

Statutes of limitation in respect of sexual offences against children and Approaches to the legal age for sexual activities



PUBLIC SEMINAR
Strasbourg and online
Wednesday 31 May 2023
Room 6, Palais

**Comparative analysis
of national approaches
in States Parties to the
Lanzarote Convention**

Organised by
the Council of Europe and
the Permanent Representation of
France to the Council of Europe

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Background information

■ The Committee of the Parties to the Council of Europe [Convention on the protection of children against sexual exploitation and sexual abuse](#) (the “Lanzarote Convention” / “Lanzarote Committee”) has for several years been following developments on two particularly important topics: the statutes of limitation in respect of sexual offences against children and that of legal age for sexual activities. Being aware that discussions on new legislation on these two topics have been underway in some of the Parties, and in order to have a better understanding of national approaches, the Lanzarote Committee launched two wide-ranging surveys among the 48 Parties to the Lanzarote Convention in 2021. The surveys had a high response rate, and given the richness, diversity and sometimes complexity of the findings, it was decided to carry out a comprehensive analysis of the replies and to organise the Lanzarote Committee annual capacity-building event on these topics, in the form of a public seminar organised together with the French Permanent Representation.

■ The seminar aims at comparing and analysing the national approaches in States Parties to the Lanzarote Convention to the statutes of limitation in respect of sexual offences against children, during the morning session, and to the legal age for sexual activities, during the afternoon session.

Statutes of limitation in respect of sexual offences against children

■ Article 33 of the Lanzarote Convention provides “that the limitation period continues to run for a sufficient period of time to allow prosecutions to be effectively initiated after the child has reached the age of majority” ([Explanatory Report to the Lanzarote Convention](#), §231).

■ There is no common approach to the length of the statutes of limitation among the Parties to the Convention: the common-law States have historically never had such time-limits, whereas among the States with the continental legal system a great variety of lengths exists, often depending on the severity of the offence. In the 21st century, following the increased awareness of child sexual abuse and the particular sensitivity and complexity of related offences impeding their investigation and prosecution, many Parties have chosen to abolish temporal limitations on their prosecution, either almost completely or only in respect of the gravest form of such offences. At the same time, other Parties have so far preserved their statutory time-limits on prosecution of all types of offences in this category, even if a general trend towards the extension of these time-limits can be observed. Should all statutes of limitation be abolished? If not, is it possible to strike a balance between the victims’ expectations and the reality of investigative and prosecutorial work, finding an ideal length of the statutory time-limits for all such offences?

■ The seminar will explore all the challenging issues related to the statutes of limitations in respect of sexual offences against children and will include interventions by stakeholders and experts coming from a wide range of State Parties as well as leave space for discussion.

■ After an overview and comparative analysis of the national approaches to the statutes of limitations, the speakers will be invited to share the **survivors’ and the practitioners’ perspectives** with regard to the abolition of statutes of limitations. This will be followed by an examination of the **national experiences and reflections of the Parties which have chosen to partially abolish the statutory time-limits and those which have chosen to maintain them**. Additional focus will be on the special mechanisms put in place by the Parties that allow **extending the statutory time-limits in particular cases without abolishing them**.

■ In the last part of the morning session representatives of the law enforcement and judicial authorities of the Parties which have largely rendered sexual offences against children imprescriptible will share their experiences in **addressing the challenges** arising out of this change. The question of whether it is possible to find a solution which would provide the victims with **non-judicial redress** will also be examined.

Approaches to the legal age for sexual activities

■ When it comes to the legal age for sexual activities – often referred to as the **age of sexual consent** – one might expect the following dichotomy: engaging in sexual activities with a child under a certain age is a criminal offence, severely punished by the law. Conversely, when the child is over that age, he or she is considered mature enough, and engaging in sexual activity with him or her would therefore be perfectly legal. In reality, this dichotomy, at first sight easy to grasp, covers a multitude of issues and legal, moral and cultural challenges.

■ The Lanzarote Convention itself does not set a common legal age for sexual activities and its Article 18 requires States Parties to criminalise the fact that a person engages in sexual activities with a child who has not reached this age threshold but leaves it to the states to decide what the minimum age is in their national legislation.

■ The seminar will explore all the main aspects of the legal age for sexual activities, divided into three panels. Each panel will include a presentation of the framework as set out in the Lanzarote Convention, in particular Article 18, a comparative analysis of the national systems in place in States Parties to the Lanzarote Convention, concrete national examples presented by experts coming from a wide range of States Parties, as well as a space for discussions.

