of the two mentioned hypotheses (removal of the parents or the person(s) who cares for the children, when these are suspected of being involved in sexual exploitation or sexual abuse of the child; and the removal of the child from the family environment when the parents or persons who care for them are suspected of being involved in sexual abuse or exploitation of the child) are provided for under domestic law.

#### Removal of the suspect

If there are strong indications of the crime having been committed, the removal of the suspect from their home may be the result of a judicial decision taken within the scope of the criminal proceedings, which implies the application of a coercive measure, prohibiting the suspect(s) to (i) remain in the home where the

victimized children live and/or (ii) not having contact with them, by any means .

The removal of the child may occur:

At any stage of the criminal proceedings, by decision of the judge, namely under promotion of the Public Prosecution Service, determining the temporary removal of the particularly vulnerable victim from the family or the closed social group in which he/she is inserted, the child being taken to a care institution ;

In result of a protective measure applied within the scope of a judicial process of promotion and protection (under the competence of the Family and Minors Court), translated into the delivery/trust of the child to a person (another parent, relative, suitable person), or in the respective placement in a foster family legally qualified for that purpose or its placement in a residential foster home .

From a decision proffered in a civil guardianship proceeding, of judicial nature, that

- a. inhibits the parent(s) from exercising parental responsibilities; or (ii) limits the exercise of parental responsibilities by the parent(s). In case of inhibition or limitation of both parents, the child is entrusted to another person (family or not) or to a foster home ;
- b. regulates or changes parental responsibilities, following the application of a coercive measure or application of an accessory penalty of prohibition of contact between parents, or when the rights and safety of victims of domestic violence and other forms of violence in a family context such as child maltreatment or sexual abuse are at serious risk.

In addition, It is important to inform that there are significant legislative changes in 2021, regarding the domestic Violence law and involving children and young people: In August 16th, Law no. 57/2021 was published, amending Law no. 112/2009, of September 16th, which extends protection to victims of domestic violence. The PC and the ( Code of Penal Procedure ( CPP) re were also amended in what concerns Domestic Violence. Main amendents victims are now considered to be "individuals who have suffered a damage, including an attack on their physical or psychological integrity, emotional or moral damage, or material loss, directly caused by action or omission, in the context of the crime of domestic violence provided for in Article 152 of the PC, including children or young people up to 18 years of age who have suffered abuse related to exposure to contexts of domestic violence".

Recognizing that domestic violence (physical, psychological, emotional, etc.) has an impact on the cognitive and emotional development of children and young people regardless of whether they are directly involved in the situation, the law has been amended and children and young people are now considered domestic violence victims and not only mere bystanders or indirect victims.

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

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

[26] *Ibid.*, Recommendation 27

- Yes  
 No

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

as explained in the previous answer Any of the two mentioned hypotheses (removal of the parents or the person(s) who cares for the children, when these are suspected of being involved in sexual exploitation or sexual abuse of the child; and the removal of the child from the family environment when the parents or persons who care for them are suspected of being involved in sexual abuse or exploitation of the child) are provided for under domestic law.

#### Removal of the suspect

If there are strong indications of the crime having been committed, the removal of the suspect from their home may be the result of a judicial decision taken within the scope of the criminal proceedings, which implies the application of a coercive measure, prohibiting the suspect(s) to (i) remain in the home where the victimized children live and/or (ii) not having contact with them, by any means .

The removal of the child may occur:

At any stage of the criminal proceedings, by decision of the judge, namely under promotion of the Public Prosecution Service, determining the temporary removal of the particularly vulnerable victim from the family or the closed social group in which he/she is inserted, the child being taken to a care institution ;

In result of a protective measure applied within the scope of a judicial process of promotion and protection (under the competence of the Family and Minors Court), translated into the delivery/trust of the child to a person (another parent, relative, suitable person), or in the respective placement in a foster family legally qualified for that purpose or its placement in a residential foster home .

From a decision proffered in a civil guardianship proceeding, of judicial nature, that

- a. inhibits the parent(s) from exercising parental responsibilities; or (ii) limits the exercise of parental responsibilities by the parent(s). In case of inhibition or limitation of both parents, the child is entrusted to another person (family or not) or to a foster home ;
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Here you can upload any file(s) in support of your answer

e. ensure that the different agencies involved in the coordination and collaboration concerning child sexual abuse are allowed to share personal information as appropriate?<sup>[27]</sup> Please provide details.

[27] *Ibid.*, Recommendation 25

- Yes  
 No

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

Please note the interdisciplinary nature of all the CPCJ (Comissão proteção crianças e jovens) eãos explained before

According to Article 13<sup>o</sup> of the Decree Law 147/99 , 1 - Public services, administrative authorities and police bodies have a duty to collaborate with the protection committees in carrying out their duties.

2 - The duty to co-operate also applies to natural and legal persons who are requested to do so.

3 - The duty to collaborate includes the duty to provide information and to issue certificates, reports and any other documents deemed necessary by the protection committees in the exercise of their promotion and protection powers, free of charge. Contém as alterações dos seguintes diplomas:

Specifically related to personal data Article 13-A of the Decree law 147/99, ( access to sensitive personal data ) states that the protection committee may, when necessary to ensure the protection of the child or young person, process sensitive personal data, namely clinical information, provided that the data subject consents or, if the data subject is a minor or an interdicted person due to a mental anomaly, their legal representative, under the terms of Article 3(h) and Article 7(2) of the Personal Data Protection Act, approved by Law 67/98 of 26 October( §1).

For the purposes of legitimizing the protection committee under the terms of the previous paragraph, the holder of sensitive personal data must provide specific and informed consent in writing( §2) .

The request for access to the processing of sensitive personal data by the protection committee must always be accompanied by the declaration of consent referred to in the previous paragraph (§3).

