

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

Fields marked with * are mandatory.

Introduction

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

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

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

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

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

The notion of the circle of trust

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

The previous and current monitoring rounds on the circle of trust

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

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

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

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

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

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

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

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

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

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

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

9. In addition, Parties are kindly requested to:

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

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

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

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

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

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

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

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

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

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

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

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

IDENTIFICATION OF THE RESPONDER

* Name of the Party responding or concerned by your response

Serbia

* Name of the contact person/coordinator

* Email address of the contact person/coordinator

KEY NOTIONS Question 1. Does your national legal framework:

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

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

- Yes
 No

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

Sexual Intercourse through Abuse of Position - Article 181 of the Criminal Code

(1) Whoever by abuse of position induces to sexual intercourse or an equal act a person who is in a subordinate or dependent position, shall be punished with imprisonment of three months to three years.

(2) Teacher, tutor, guardian, adoptive parent, stepfather or other person who through abuse of his position or authority has sexual intercourse or commits an act of equal magnitude a juvenile entrusted to him for learning, tutoring, guardianship or care, shall be punished with imprisonment of one to ten years.

(3) If the offence specified in paragraph 2 of this Article is committed against a child, the offender shall be punished with imprisonment of five* to twelve years.

(4) If the offence specified in paragraphs 1 through 3 of this Article resulted in pregnancy, the offender shall be punished for the offence specified in paragraph 1 with imprisonment of six months to five years, and for the offence specified in paragraph 2 with imprisonment of two to twelve years, and for the offence specified in paragraph 3 with imprisonment of five to fifteen years.

(5) If death of the child results due to offence specified in paragraph 3 of this Article, the offender shall be punished with imprisonment of minimum ten years.

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

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

[7] *Ibid.*, Recommendation 2

- Yes
 No

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

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

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

- Yes
 No

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

Sexual Intercourse through Abuse of Position - Article 181 of the Criminal Code

(1) Whoever by abuse of position induces to sexual intercourse or an equal act a person who is in a subordinate or dependent position, shall be punished with imprisonment of three months to three years.

(2) Teacher, tutor, guardian, adoptive parent, stepfather or other person who through abuse of his position or authority has sexual intercourse or commits an act of equal magnitude a juvenile entrusted to him for learning, tutoring, guardianship or care, shall be punished with imprisonment of one to ten years.

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(5) If death of the child results due to offence specified in paragraph 3 of this Article, the offender shall be punished with imprisonment of minimum ten years.

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

d. [define the notion of “circle of trust”?](#)^[9]

[9] *Ibid.*

- Yes
 No

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

Definition of „circle of trust“ is not envisaged in the national legislation.

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

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

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

[10] *Ibid.*, Recommendation 6

- Yes
 No

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

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

[1] *Ibid.*, Recommendation 5

- Yes
 No

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

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

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

[12] *Ibid.*, Recommendation 1

- Yes
 No

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

Yes. Provision of the Criminal Code is provided under question 1c.

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

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

[13] *Ibid.*, Recommendation 7

- Yes
 No

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

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

[14] *Ibid.*, Recommendation 8

- Yes
 No

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

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

a. criminalise sexual abuse of children for acts other than sexual intercourse and equivalent actions?^[15] Please specify which other acts are covered and whether violation of a child's "sexual integrity" specifically is criminalised.

[15] *Ibid.*, Recommendation 9

- Yes
 No

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

The Criminal Code of the Republic of Serbia also criminalizes pimping and procuring a minor for sexual intercourse or equivalent actions, mediation in prostitution, using a minor to produce photographs, audio-visual or other items of pornographic content or for a pornographic show, procuring and possession of such materials, using the means of information technologies to deliberately access such material, inducing a child to attend rape, intercourse or another act equal to intercourse, or some other sexual act and using computer network or communication with other technical devices makes appointment with a minor and appears on the place of the appointment with the intent to commit a criminal act against the sexual freedom.

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

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

[16] *Ibid.*, Recommendation 11

- Yes
 No

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

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

[17] *Ibid.*, Recommendation 12

- Yes
 No

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

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

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

[18] *Ibid.*, Recommendation 57

- Yes
 No

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

The Criminal Procedure Code of the Republic of Serbia (Article 6) envisages that the public prosecutor is required to conduct criminal prosecution where there are grounds for suspicion that a criminal offence has been committed or that a certain person has committed a criminal offence prosecutable ex officio. All criminal act against the sexual freedom are prosecutable ex officio, which means that a criminal complaint from the victim or his/her legal representative is not necessary.

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

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

[19] *Ibid*

- Yes
 No

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

According to the aforementioned Article 6 of the Criminal Procedure Code of the Republic of Serbia, for criminal acts which are prosecutable ex officio a criminal complaint from the victim or his/her legal representative is not necessary, which means that a withdrawal of the victim`s complaint does not have any influence on criminal proceedings.

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

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

[20] *Ibid.*, Recommendation 56

- Yes
 No

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

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

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

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

- Yes
 No

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

Children below the age of criminal responsibility are initially subject of protection within the system of social services. Social protection system, is directing these children toward health care, or other non/medical institutions with adequate methodology for counselling.