■ The first panel will explore **why a common legal age for sexual activities has not been agreed upon so far**. Indeed, academic, medical, and scientific literature has never reached a consensus on the existence of a **“perfect” legal age for sexual activities** that illustrates the age at which a child reaches a sufficient degree of maturity to consent to sexual activity; in short, a uniform age of “sexual maturity”. States have therefore always chosen their own age limits, with variations ranging from 14 to 18 years in Europe today. The panel will compare points of view by involving expert representatives of States Parties where the legal age for sexual activities is the lowest and where it is the highest, as well as where recent reforms have raised or lowered this age threshold. It will also provide an opportunity to discuss more specific issues related to this subject, including the existence of systems where the legal age itself depends on the nature of sexual activity, or where a distinction exists between the legal age for sexual activities and the legal age of consent.

■ The second panel will address the “age difference clauses”. In many countries, such clauses, also known as **“Romeo and Juliet” clauses**, are used to derogate from the general principle of the legal age for sexual activities, in order not to criminalise consenting sexual activities between persons of similar age and/or maturity. However, approaches to these clauses differ significantly from state to state: some apply them only to children, some also to young adults, some have them embedded in the law, while others rely on the discretion of judges. The panel will therefore draw an overview of the various issues at stake.

■ Finally, the third panel will raise the question of whether the **notion of consent, or lack of it, can and should be precisely defined**, in the law or by the national courts in their jurisprudence. Indeed, the notion of a child's consent in a relationship with an adult is often at the heart of court cases and media coverage. This raises the question of what exactly is covered in the search for a granted consent and whether the use of this notion is appropriate or potentially harmful.

■ The seminar will be held in Strasbourg and streamed online.

Draft Programme

Wednesday 31 May 2023, 9:30 - 13:00 and 14:30 - 18:00 (CEST)

09:30 am

Welcoming remarks

- **Marie Fontanel**, Ambassador, Permanent Representative of France to the Council of Europe
- **Marja Ruotanen**, Director General of Democracy and Human Dignity, Council of Europe

Statutes of limitation in respect of sexual offences against children

09:40 am

Moderator

- **Gioia Scappucci**, Executive Secretary of the Lanzarote Committee, Council of Europe

Panel 1 – Setting the scene

09:45 am

Overview and comparative analysis of national approaches to statutes of limitations in respect of sexual offences against children

- **Maria Andriani Kostopoulou**, Attorney at Law, Court of Cassation, Greece

09:55 am

Survivors' perspective in favour of a complete abolition of statutes of limitations

- **Matthew McVarish**, The Brave Movement

10:05 am

Challenges in investigative and judicial proceedings as a potential result of abolished statutes of limitations

- **Daniel Pical**, Honorary Judge, International Association of Youth and Family Magistrates

10:15 am

Q&A/Discussion

Panel 2 – National experiences

10:25 am

Partial or complete abolition of statutes of limitations

- **Ketevan Tatuashvili**, Advisor, Human Rights Secretariat, Administration of the Government of Georgia, Representative of Georgia to the Lanzarote Committee
- **Christel De Craim**, Head of Service for Criminal Policy, Federal Public Service Justice of Belgium, Representative of Belgium to the Lanzarote Committee, and **Valérie Gengoux**, Service for Criminal Policy, Federal Public Service Justice of Belgium, member of the Belgian delegation to the Lanzarote Committee, by videolink
- **Anna Doszpoth**, Legal Advisor, Deputy State Secretariat for Criminal Law Codification, Ministry of Justice of Hungary, Representative of Hungary to the Lanzarote Committee

