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LANZAROTE CONVENTION

Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

Replies to the thematic questionnaire

SAN MARINO

2nd thematic monitoring round

“The protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)”

Replies registered by the Secretariat on 25 October 2017

Question 1

Two major educational projects are being conducted at the Secondary School. One is dedicated to emotional and sexual education, the other to a conscious use of Information and Communication Technology and social media in particular. While the first project has been included in teaching programmes for some time and forms part of the Educational Plan, the second one was introduced two years ago and is still under trial.

- Project "Emotional Education"
The project is destined to the first, second and third classes. It includes a 2-hour module held by the science teacher with the assistance of a psychologist and a physician and a series of educational initiatives within other disciplines whose subjects are related to the project (physiological aspects, analysis of feelings, emotions and interpersonal relationships). The first classes analyse the emotional dynamics within the family, while the second classes analyse the interpersonal relationships in expanded contexts, such as schools, sports environments and other centres of social aggregation. The third classes focus on psychophysical changes related to adolescence and on the use and abuse of new social tools offered by ICT, including sexting.
- Project "Education to a conscious use of social networks"
The project, implemented in collaboration with the data protection Authority, is intended for all first, second and third classes of the lower secondary school.
The issues dealt with mainly focus on cyberbullying, protection of personal data, conscious use of electronic devices (smartphones, tablets and PCs) and risks related to the production and dissemination of self-produced videos.
The activities proposed include awareness-raising meetings with families on sexting and its legal and psychological implications. Such meetings are held by legal and technical experts.
The project, first included in the training course "*Pestalozzi Program - Respect - Responsible attitudes and behaviour in the virtual social space*" (2013-2014) by Prof. Alessandro Cenci, has been proposed in a systematic manner for two school years (2014-15, 2015-16), with an educational programme entitled "#sei connesso ??? Educare alla rete" (Are you connected? Web education), open to all classes of lower secondary school.
At the end of the programme an on-line questionnaire was sent to all students participating in the project. The questionnaire had the following purposes:
 - to collect the first data related to the Internet and social media among young people;
 - to increasingly customise the initiatives of the interdisciplinary group "#sei connesso ??? Educare alla rete" in the classes, through a critical analysis of data;
 - to encourage children to reflect on their on-line habits;
 - to encourage dialogue among classes.The 20 questions that the working group has elaborated and selected can be divided into 2 sections:
 - a first part dealing, in general, with connection tools and on-line habits of young people;
 - a second one, more specific, on social media and their conscious use.

Altogether, 460 students of the lower secondary school at Fonte dell'Ovo, i.e. more than 70% of the total number of students of the Institute, answered the questionnaire.

In order to guarantee more coherent and effective educational interventions aimed at consolidating students' cognitive tools for a responsible and conscious use of ICT, the reform of the San Marino school, which is still under way and whose full implementation is expected by Spring 2018, has drawn up new guidelines on the issues related to digital skills. Such skills are dealt with in six curricular modules: Information, communication, content creation, problem solving and security.

The latter pays particular attention to the student's awareness of the threats posed by the Internet and to a use of new computing devices which preserves physical and mental health.

Professionals involved:

Sex education is mainly taught by psychologists, sex therapists, gynaecologists and science teachers. Emotional education and conscious use of social media also involve all the teachers of other subjects, who dedicate part of their hours to the issues above, including sexting. Occasionally, the school also relies on legal advisors acting as educators for families. The work of all professionals is partly coordinated by class councils, partly by the school director and teachers' board.

Link to material produced:

<http://www.media.educazione.sm/on-line/home-portale-scuole-medie/materiali-per-la-didattica/materiali-interdisciplinari/social-network.html>

Question 2

Apart from what is mentioned at point n.1, the Great and General Council (Parliament) adopted a decision unanimously on 20 March 2017 to monitor, inform the citizenry and elaborate a project to combat bullying, cyberbullying, and also make research on the subject at a national level.

The parliamentary decision delegates the Government to adopt a prevention plan for families and the population in general, and to include cyberbullying in all educational programmes before 31.12.2017, involving families and the population in general.

Question 3

See reply to question n.1.