Whenever the entity holding the information referred to in paragraph 1 is a health unit, the request from the protection committee must be addressed to the person in charge of its clinical management, who is responsible for coordinating the collection of information and forwarding it to the requesting committee (§4)

Since 2015, the law has also improved articulation between procedures that take place simultaneously, with changes to the LPCYPD (Law on the Protection of children and Youth at risk) , the General Regime of Civil Proceedings (RGPTE) and the Statute of the Victim (EV)

The hearing of the child in promotion and protection and civil guardianship proceedings is now regulated by Articles 4 and 5 of the RGPTE. Article 5(7)(d) states that "When the child has made statements for future reference, these may be considered as evidence in civil guardianship proceedings", which applies in the same way to protection proceedings (Article 84 of the LPCYPD)

At judicial level it is also important to quote Law 34/2009, related to the applicable regime of processing of data relating to the judicial system as well as also Law no. 59/2019 of 08 August, on the regime applicable to personal data for the prevention, detection, investigation or repression of criminal offences transposing Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016

A reference should also be made to Decree-Law no. 97/2019 of 26 July, which amended the system for the electronic processing of court proceedings provided for in the Code of Civil Procedure (created the

conditions for the implementation relating to the simplification and dematerialization of communications between the courts and public entities. The RGPT approved by Law 141/2015 of 8 September and amended by Law 24/2017 of 24 May, proposed the simplification of procedures of an adjectival nature in civil guardianship proceedings and, in particular, in orders that dispute the regulation of the exercise of parental responsibilities, with the main aim of introducing greater speed, agility and effectiveness in resolving these conflicts. Ordinance 348/2019 of 4 October Regulates electronic communications between the courts and Social Security in the context of civil guardianship and promotion and protection proceedings.

Finally a mention to Ordinance n.º 357/2019, de 08 de Outubro, regulating electronic communications between the courts and schools in the public network under the supervision of the Ministry of Education. It makes easier and quicker for schools to access judicial decisions concerning pupils that the court believes should be communicated to the school (such as decisions concerning the exercise of parental authority or protection measures applied to minors), while at the same time speeding up and accelerating the way the court obtains information about the pupil's school career,

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

## CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

### Question 8. Does your national legal framework clearly distinguish:

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

[28] *Ibid.*, Recommendation 32

- Yes  
 No

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

Those are different realities according to the differentiating criterion of the moment at which they are applied - before or after the conviction for the offence.

In the Portuguese legal-penal system there are no automatic effects of sentences, nor automatically applied coercive measures, resulting from the mere report of the crime - art. 65 CP and art. 204 Code of Criminal Procedure (CCP) , according to two general principles, provided for in Article 65(1) and (2) of the PC: (i) no penalty involves as a necessary effect the loss of civil, professional or political rights; (ii) the law may make certain crimes correspond to the prohibition of the exercise of certain rights or professions.

Whether by applying a measure of a transitory nature, as is the case with coercive measures, or as a consequence of the execution of a sentence, it will always be necessary to judge whether the assumptions laid down in the law have been verified, enabling the provisional or definitive disqualification from exercising parental responsibilities, at the end of a procedure in which the adversarial process is necessarily exercised.

- Suspension

a)RGPTE ( Law 141/2015) :

Article 52 provides for the possibility of a total or partial disqualification from exercising parental responsibilities to be demanded, when a parent culpably breaches their duties towards their children, to their serious detriment, or when, due to inexperience, illness, absence or other reasons, they are unable to fulfil those duties. Article 57 foresees cases of suspension of parental rights and foster care where the court may order the suspension of the exercise of parental responsibility and the fostering of the child if the defendant (s) is manifestly physically or morally incapable of caring for the child. Foster care shall take place in the home of a suitable person or family, or as a last resort, in a foster care institution.

b) Code of Criminal procedure (CCP)

Article 199 suspension of the exercise of a profession, function, activity and rights is the coercive measure by which the judge imposes on the accused the suspension of the exercise of these activities or tasks, provided that t: a) The offence charged against the accused is punishable by a maximum prison sentence of more than 2 years; and b) The prohibition of the respective exercise may be decreed as a result of the offence charged..Please see also article 200 and 203 of CCP ( translated in the next answers)

Suspensions are legally exhaustive provided. Coercive measures can be combined with others.

- Prohibition of child trust and disqualification from parental responsibility in the Penal Code .

Article 69-C determines that :

- the conviction prohibiting assuming the trust of minors, especially the adoption, guardianship, curatorship, foster care, civil sponsorship, delivery, custody or trust of minors, of the agent who is punished for any of the listed crimes, 163 (sexual coercion) and 164 (rape), being the victim a minor; 165 (abuse of a person incapable of resisting); 166 (abuse of an interned person); 167 (sexual fraud); 170 (sexual harassment); 171 (sexual abuse of children); 172 (sexual abuse of minors who are dependent or in a particularly vulnerable situation); 173 (sexual acts with adolescents); 174 (recourse to child prostitution); 175 (pimping of minors) ; 176 (child pornography) and 176-A (solicitation of minors for sexual purposes).

- the conviction of disqualification from exercising parental responsibilities of an agent who is punished for one of the crimes listed below, committed against his child, his spouse or a person with whom he maintains a relationship similar to that of the spouses: 163 (sexual coercion); 164 (rape); 165 (abuse of a person incapable of resisting); 166 (abuse of a person in hospital); 170 (sexual harassment); 171 (sexual abuse of children); 172 (sexual abuse of minors who are dependent or in a particularly vulnerable situation); 173 (sexual acts with adolescents); 174 (recourse to child prostitution); 175 (pimping of minors); 176 (child pornography) and 176A (solicitation of minors for sexual purposes).