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

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

[22] Question included for capacity-building purposes

- Yes
 No

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

Criminal procedure against children above the age of criminal responsibility is foreseen by the the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles. Only sanctions and measures envisaged by that Law can be imposed against juvenile offenders.

According to Article 2 of that Law, neither criminal sanctions nor other criminal measure provided under this Act may be pronounced or applied to a person under fourteen years of age at the time of commission of an unlawful act provided under law as a criminal offence. A juvenile is a person who at the time of commission of the criminal offence has attained fourteen years of age and has not attained eighteen years of age.

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

CHILD VICTIMS' RIGHT TO PROTECTION AND PARENTAL RIGHTS

Question 7. Does your national legal framework:

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

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

- Yes
 No

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

Although the answer is "yes" this is very much dependent on the age of a child. According to Article 65. (para 5), of Serbian Family Law, "A child who has reach ten years of age, may address to court or administrative body by himself/herself, or through another person or institution, and request assistance in realization of his /her rights to free expression of opinion". Younger children (bellow this age) are in such circumstances usually confused and need presence of a grown up person. Professionals (from social services), are allowed to conduct individual explanatory interview in order to check initial child statement, and try to establish the facts. This is inevitable for the cases where reasonable assumption exists that presence of parent/parents or other person (relative) might influence the child statement.

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

b. provide for the possibility for child protection professionals to conduct exploratory interviews of a child without acquiring the parents/legal guardians' prior consent in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?^[24] Please provide details.

[24] *Ibid*

- Yes
 No

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

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

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

- Yes
- No

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

The Law on Prevention of Domestic Violence envisages urgent measures of temporary removal of the perpetrator from the apartment and measure of temporarily prohibiting the perpetrator from contacting the victim of violence and approaching him/her if there is a reasonable doubt that the criminal act against sexual freedom is committed against the family member.

This measure is issued by the criminal court, on the request of the prosecutor.

Furthermore, the Family Act has foreseen measures for protection against domestic violence, including criminal acts against sexual freedom. One of the measures is issuance of order for eviction from the family apartment or house, regardless of ownership or lease of immovable property.

This measure is issued by the civil court, based on the lawsuit.

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

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

[26] *Ibid.*, Recommendation 27

- Yes
- No

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

Removal from the family is urgent measure applying when the child's health, protection, care, life and generally best living conditions are endangered. It is always accompanied with social service decision on guardianship. Article 332. (para 2) defines that providing accommodation (for a child), is urgent within the 24 hours from the moment of being informed about the danger, and need for guardianship. Procedure and duration of removal are defined by General Protocol for Protection Children from Neglecting and Abuse.

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

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

[27] *Ibid.*, Recommendation 25

- Yes
 No

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

Sharing of information between state authorities is regulated by the law.

All state authorities involved in the coordination and collaboration concerning child sexual abuse are allowed to share personal information in line with provisions of the Law on Personal Data Protection and the Law on Free Access to Information of Public Importance.

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

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 8. Does your national legal framework clearly distinguish:

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

[28] *Ibid.*, Recommendation 32

- Yes
 No

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

The answer is yes. In first case, parental rights are suspended according to Article 132. (para 1) of Serbian Family Law, while child is put under guardianship. "The guardianship authority may decide to appoint a temporary guardian to a ward, to a child under parental care, or to a person with legal capacity, if it finds that necessary for the temporary protection of the personality, rights or interests of those persons". In case number two, after suspicion for sexual abuse is confirmed, and perpetrator is convicted, withdrawal of parental rights automatically follows. "A parent who abuses his/her rights or grossly neglects duties that comprise a part of his/her parental rights may be fully deprived of parental rights" Article 81. (para 1) of Serbian Family Law. "A parent abuses rights that comprise a part of parental rights if he/she physically, sexually or emotionally abuses the child". Article 81. (para 2.1), of Serbian Family Law.

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

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 9. Does your national legal framework provide for:

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

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

- Yes
 No

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

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

[30] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (9.b Yes)

See answer/explanation above.

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

GUARANTEES OF PROTECTION FOR PERSONS REPORTING SUSPECTED OFFENCES

Question 10.

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

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

Pursuant to the Article 280 of the Criminal Procedure Code of the Republic of Serbia, state and other authorities, legal and natural persons report criminal offences which are prosecutable ex officio about which they were informed or they learn in other manner, under the conditions stipulated by law or other regulation.

Since the reporting of such criminal act is an obligation, prosecution or punishment is excluded, except in case of false reporting which is considered as criminal act if someone is reporting a person of committing an offence prosecuted ex officio, while aware that such person is not the offender.

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

ASSISTANCE TO THIRD PARTIES Question 11.

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

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

Persons close to the victim (family members along with victim), may have therapeutic assistance as part of the family therapy recommended by professionals already offering assistance to the victim. But it is not mandatory; it is a matter of personal choice.

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

ASSISTANCE TO THIRD PARTIES Question 12.

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

[33] *Ibid.*, Recommendation 31

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

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

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

Please provide details.