- **Marlena Jukić**, Head of Service for criminal substantive law regulations, Directorate for criminal law, Ministry of Justice and Public Administration of Croatia, representative of Croatia to the Lanzarote Committee
- 11:05 am **Extension of statutes of limitations via special mechanisms**
- **Claire Paillassou**, Reporting magistrate, Office of legislation and legal affairs of the Directorate of judicial youth protection, Ministry of Justice, France; former children’s judge at the Strasbourg court and former lecturer in juvenile criminal law at the law faculty of the University of Strasbourg
- 11:15 am **Preservation of statutes of limitation**
- **Šimon Pepřík**, Legislative Department (Criminal Law Unit), Ministry of Justice of the Czech Republic, representative of the Czech Republic to the Lanzarote Committee, by videolink
- 11:25 am **Coffee break**
- 11:45 am **Challenges in investigative and judicial proceedings presented by imprescriptible offences: national experiences**
- **Kolbrún Benediktsdóttir**, Deputy District Prosecutor, Iceland
 - **Thomas Frøberg**, Higher Prosecuting Authorities, Norway
 - **Barry Donoghue**, former Deputy Director of Public Prosecutions, Ireland, by videolink
 - **Eria Papaloizou** and **Vasilis Bissas**, Counsel of the Republic, Cyprus, by videolink
- 12:25 am **Q&A/Discussion**
- Panel 3 – Alternative approaches**
- 12:35 am **Redress for victims outside of judicial proceedings**
- **Edouard Durand** and **Nathalie Mathieu**, Co-presidents of Ciivise, French Independent Commission on Incest and Sexual Violence against Children, by videolink
- 12:45 am **Q&A/Discussion**
- 12:55 am **Closure**
- 1:00 pm **End of the morning seminar**

Approaches to the legal age for sexual activities

- 2:30 pm **Opening of the afternoon seminar by the moderator**
- **Irena Guidikova**, Head of the Children's Rights and Sport Values Department, Council of Europe

Panel 1 – General considerations on the legal age for sexual activities

- 2:35 pm **Brief comparative analysis**
- **Domenico Rosani**, Assistant Professor, University of Utrecht, Netherlands

2:40 pm **Is there an ideal age for sexual activities?**

Discussion on a recent reform that raised the legal age for sexual activities

- **Anna-Liisa Uisk**, Adviser, Department of Criminal Policy, Ministry of Justice of Estonia

Discussion on a recent reform that lowered the legal age for sexual activities

- **Lorna Muscat**, Head of the Office of the Commissioner for Children, Representative of Malta to the Lanzarote Committee, by videolink

3:00 pm **Differences between the legal age for sexual activities, and the age of sexual consent**

Differences in these two thresholds, depending on the victim's complaint

- **Domenico Rosani**, Assistant Professor, University of Utrecht, Netherlands, on the Turkish approach to the legal age for sexual activities

Differences in these two thresholds, which will impact the gravity of the offence

- **Davit Tumasyan**, Independent expert and University Lecturer, Armenia

3:20 pm **Q&A session / discussion**

3:40 pm **Coffee break**

Panel 2 – The age difference clause, or the "Romeo and Juliet" clause

- 4:00 pm **Brief comparative analysis**
- **Domenico Rosani**, Assistant Professor, University of Utrecht, Netherlands

4:05 pm **Existence of an age tolerance clause (only) between children**

- **Marlena Jukić**, Head of the Service for criminal substantive law regulations, Sector for criminal law regulations, Directorate for criminal law, Ministry of Justice and Public Administration of Croatia, representative of Croatia to the Lanzarote Committee

No age exception including between children

- **Fabienne Abens**, Seconded professor, Children's Rights Department, General Directorate for Child and Family Support, Ministry of Education, Children and Youth of Luxembourg

Relations between a child below the legal age and a young adult

- **Catherine Mathieu**, president of the Meaux judicial court, former member of a multidisciplinary mission to reflect on sexual offences against children in the context of the French 2021 legislative reform

4:35 pm

Q&A session / discussion

Panel 3 – Can and should consent be defined?

5:00 pm

Brief comparative analysis

- **Domenico Rosani**, Assistant Professor, University of Utrecht, Netherlands

5:05 pm

Definition of consent embedded in the law

- **Corah Caples**, Assistant Principal Officer, Criminal Justice Policy, Department of Justice of Ireland, representative of Ireland to the Lanzarote Committee

Definition of consent exists in the jurisprudence

- **Claire Paillassou**, Reporting magistrate the Office of legislation and legal affairs of the Directorate of judicial youth protection; former children's judge at the judicial court of Strasbourg and former lecturer in juvenile criminal law at the law faculty of Strasbourg

5:25 pm

Q&A session / discussion

5:45 pm

Concluding remarks on both topics discussed during the seminar

- **Maria José Castello-Branco**, Legal Adviser, Civil Justice Unit, International Affairs Department, Directorate General for Justice Policy, Ministry of Justice of Portugal, Chairperson of the Lanzarote Committee

6:00 pm

End of the seminar