Complementary it should be mentioned Article 1906<sup>a</sup>-A Civil Code (CC) , on urgent regulation of parental responsibilities in cases of domestic violence, which also constitutes an important coordination measure : "it is considered that the joint exercise of parental responsibilities may be judged contrary to the interests of the child if:

(a) a coercive measure has been ordered or an ancillary penalty of prohibition of contact between parents has been imposed, or

b) The rights and safety of victims of domestic violence and other forms of violence in the family context, such as ill-treatment or sexual abuse of children, are seriously jeopardised."

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

## CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

### Question 9. Does your national legal framework provide for:

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

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

- Yes  
 No

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

AS previously answered .

According to general rule of criminal proceeding, Article 200 of CPP provides for the prohibition and imposition of behaviours, same of them having to be decided in 48 hour :

1 - If there are strong indications that an intentional crime has been committed, punishable by a maximum prison sentence of more than 3 years, the judge may impose on the accused, cumulatively or separately, the following obligations

- a) Not to remain, or not to remain without authorisation, in the area of a given town, parish or municipality or in the residence where the crime was committed or where the offended, their relatives or other persons on whom further crimes may be committed live ;
- b) Not to go abroad, or not to go without authorisation ;
- c) Not to leave the town, parish or municipality of their residence, or not to leave without authorisation, except for predetermined places, namely their place of work ;
- d) Not to contact certain people by any means or not to frequent certain places or environments ;
- e) Not acquiring, using or, within the time limit set, handing over weapons or other objects and utensils in their possession that could facilitate the commission of another offence ;
- f) Subject themselves, with prior consent, to treatment for the addiction from which they suffer and which has favoured the commission of the crime, in an appropriate institution..

2 - The authorisations referred to in the previous paragraph may, in urgent cases, be requested and granted verbally, with a note being drawn up in the case file.

3 - The prohibition of the accused from travelling abroad implies that the passport in his possession must be handed over to the custody of the court and that the competent authorities must be notified, with a view to the non-granting or non-renewal of passports and border controls.

4 - The obligations set out in points a), d), e) and f) of paragraph 1 may also be imposed by the judge on the defendant if there is strong evidence that the offence of threatening, coercing or stalking has been committed, within a maximum of 48 hours.

5 - For the purposes of the previous paragraph, when the obligation provided for in point d) is in question and when it proves essential for the protection of the victim, technical means of remote control may be applied, with justification, and the suspect's prior hearing may be dispensed with, in which case, if necessary, the accused will be constituted when the coercive measure is notified.

6 - The application of an obligation or obligations involving the restriction of contact between parents shall be immediately communicated to the representative of the Public Prosecutor's Office who exercises functions in

the competent court, for the purpose of urgently initiating the respective process of regulation or alteration of the regulation of the exercise of parental responsibilities.

7 - In the case of an accused legal person or similar entity, the judge may impose a ban on contact, a ban on acquiring or using certain objects and an obligation to hand over certain objects, with prior consent, to treatment for addiction which he or she suffers from and which has favoured the commission of the crime, in an appropriate institution..

In the case of sexual violence in domestic Article 31§1 of the Law 112/2009, urgent coercive measures are also possible and can be cumulated with other. One of those (e) is restricting the exercise of parental responsibilities, guardianship or being accompanied :

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

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

[30] *Ibid*

- Yes  
 No

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

ASA previously answered

.

According to Article 203 CPP :

1 In the event of a breach of the obligations imposed by a coercive measure, the judge, taking into account the seriousness of the offence charged and the reasons for the breach, may impose one or more other coercive measures provided for in this Code and admissible in the case.

2 - Without prejudice to the provisions of Article 193(2) and (3), the judge may impose pre-trial detention if the offence carries a maximum prison sentence of more than 3 years :

- a) In the cases provided for in the previous paragraph ; or  
b) When there are strong indications that, after the application of a coercive measure, the accused has committed an intentional crime of the same nature, punishable by a maximum prison sentence of more than 3 years.

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

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

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

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

In the Portuguese legal system:

a) LPCYPD foresees that anyone who is aware of situations that may endanger the life and the physical or psychological integrity or liberty of the child shall report the situation to the authorities with competence in childhood and youth matters, law enforcement authorities, protection commissions or the legal authorities. Articles 64, 65, 66, 68 and 69 of the LPCYPD are also particularly relevant in this regard, as they set forth that any person who knows of situations that endanger the life, physical or psychic integrity or freedom of a child is obliged to report them.

b) Article 242 of the CCP, denouncing a crime is mandatory, even if the perpetrators are not known, (a) For police entities, as to all crimes of which they become aware and b) for officials, within the meaning of Article 386 of the PC, in relation to crimes that come to their knowledge in the course of their duties and because of them. When several people are obliged to report the same crime, the reporting of the same crime by one of them shall dispense the others. When the denunciation refers to a crime whose procedure depends on a complaint or private accusation, the complaint will only give rise to the initiation of an investigation if the complaint is filed within the legally prescribed time limit.

Complaint or report can be lodged with one of the following authorities :

- Public Prosecutor office ;
- Judiciary Police (PJ) ;
- Public Security police (PSP) ;
- National Republican Guard (GNR).

In the case of certain offences, complaints and denunciations can also be lodged :

- at the Immigration and Borders Service ;
- or Delegations of the National Institute of Legal Medicine and Forensic Sciences, medico-legal offices and hospitals where there are medico-legal experts;
- through the Ministry of Internal Affairs (MAI)' Electronic Complaints Portal

Article 244 CCP states that anyone who hears of an offence may report it to the Public Prosecutor's Office, another judicial authority or the criminal police, unless the respective procedure depends on a complaint or private accusation.

Reports can be either verbal or written and are subject to any special formalities.

If the complainant does not know or master Portuguese, the complaint must be made in a language he or she understands. An anonymous complaint can only lead to the opening of an enquiry if: a) It provides evidence of a criminal offence; or b) It constitutes a criminal offence. ( article 246 CCP)

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

it is not possible to answer this question using the space permitted . So the answer is uploaded as a file

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

All measures applied to the children have the objective of ensuring all the rights of the children.