Question 4

Not yet. There is no University with faculties offering such courses in San Marino, but educators and teachers go to University in Italy so there are likely to receive such training and knowledge there.

Question 5

See reply to question 2.

Question 6

Such specific services are not yet available also in consideration of the population of San Marino. There are services in charge of protecting and listening to minors, in response to all problems related to ill-treatment and discomfort of children.

In the year 2016 there were 19 cases of children victims of witnessing violence and/or psychological and/or physical violence.

The approach is a case to case one, and when a professional competency is not available in San Marino, cooperation with Italian structures applies.

However, a cooperation with the NGO "Telefono Azzurro" is envisaged by the end of the year, especially concerning training and access to helplines.

Question 7

There are no NGO dealing with those issues.

Conventions with care homes outside the territory of San Marino have been concluded for the protection of women and children victims of violence.

As mentioned in question 6, a cooperation with Telefono Azzurro is about to begin, and Minor Service already collaborates with CISMAI (Coordinamento italiano dei servizi contro il maltrattamento e l'abuso all'infanzia) for training and assistance.

Question 8

In the Republic of San Marino this issue is regulated by Art. 177 ter of the Criminal Code, introduced by Law no. 61 of 30 April 2002 "Law on the repression of the sexual exploitation of children".

Under this article child pornography consists in the production of "performances, works or material" (therefore including through ICTs) "visually showing a child in sexually explicit conduct for purposes of sexual incitement."

The law punishes with third-degree imprisonment (i.e. from two to six years) and disqualification of the same degree (i.e. one to three years) anyone who produces and trades in child pornographic works.

Punishments are increased by one degree (fourth-degree imprisonment, i.e. from four to ten years and fourth-degree disqualification, i.e. from two to five years) if the act is committed to the detriment of a minor under 14, or under 18 if affected by physical or mental disability (aggravating circumstances).

Anyone who provides another person, at any title, with child pornographic material is punished with first-degree imprisonment (from three months to one year), or with second-degree arrest (from fifteen days to two months) and in any case with first-degree disqualification (from fifteen days to one year).

If the dissemination, disclosure or publication of such material takes place through the Internet and in any case through the ICTs (e.g. virtual pornography), the punishment envisaged by the law is third-degree imprisonment (from two to six years) and third-degree disqualification (from two to three years).

The same punishments apply if ICTs are used for the dissemination of information aimed at soliciting minors under 18.

The sentence for such offence entails (Art. 147 of the Criminal Code) confiscation, preceded in the pre-trial stage by seizure for the purpose of confiscation.

Law no. 61/2002 mentioned above has extended San Marino territorial jurisdiction to include offences committed abroad by or to the detriment of a San Marino citizen, without prejudice to Art. 7 of the Criminal Code.

In the light of the above, a positive answer can be given to questions 8.1 a) (the definition of "performances, works or materials" undoubtedly include images and/or video); 8.2 b) (the sentence beginning with "anyone" in Art. 177-ter of the Criminal Code does not distinguish between generated and self-generated material, clearly including both, and 8.1 c) (the definition of "performances, works or materials" includes sound material or texts).

Positive answers can also be given to questions 8.2 a) and b). The word "anyone" in Art. 177 ter of the Criminal Code includes both the singular and the plural, as clearly established with regard to many articles of the Criminal Code using the same expression and which have been the subject of extensive case-law.

On the contrary, questions 8.3 a) and b) cannot be answered positively, since the scope of the above mentioned Art. 177 ter of the Criminal Code is necessarily broad, in order to cover the widest possible range of sanctioned behaviours on child pornography. The intention of San Marino legislator was not to specify individual behaviours, so as not to run the risk of neglecting some or not include criminal behaviours unforeseeable at that time (in consideration of the natural evolution of IT systems, progress in technology, new behaviours, conducts or attitudes, etc.).

Question 9

On account of the answer to question 8 above, questions 9.1 b) and 9.2 c) can be answered positively, being the dissemination and transmission of child pornographic material criminally sanctioned, when destined both to adults and to other children.

On the contrary, San Marino legislation does not explicitly sanction the mere possession of child pornographic material. The Government adopted a draft law for the transposition, through parliamentary procedure, of the provisions contained in the Council of Europe Convention on Cybercrime (Budapest Convention) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, signed by the Republic of San Marino on 17 March 2017. Such draft law envisages an amendment of Art. 177 ter of the Criminal Code, in order to sanction also the mere possession of child pornographic material, irrespective of the medium used.