In all situations where children's rights are harmed (or where there is a suspicion of harm), as is the case when they are victims of actions that offend their freedom and sexual self-determination, the set of rules that make up family and children's law (whether those that refer to the system of promotion and protection, or those that more directly concern the exercise of parental responsibilities) are always called upon to intervene, simultaneously and without prejudice to the effects of the intervention provided for in criminal law and criminal procedure.

The Portuguese legal system aims for the considered and coordinated intervention of the criminal jurisdiction and the family and children's jurisdiction, in order to take into account all relevant aspects of the life of the child victim of a sexual offence, namely their relevant emotional relationships, thus seeking a solution that reduces any possible negative impacts on the child - art. 4, e), g) and h) LPCYD

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)

Law 113/2009, of September 17, establishes that in the "... recruitment for professions, jobs, functions or activities, public or private, even if unpaid, whose exercise involves regular contact with minors, the recruiting entity is obliged to ask the candidate to present a criminal record certificate and to consider the information contained in the certificate when assessing the candidate's suitability to exercise the functions", under penalty of incurring an administrative infraction punishable with a fine (see Article 2, paragraphs 1 and 7)

The execution of this norm is guaranteed with the following procedures :

- Criminal record certificates for non-judicial purposes depends on the answer to the question about whether or not the purpose for which the certificate is intended involves regular contact with minors (to be compulsorily inserted by the operator in the application submission process) ;
- In cases of issue for purposes involving regular contact with minors, this mention is expressly included in the certificate (certificates that do not contain this information shall not be accepted by the recruiting entities in question) ;
- This certificate always includes convictions for crimes of domestic violence of maltreatment or against sexual freedom and self-determination (cfr. § 3 of Article 2 of Law 113/2009), regardless of the other rules applicable to the issue;
- These certificates also include convictions handed down by foreign courts appearing in the Portuguese criminal record for crimes equivalent to domestic violence, abuse, or against freedom and sexual self-determination (cfr. § 5 of Article 2 of Law no. 113/2009).
- The cancellation from the criminal record of convictions for crimes against sexual freedom and self-determination occurs 23 years after the date of the sentence's extinction, as long as there has been no new conviction for a crime of the same nature in the meantime (cfr. §. 1 of Article 4 of Law no. 113/2009).

For instance, the Regulation for the Registration of Lawyers and Trainee Lawyers portuguese bar association ( Ordem dos Advogados), does requires Criminal record certificate, and most of the certificates delivered for registration at the Bar mention "It involves regular contact with minors" (Law n.º 113/2009), and the CNPDPCJ applies a Safeguarding Policy for the Promotion of the Rights and the Protection of Children and Young People where a special reference is made to the right of demanding the criminal record ( individuals) or a declarative compromise ( moral persons

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)

Law no. 37/2015, of 05 May, on criminal identification law, establishes the general principles governing the organization and operation of criminal identification, transposing into national law Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records between member states. This law contains a whole chapter dedicated to Exchange of information on convictions handed down by courts in Member States of the European Union (chapter 5) and another chapter related to the eExchange of information with States that are not members of the European Union (chapter 6).

The Ministry of Justice is working on the system.

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

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

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

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

- Yes  
 No

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

WE understood this question just tconnected to the delay after a suspicion as arisen, not elated to the conditions .

Please refer to the previous answer related with the exercise of profession, function, activity and rights suspension or prohibition and imposition of behaviour ( article 199 CPP and article 200) which can be ordered in same cases in 48 hours (§4 of Article 200CPP) .

The disciplinary legal framework provides for the possibility of suspension of civil servants (Article 4 of Law 35/2014 of 20 June). Article 211(1) admits preventive suspension the exercise of their functions, without loss of basic remuneration, until the decision of the procedure, but for a period not exceeding 90 days, whenever their presence proves inconvenient for the service or for ascertaining the truth. For private sector workers (Article 328 of Law 7/2009 of 12 February) there is the possibility of sanctioning the worker with a suspension penalty. According to Article 329(5) of Law 7/2009, it is possible to suspend a worker if a disciplinary procedure has been initiated and their presence is inconvenient.

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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)

a.and b.

Both questions should be answered having the assumption on the rules providing for the possibility to reporting a crime, as explained.

- Law on the protection of children and young in danger

The mentioned LPCYPD foresees that anyone who is aware of situations that may endanger the life and the physical or psychological integrity or liberty of the child shall report the situation to the authorities with competence in childhood and youth matters, law enforcement authorities, protection commissions or the legal authorities. Articles 64, 65, 66, 68 and 69 of the LPCYPD are also particularly relevant in this regard, as they set forth that any person who knows of situations that endanger the life, physical or psychic integrity or freedom of a child is obliged to report them.

- Penal Code and Penal Procedure Code

According to tArticle 200 of PC, whoever in a case of serious need, namely caused by a disaster, accident, public calamity or situation of common danger, which endangers the life, physical integrity or freedom of another person, fails to provide the necessary assistance to remove the danger, either by personal action or by promoting assistance, shall be punished with imprisonment of up to 1 year or a fine of up to 120 days. If the situation previously referred was created by the person who omits the aid due, the ommitter shall be punished with imprisonment of up to 2 years or a fine of up to 240 days.

The omission of aid is not punishable when there is a serious risk to the life or physical integrity of the ommitter or when, for another relevant reason, the aid is not required.

According to Article 242 of the CCP, denouncing a crime is mandatory, even if the perpetrators are not known, (a) For police entities, as to all crimes of which they become aware and b) for officials, within the meaning of Article 386 of the PC, in relation to crimes that come to their knowledge in the course of their duties and because of them. When several people are obliged to report the same crime, the reporting of the same crime by one of them shall dispense the others. When the denunciation refers to a crime whose procedure depends on a complaint or private accusation, the complaint will only give rise to the initiation of an investigation if the complaint is filed within the legally prescribed time limit.

Reporting is optional for everybody else : anyone who hears of a crime can report it to the Public Prosecutor's Office, another judicial authority or the criminal police, unless the respective procedure depends on a complaint or private accusation ( article 244 of the CCP)

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)

AS mentioned before , article 171 to 177, are crimes related to sexual abuse of children. Articles 163 to 170 are crimes committed against sexual freedom, which can be committed against children .

. Article 11 of the Penal Code on the liability of natural or moral persons provides the following :

1- Except as provided for in the following paragraph and in the cases specifically provided for by law, only natural persons shall be liable for criminal offences.

2 - Legal persons and similar entities, with the exception of the State, legal persons exercising prerogatives of public power and organisations governed by public international law, shall be liable for the crimes provided for in articles 144-B, 150, 152-A, 152-B, 156, 159 and 160, in articles 163 to 166 where the victim is a minor, and in articles 168, 169 and 169 where the victim is a minor. They shall be liable for the offences provided for in Articles 144b, 150, 152a, 152b, 156, 159 and 160, Articles 163 to 166 if the victim is a minor, and Articles 168, 169, 171 to 177, 203 to 206, 209 to 223, 225, 226, 231, 232, 240, 240, 240, 240, 240, 240, 240. Articles 169 to 177, 203 to 206, 209 to 223, 225, 226, 231, 232, 240, 256, 258, 262 to 283, 285, 299, 335, 348, 353, 359, 363, 367, 368a and 372 to 377, when committed:

(a) in their name or on their behalf and in their direct or indirect interest by persons occupying a leading position in them; or

b) By anyone acting in their name or on their behalf and in their direct or indirect interest, under the authority of the persons referred to in the previous point, as a result of a breach of their duties of supervision or control.

3 - (Repealed.)

4 - The bodies and representatives of the legal person and whoever has the authority to exercise control over its activity, including non-executive members of the management body and members of the supervisory body, shall be deemed to be in a position of leadership.

5 - For the purposes of criminal liability, entities that are equivalent to legal persons are considered to be civil law companies.

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

The Bar Association guarantees in its statute, which takes the form of a law, that lawyers have a duty to ensure their own training by undergoing continuous training (art. 91 i)) and that lawyers should not accept matters for which they do not have sufficient knowledge (art. 98 i)). 2 ) However, the Lawyers' Association itself is promoting training on this subject, for example, on 9 October it will be holding an awareness-raising session on "Sexual violence in the context of the Church: perspectives on victims and aggressors" for lawyers, and several training sessions have already been planned on the Community instruments for the protection of victims and/or particularly vulnerable people, such as children.

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

According to the professional statute of the lawyers, the law firm, even if it ensures the creation of independent working groups internally, may not sponsor causes or clients when this constitutes a conflict of interest under the terms of the law. ( Article 81 Estatuto profissional do advogado )

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

According to Article 13 of the Victim's Statute ( Law 130/2015, 4th September), 1. the State ensures that in the case of victims of the crime of domestic violence provided for in article 152 of the Penal Code, under the terms of Law no. 112/2009, of 16 September, and in the case of victims of crimes against sexual freedom and self-determination, it is presumed, until proven otherwise, that the victim is in a situation of economic insufficiency.  
2 - In the cases provided for in the previous paragraph, the victim shall be guaranteed swift and subsequent urgent legal aid, and immediate access to legal counselling shall be ensured.

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

Yes.

No limitations are introduced to the availability of the protection measures, related to age. Article 22 of the victim Statute that all child victims have the right to be heard in criminal proceedings, taking into account their age and maturity.

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



As already mentioned, §1 of Article 15 of the Victims Status , implies that an adequate level of protection is ensured for the victim and, where appropriate, their family members listed in Article 67a(1)(c) of the Code of Criminal Procedure, particularly with regard to security and safeguarding privacy, whenever the competent authorities consider that there is a serious threat of reprisals and situations of re-victimisation or strong indications that this privacy may be disturbed.

Article 17 of the same EV deals expressly with secondary victimization and states that Victims have the right to be heard in an informal and private environment, and appropriate conditions must be created to prevent secondary victimisation and to avoid pressures( §1 ) and that the questioning of the victim and their possible submission to a medical examination must take place, without undue delay, after the news of the crime has been acquired, only when they are strictly necessary for the purposes of the enquiry and criminal proceedings and their repetition must be avoided.( §2)

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

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

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

Yes.

a) Victims Status

According to the Article 23<sup>o</sup> of the Victims Statute :

1 - The testimony and statements of particularly vulnerable victims, when they require the presence of the accused, shall be given by videoconference or teleconference, as determined by the Public Prosecutor's Office, on its own initiative or at the request of the victim, during the investigation phase, and as determined by the court, on its own initiative or at the request of the Public Prosecutor's Office or the victim, during the pre-trial or trial phases, if this proves necessary to ensure that the statements or testimony are given without constraints.

2 - When making statements or giving evidence, the victim is accompanied by a specially qualified counsellor, previously appointed by the Public Prosecutor's Office or the court.

In Article 24 this is always a requirement an also in Article 271 the CCP, the child is also accompanied by a technician specially qualified to accompany them.

b) pLPCYPD .

- In the Promotion and Protection Process , in the initial order, the judge may appoint a date for hearing the experts - 107th of Law 147/99, of 1st September,

c) tutelar measures

- Article 4(1)(c) of the RGPTE approved by Law no. 141/2015, of 8 September (RGPTC), the child is heard preferably with the support of the court's technical counsellor, to be requested by the judge.

- Article 5(7)(a) of the RGPTE, the child's hearing must be assisted by a specially qualified technician;

- Article 35(3) of the RGPTE the experts may be heard at the conference;

d) Witness Protection act ( WPA)

In Law 93/99, of 14/07, the WPA , Article 26 (Especially vulnerable witnesses), Article 27 (Accompaniment of particularly vulnerable witnesses), Article 29 (Intervention in subsequent stages of the investigation) and Article 30 (Prior visit). eexpressly provides for possible prior contact between the witness and the judge and the place where the witness will be interviewed and defines the rules for carrying out the hearing."