Question 9.2

As highlighted in the answer to question 8.1, the only offences that are not prosecuted are those committed in a foreign territory by or to the detriment of a San Marino citizen when the following conditions are met:

- 1) the San Marino citizen or the foreigner was tried and acquitted abroad;
- 2) the individual, who has been sentenced abroad, has fully served the sentence imposed upon conviction, though the punishment was less severe than that envisaged by San Marino Criminal Code;
- 3) the individual, who has been sentenced abroad, has served a part of the sentence imposed upon conviction, if said part is equivalent to the entire punishment envisaged by San Marino Criminal Code.

Question 9.3

There are no consequences.

Question 9.4

On account of the answer to question 8 above, questions 9.4 b) and 9.4 c) can be answered positively, being the dissemination and transmission of child pornographic material criminally sanctioned, when destined both to adults and to other children.

On the contrary, San Marino legislation does not explicitly sanction the mere possession of child pornographic material. The Government adopted a draft law for the transposition, through

parliamentary procedure, of the provisions contained in the Council of Europe Convention on Cybercrime (Budapest Convention) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, signed by the Republic of San Marino on 17 March 2017. Such draft law envisages an amendment of Art. 177 ter of the Criminal Code, in order to sanction also the mere possession of child pornographic material, irrespective of the medium used.

Question 9.5

As indicated above, the only offences that are not prosecuted are those committed in a foreign territory by or to the detriment of a San Marino citizen when the following conditions are met:

- 1) the San Marino citizen or the foreigner was tried and acquitted abroad;
- 2) the individual, who has been sentenced abroad, has fully served the sentence imposed upon conviction, though the punishment was less severe than that envisaged by San Marino Criminal Code;
- 3) the individual, who has been sentenced abroad, has served a part of the sentence imposed upon conviction, if said part is equivalent to the entire punishment envisaged by San Marino Criminal Code.

Question 9.6

There are no consequences.

Question 9.7

Without prejudice to the answers to previous questions, under San Marino Criminal Code, the age of criminal liability is set at 14 years (previously such age was 12 years; since 2014 – in response to various requests by some international bodies – the age of criminal liability was raised to 14 years). The punishment is reduced by one to two degrees in case of minors over 14 but below 18, for whom the judge has established full possession of their faculties.

Question 9.8

As indicated above, the only offences that are not prosecuted are those committed in a foreign territory by or to the detriment of a San Marino citizen when the following conditions are met:

- 1) the San Marino citizen or the foreigner was tried and acquitted abroad;
- 2) the individual, who has been sentenced abroad, has fully served the sentence imposed upon conviction, though the punishment was less severe than that envisaged by San Marino Criminal Code;
- 3) the individual, who has been sentenced abroad, has served a part of the sentence imposed upon conviction, if said part is equivalent to the entire punishment envisaged by San Marino Criminal Code.

Question 9.9

There are no consequences.

Question 9.10

Without prejudice to the answers to previous questions, under San Marino Criminal Code the age of criminal liability is set at 14 years (previously such age was 12 years; since 2014 – in response to

various requests by some international bodies – the age of criminal liability was raised to 14 years). The punishment is reduced by one to two degrees in case of minors over 14 but below 18, for whom the judge has established full possession of their faculties.

Question 9.11

As indicated above, the only offences that are not prosecuted are those committed in a foreign territory by or to the detriment of a San Marino citizen when the following conditions are met:

- 1) the San Marino citizen or the foreigner was tried and acquitted abroad;
- 2) the individual, who has been sentenced abroad, has fully served the sentence imposed upon conviction, though the punishment was less severe than that envisaged by San Marino Criminal Code;
- 3) the individual, who has been sentenced abroad, has served a part of the sentence imposed upon conviction, if said part is equivalent to the entire punishment envisaged by San Marino Criminal Code.

Question 9.12

There are no consequences.

Question 10

As already indicated in previous answers, at present, the production and not the mere possession of child pornography is criminalised. The provisions on the age of criminal liability referred to in answer to question 9.10 shall not be affected.