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## SUPPORT FOR CHILD VICTIMS IN IVESTIGATIVE 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)

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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)

Please note that in Portugal Judicial proceeding are initiated by a phase of inquiry which is a mandatory investigation phase that begins whenever a crime is reported. .

This answer is only referred to GNR and PSP (Guarda Nacional Republicana and Polícia de Segurança Pública) , and not to judicial proceedings .

Article 18 of the Victims Status provides for

Victim assistance and information centres in criminal police agencies

1 - Each security force and service shall set up its own network of victim services offices, equipped with suitable conditions, namely privacy, for attending to victims.

2 - Attendance must be carried out under the conditions set out in paragraph 1 of the previous article and in such a way that the victim is provided with the information set out in the law in an appropriate and complete manner.

3 - The provisions of the previous paragraphs must also be realised, whenever possible, on the premises of the investigation and prosecution departments..

The security forces immediately activate the Judicial Police and take all preventive measures of health care and preservation of the means of proof, involving all the stakeholders already mentioned in order to provide the most viable support to the child.

GNR and PSP have victim support rooms and seeks to keep the child away from crowded places, trying to create a calm environment, usually adapted for this purpose

Order No. 11718-A/2020, of 25 November, from the Minister of Internal Affairs, approved the Regulation on the Material Conditions of the Victim Assistance Rooms (VSS) in Police Establishments, constituting a reinforcement of the permanent commitment of the Security Forces to improve the quality of assistance to victims, namely the especially vulnerable ones, and in particular to victims of ill-treatment committed in the context of domestic violence. In this order there is a provision specifically related to children: "There should be a space in the SAV particularly welcoming for children, either with appropriate furniture and decoration, or with toys and other objects promoting interaction with children".

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)

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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)

Article 17(2) of the Victim's Status enshrines that the questioning of the victim should take place without undue delay after acquisition of the news of the crime and that repetition of the same should be avoided. Article 17 (1) of the victims status enshrines the right of the victims to be heard in an informal and reserved environment, providing on the conditions for the prevention of secondary victimisation.

This discipline is reinforced by the provisions of Article 24 (3) and (4) of the EV, which, in relation to especially vulnerable victims, provides that statements for future reference shall be taken under the said conditions, and also by Article 271 (2) and (4) of the CPP, which states that in the case of proceedings for a crime against the sexual freedom and self-determination of a minor, the questioning of the victim shall always take place in an informal and reserved environment.

The aforementioned legal discipline has been implemented in the courts and investigation and prosecution departments through the allocation of rooms prepared with a view to providing adequate conditions to minimize the impact of the hearing and enhance the spontaneity of the testimony. Please see previous answer .

Furthermore, the investigation and penal action departments tend to have sections specialized in the type of crimes in focus or proceed to the concentrated distribution of this type of cases in specific magistrates, which results in a greater specialization and training, both for the latter and for the judicial officers, namely regarding the contact with child victims.

The following are two hierarchical instruments of mandatory observance for public prosecutors: Instruction 1 /2014, of 15 October, of the Prosecutor General of the Republic, which determines that enquiries concerning the criminal phenomena of domestic violence, ill-treatment and/or against sexual self-determination should be assigned to specialised sections or to specific magistrates, by means of concentrated distribution. The grounds for this determination include allusions (i) to the specific rights of the victims, in part directly related to the investigative activity, which should be developed in close connection and articulation with other areas, and in a close coexistence with social, associative and community mechanisms and responses, always in an interdisciplinary perspective; (ii) to specific requirements for the assessment of risk factors and the consideration of the vulnerability of the victims, segments that are associated with the objectives of prevention of non-revictimisation; (iii) to the specificities of the investigation of crimes against sexual self-

determination, with special emphasis on the creation of criminal procedural mechanisms that allow safeguarding the freedom to testify and the safety and privacy of the victim during the proceedings (iv) and to the Lanzarote Convention itself;

Directive 1/2021, of 2 June, from the Prosecutor General of the Republic, concerning generic Directives and Instructions for the implementation of the criminal Policy Law for the biennium 2020/2022, provides, in points I-H, subparagraph vii and II F), specifically on the crimes against sexual freedom and self-determination, establishing, in addition, that (i) whenever the victims are children or young people, the enquiries should be assigned to specialized sections or to specific magistrates, through concentrated distribution; (ii) the public prosecutor should personally conduct the questioning of especially vulnerable victims.

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

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

[52] *Ibid.*, Recommendation 54

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

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

[53] *Ibid.*, Recommendation 44

- Yes  
 No

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

In what concerns the conduct of the hearing/interrogation by the same person, we underline, in particular, the provisions of Article 21 (2) (b) of the Victim's Status which, referring to particularly vulnerable victims, consecrates as a protective measure the conducting of the interviews, whenever possible, by the same person, provided that it corresponds to the victim's wishes.  
Please see also answer to question 17 a) .

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)

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

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

a. 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)

Children victims of crimes against sexual freedom and self-determination are heard during the enquiry, when statements are taken for future memory (Article 271 (2) of the CCP).

Statements are taken through audio or audio-visual recording, which will only not be observed when such means are not available, in which case it should be included in the minutes of the proceedings (Article 24 (4), of the EV).

The purpose of taking statements for future memory is essentially so that the testimony can be taken into account at trial (Articles 24 (1) of the CCP and 271 (1) of the CCP). Thus, the provision of testimony in trial hearing will only take place if it is necessary for the purposes of the proceedings and provided that it does not jeopardise the physical or psychological health of the person who must provide it (Article 271 (8) of the CCP)

However, if in the hearing of the trial there is to be a deposition of the child victim, it should take place by videoconference or teleconference (Articles 21 (2) (c) and 23 of the CCP Procedure), without prejudice to, if

it is to take place in person, the accused should be removed from the room during the act (Article 352 (1) (b) of the CCP).