Question 11

On this subject, the Government adopted a draft law for the transposition, through parliamentary procedure, of the provisions contained in the Council of Europe Convention on Cybercrime (Budapest Convention) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, signed by the Republic of San Marino on 17 March 2017.

Question 12

Please see replies to question n.8, 9.2, 9.5, 9.8 and 9.11.

Question 13

13.1

There are no special units/services/sections dealing exclusively with sexual offences against children and facilitated by the use of ICT (information and communication technologies). However, there is an office within the Gendarmerie called "Gender and Child Abuse Office". If crimes against children are reported, this office carries out investigation with the support of the Judicial Police Unit of the Gendarmerie (forensic police, prevention of and fight against cybercrime). In all cases, specific investigation activities will be coordinated and ordinate by the Investigating Judge to whom the crime was reported.

13.2

The Forensic Police of the Judicial Police Unit is equipped with the tools and expertise to carry out investigations in the field of cybercrime. The team is supported by the Gender and Child Abuse Office, whose staff is trained to deal with offences against children.

→ As regards law enforcement, please indicate if:

- a. there is a victim identification function?

No such specific function exists: the police use traditional investigation techniques.

- b. there is an active contribution to the INTERPOL's International Child Sexual Exploitation (ICSE) image database? If not, why?

Yes, the San Marino law enforcement authorities are in close contact with the San Marino INTERPOL NCB, but no cases have been filed so far.

Question 14

What challenges do law enforcement, prosecution and courts face during the prosecution of ICT facilitated sexual offences against children involving the sharing of:

- a. self-generated sexually explicit images and/or videos?
- b. self-generated sexual content?

Regarding San Marino law enforcement authorities, the lack of specific cases has so far prevented authorities from considering this a critical issue. In the past, also investigations regarding adults entailed serious difficulties when images were located in servers based in poorly collaborative countries.

Question 15

Not yet. Only staff from Minor Service who collaborate closely both with judicial authorities and police forces received this kind of training so far.

Question 16

San Marino does not have the concrete need for such measures since the cases mentioned above did not occur. However, beyond INTERPOL, San Marino can rely on the following Agreements:

On 29 February 2012, the Government of the Republic of San Marino and the Government of the Italian Republic signed the Agreement on cooperation in the prevention and suppression of crime. This is aimed at preventing, combating and investigating unlawful immigration and all forms of trafficking in human beings, with particular reference to the exploitation, including of sexual nature, of women and minors.

On 18 July 2012, an Arrangement on enhancing exchange of information to prevent crime was signed between the Government of the Republic of San Marino and the Government of the United States of America. Such Arrangement provides for collaboration between the two States to prevent, detect and investigate serious criminal offences.

San Marino concluded bilateral agreements with Italy and France on legal cooperation in criminal matters.

On 20 November 2006, the Republic of San Marino accepted the Constitution and General Regulations of the International Criminal Police Organization (ICPO - Interpol), as adopted by the General Assembly of the Organization during its 25th session (1956 - Vienna) and subsequent amendments. In conformity with the Constitution of the Organization, San Marino has established its own National Central Bureau, responsible for international police cooperation under the agreements in force. This Bureau, under the responsibility of the Minister of Foreign Affairs, liaises with the National Central Bureaus of the other member States, as well as with the General Secretariat of the Organization.

The Republic of San Marino ratified the following instruments in the field of transnational crime:

- United Nations Convention against Transnational Organized Crime, done at Palermo on 15 November 2000, ratified on 1 June 2010;
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000, ratified on 1 June 2010;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000, ratified on 1 June 2010.

Finally, San Marino ratified the following international instruments in the field of mutual legal assistance:

- European Convention on Mutual Assistance in Criminal Matters, done at Strasbourg on 20 April 1959, ratified on 4 March 2009.
- European Convention on Extradition, done at Paris, on 13 December 1957, and relevant declarations and reserves, ratified with Parliamentary Decree no. 28 of 16 March 2009;
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990, ratified with Decree no. 92 of 18 September 2000.
- European Convention on the International Validity of Criminal Judgements, done at The Hague on 28 May 1970, ratified on 17 April 2002.