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

b. [does your national legal framework make an exception in the requirement to be physically present at court hearings for child victims of sexual abuse, including when they are giving evidence?](#)<sup>[56]</sup> Please provide details.

[56] *Ibid.*, Recommendation 59

- Yes  
 No

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

Yes.

According to Article 21 and 24 of the EV an exception is made related to the requirement to be physically present at court hearings for child victims of sexual abuse, including when they are giving evidence

Article 21

Rights of particularly vulnerable victims

- 1 - An individual assessment must be made of particularly vulnerable victims in order to determine whether they should benefit from special protection measures.
- 2 - The special protection measures referred to in the previous paragraph are as follows:
  - a) The victim must be interviewed by the same person, if the victim so wishes, and provided that the criminal proceedings are not jeopardised;
  - b) The questioning of victims of sexual violence, gender-based violence or intimate partner violence, unless carried out by a public prosecutor or judge, must be carried out by a person of the same sex as the victim, if the victim so wishes and provided that the criminal proceedings are not jeopardised;
  - c) Measures to avoid visual contact between victims and defendants, particularly during the giving of evidence, through the use of appropriate technological means;
  - d) Making statements for future reference, under the terms of Article 24;
  - e) Exclusion of publicity from hearings, under the terms of Article 87 of the Code of Criminal Procedure.

According to Article 24 EV on Statements for future reference,

- 1 - The judge, at the request of the particularly vulnerable victim or the Public Prosecutor's Office, may hear the victim during the course of the enquiry, so that the statement can, if necessary, be taken into account in the trial, under the terms and for the purposes set out in Article 271 of the Code of Criminal Procedure.
- 2 - The Public Prosecutor's Office, the accused, the defence counsel and the lawyers constituted in the case shall be notified of the time and place of the statement so that they can be present, and the attendance of the Public Prosecutor's Office and the defence counsel is mandatory.
- 3 - Statements are taken in an informal and reserved environment, with a view to ensuring that the answers are spontaneous and sincere.
- 4 - Statements are taken, as a rule, by audio or audiovisual recording. Other means may only be used, namely stenographic or stenotypical, or any other technical means capable of ensuring their full reproduction, or documentation by means of a record, when those means are not available, which must be stated in the record..
- 5 - Questioning is carried out by the judge, after which the Public Prosecutor's Office, the lawyers and the

defence counsel, in that order, may ask additional questions, and the victim must be assisted during the proceedings by a specially qualified technician, previously appointed by the court.

6 - In the cases provided for in this Article, testimony should only be given at a court hearing if it is indispensable for discovering the truth and does not jeopardise the physical or mental health of the person who must give it.

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

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

[57] *Ibid.*, Recommendation 60

- Yes  
 No

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

The child victim has the right to be heard in the penal procedure and, to that effect, his/her age and maturity should be taken into account (Article 22 (1) of the EV).

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)

Please see previous answers, specially on the regime provided for Article 271 CCP. and article 15 of the victim's Status  
In case the scope of the question includes the probative relevance of recordings of the child, outside the scope of statements for future memory or the anticipated production of evidence, in general (possible expertise with image and sound collection or interviews carried out in the context of medical or psychological monitoring) it is important to consider that their evidential relevance can be requested to be admitted as evidence, to be freely assessed by the Public Prosecutor's Office or the court, depending on the stage of the case - articles 124, 125 and 127, all of the Criminal Procedure Code  
.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?



Pursuant to Article 15 (1) of the victim's recording an adequate level of protection is ensured to victims and, where appropriate, their family members, particularly as regards safety and privacy, when the competent authorities consider that there is a serious threat of reprisals and situations of revictimisation or strong indications that this privacy may be disturbed.

Paragraph 2 of the same Article adds that contact between victims and their relatives and suspects or accused persons should be avoided in all places where they are present during proceedings, namely in court buildings.

In any case, the judge, or the Public Prosecution Service, during the enquiry phase, may determine that the victim be provided with psychosocial support, if this proves to be indispensable for the victim's protection (Article 15 (3) of the EV).

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

Pursuant to Article 15 (1) of the EV an adequate level of protection is ensured to victims and, where appropriate, their family members, particularly as regards safety and privacy, when the competent authorities consider that there is a serious threat of reprisals and situations of revictimisation or strong indications that this privacy may be disturbed.

Paragraph 2 of the same Article adds that contact between victims and their relatives and suspects or accused persons should be avoided in all places where they are present during proceedings, namely in court buildings.

In any case, the judge, or the Public Prosecution Service, during the enquiry phase, may determine that the victim be provided with psychosocial support, if this proves to be indispensable for the victim's protection (Article 15 (3) of the EV).

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)

Yes.

As already mentioned in a) Article 271.<sup>9</sup> CPP, Article 349 of the CCP and Article 352 CCP.

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*

According to Article 15 (1) of the Statute of the Victim an adequate level of protection is ensured to the victim and, where appropriate, his or her family members, namely as regards security and safeguarding of privacy, where the competent authorities consider that there is a serious threat of reprisals and situations of revictimisation or strong indications that this privacy may be disturbed.

Paragraph 2 of the same Article adds that contact between victims and their relatives and suspects or accused persons should be avoided in all places where they are present during proceedings, namely in court buildings.

In any case, the judge, or the Public Prosecution Service, during the enquiry phase, may determine that the victim be provided with psychosocial support, if this proves to be indispensable for the victim's protection (Article 15 (3) of the EV).

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

The CPP enshrines rules that protect privacy and the right to the image and intimacy of private life in offences against sexual self-determination: this is the case with Article 87 and Article 88.

Article 87(3) of the CPP on public attendance at procedural acts establishes that in the case of proceedings for the offence of trafficking in persons or offences against sexual freedom and self-determination, procedural acts take place, as a rule, without publicity.

In addition, Article 88(1) of the CPP states that the media is only allowed to give a detailed account, within the limits of the law, of the content of procedural acts that are not covered by judicial secrecy or which the general public is allowed to attend.

In addition to the procedural rules already mentioned, the media are subject not only to the legal regime aimed at directly protecting children, but also to the rules resulting from the activity carried out by the media.

With regard to the rules designed to protect children, special mention should be made of those contained in the EV (Law no. 130/2015, of 4 September), which states in Article 22 (Rights of child victims) that information that could lead to the identification of a child victim must not be disclosed to the public, under penalty of its agents incurring the crime of disobedience (no. 5).

This provision is complemented by an express authorisation for the media, which reads as follows: 1 - The media, whenever publicising situations relating to the commission of crimes, when the victims are children or young people or other particularly vulnerable persons, may not identify, or transmit elements, sounds or images that allow their identification, under penalty of their agents incurring in the commission of a crime of disobedience. 2 - Without prejudice to the provisions of the previous paragraph, the media may report the content of the public acts of the criminal proceedings relating to the crime in question (Article 27.)

Finally, mention should be made of the general limits to which the media are subject, which are set out in the laws that govern their activity: Article 3 and Article 30 of the Press Law (Law no. 2/99, of 13 January); Articles 27, 34, 71 and 86 of the Television and Audiovisual Services on Demand Law (Law 27/2007, of 30 July); and Articles 30, 32 no. 1; 65 no. 1 of the Television and Audiovisual Services on Demand Law (Law 27/2007, of 30 July). Articles 27, 34, 71 and 86 of the Television and Audiovisual Services on Demand Act (Law 27/2007, of 30 July) and Articles 30, 32 no. 1; 65 no. 1 of the Radio Act (Law 54/2010, of 24 December), as well as the Journalists' Code of Ethics, which stipulates that journalists must not directly or indirectly identify victims of sexual crimes. Journalists must not directly or indirectly identify minors, whether they are sources, witnesses to news events, victims or perpetrators of acts that the law classifies as criminal offences. Journalists must not humiliate people or disturb their pain.

The same reasoning applies, *mutatis mutandis*, to offences committed through the media, because the principle of the best interests of the child and the imperative standards of protection that aim to protect them determine this.

Other rules in the Portuguese legal system also protect children, namely those contained in the Law for the Protection of Children and Young People in Danger, which prohibit the dissemination by the media of information about children and young people at risk (Articles 1, 2, 3, b), f) and g), and 90). It also includes the rules of the civil guardianship regime (Law 141/2015 of 8 September), in particular Articles 90(1) and 33 (2), which also prohibit the dissemination of such information and refer to the aforementioned regime of the Protection Law.

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)

alreday answered. please see Article 13 of the Victim's statute : 1. the State ensures that in the case of victims of the crime of domestic violence provided for in article 152 of the Penal Code, under the terms of Law no. 112/2009, of 16 September, and in the case of victims of crimes against sexual freedom and self-determination, it is presumed, until proven otherwise, that the victim is in a situation of economic insufficiency.

2 - In the cases provided for in the previous paragraph, the victim shall be guaranteed swift and subsequent urgent legal aid, and immediate access to legal counselling shall be ensured."

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 principle, children under 18 years old lacks the capacity to exercise rights, especially to enter into legal transactions (Articles 122, 123 and 1157 of the CC).

Representation is granted as already explained (please see Articles 13 and 24 of the EV and 271CPP).

According to the LTE a child over the age of 12 can take the initiative in proceedings by initiating the appropriate civil guardianship measure (Article 17(1)), as well as the obligation to appoint a lawyer for the child, under the conditions set out in Article 17(2).

According to Case law, "it is considered that the harmony of the system and an extensive interpretation of both Article 103 and Article 5 of the European Convention on the Exercise of Children's Rights mean that a 17-year-old minor, who is presumed to have adequate maturity, should be allowed to choose her own lawyer (don't forget that Article 103(2) applies to all minors regardless of age, so anyone who presents themselves at the age of 17 will have that maturity from the outset, as they are on the verge of reaching the age of majority)." Acórdão do Tribunal da Relação de Lisboa (dgsi.pt)

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

[65] *Ibid.*, Recommendation 52

According to article 16 of the Victim's Statute, every victim has the right to hold a decision on indemnization and returning of assets :

1 - In criminal proceedings, victims are recognised as having the right to obtain a decision on compensation from the perpetrator within a reasonable period of time.

2 - The provisions of Article 82-A of the Code of Criminal Procedure shall always apply to particularly vulnerable victims, except in cases where the victim expressly opposes this.

3 - Assets belonging to the victim that are seized in criminal proceedings must be immediately examined and returned, except when they are of evidentiary importance or are likely to be declared forfeit in favour of the state.penal

ESpecifically to particularly vulnerable victims is granted ( article 25) , the access to reception facilities, and medical assistance ( Article 26).Generally, public and private health services provide consultations for therapeutic accompaniment (psychology, child and adolescent psychiatry, psychiatry, family therapy. Some services also provide more specialized consultations for victims of violence. There are health services that provide therapeutic counseling and/or treatment of the offender's addictions, which can be an obligation defined within the framework of the criminal process. Sometimes, organizations that intervene with adult victims of domestic violence, mostly women, also provide psychological support

The Commission for the Protection of victims of Crimes was reactivated in October 2010 in order to ensure the state advance payment of compensation to victims of violent crimes and domestic violence.

Please see an uploaded example from the kinnd of collabaoarative workind dane with the Portuguese Associataion for Victims support [https://apav.pt/apav\\_v3/index.php/pt/](https://apav.pt/apav_v3/index.php/pt/)

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