[34] *Ibid.*, Recommendation 33

- Yes
- No

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

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

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

- Yes
- No

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

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

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

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

- Yes
- No

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

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

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

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

Please provide details.

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

- Yes
- No

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

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

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

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

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

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

[41] *Ibid.*, Recommendation 36

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

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

[42] *Ibid.*, Recommendation 37

In Serbia, usually professionals from social services are in court proceedings appointed for the role of "collision guardians" to avoid conflict of interest. By professions they are: social workers, psychologist, special educators, pedagogues, or jurists. They are trained by means of their basic professions, and they are paid through their salaries in social services, not through the role of guardians.

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

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

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

[43] *Ibid.*, Recommendation 34

- Yes
 No

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

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

[44] *Ibid*

- Yes
 No

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

See answer above. Main role of collision guardians is to represent child in court during different court proceedings (not only in cases of sexual abuse). Article 265. (para 1) of Serbian Family Law says: "If adverse interests exist between the child and the child's legal representative, the child is to be represented by a collision guardian".

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

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

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

[45] *Ibid.*, Recommendation 38

The authority conducting proceedings is required to protect an injured party or witness from an insult, threat and any other attack, irrespective of their age. Upon receiving notification from the police or the court or upon learning about the existence of violence or a serious threat directed at a victim or a witness, the public

prosecutor will undertake criminal prosecution or notify the competent public prosecutor thereof. A public prosecutor or the court may request that the police undertake measures to protect a victim or a witness in accordance with the law.

Furthermore, a juvenile who is a victim shall have a legal representative from the first questioning of the defendant. If the juvenile does not have a legal representative, he shall be appointed from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles. The costs of representation shall be borne by the budget of the authority conducting proceedings. If a juvenile is questioned as witness, who due to the nature of the criminal offence, consequences or other circumstances is particularly vulnerable or is in a particularly difficult mental state, confrontation between him and the defendant is prohibited.

If recognition of the defendant is done by a juvenile who is a victim, the Court shall proceed with particular care and shall conduct such recognition in all phases of the proceeding in a manner that completely prevents the defendant from seeing the juvenile.

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

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

[46] *Ibid.*, Recommendation 39

The authority conducting proceedings may ex officio, at the request of parties or the witness himself, designate as an especially vulnerable witness a witness who is especially vulnerable in view of his age, experience, lifestyle, gender, state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances.

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

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

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

As already noted, a juvenile who is a victim shall have a legal representative from the first questioning of the defendant. If the juvenile does not have a legal representative, he shall be appointed from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles.

An especially vulnerable witness may be examined only through the authority conducting the proceedings, who will treat the witness with particular care, endeavouring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings.

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

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

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

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

- Yes
 No

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

Criminal procedure against children above the age of criminal responsibility is foreseen by the the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles taking into account all specificities of the mental and physically state of juvenile offenders.

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

INVESTIGATION Question 19. In the investigation phase:

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

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

[49] *Ibid.*, Recommendation 41

- Yes
 No

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

If, due to the nature of the criminal offence and the juvenile's character authority conducting proceedings considers it necessary, it shall order questioning of the juvenile with the aid of technical devices for transmitting of image and sound, and the questioning shall be conducted without presence of the parties and other participants in the proceeding in the room where the witness is located, so that parties and persons entitled to ask question may do so through the authority conducting proceedings, psychologist, pedagogue, social worker or other qualified person.

Juveniles may be questioned as witness-/victims in their apartment or other premises and/or authorized institution – organization that is professionally qualified for questioning of minors.

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

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

[50] *Ibid.*, Recommendation 42

- Yes
 No

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

Public Prosecutor and judge responsible for interviewing child victims have special skills in the field of the rights of the child and in criminal protection of minors. They undergo specialized training organized by the Judicial Academy in order to obtain licence for conducting cases with minor offenders and victims/witnesses. Also, if particular activities are delegated to the police, specialized members of the police authorities with special skills in the field of the rights of the child and criminal protection of minors shall participate in conducting delegated activities.

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

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

[51] *Ibid.*, Recommendation 43

- Yes
 No

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

According to the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, criminal proceedings for offences against minors are urgent. Furthermore, if a juvenile is questioned as witness who

is victim of a criminal act against sexual freedom, the questioning may be conducted at most twice, and exceptionally more if necessary to achieve the purpose of criminal proceeding.

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

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

[52] *Ibid.*, Recommendation 54

In addition to answer to question 19c, if the juvenile is questioned more than twice, the public prosecutor shall particularly have regard for the protection of personality and development of the juvenile. When a juvenile has been questioned by using technical devices for transmitting of image and sound, the record of his testimony shall be read at the main hearing or a recording of the questioning heard in order to avoid victim's presence.

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

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

[53] *Ibid.*, Recommendation 44

- Yes
 No

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

In Public Prosecution Same Prosecutor is conducting all evidentiary actions in one case, including the interview of the child victim.

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

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

[54] *Ibid.*, Recommendation 45

- Yes
 No

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

According to Article 68 of the Criminal Procedure Code of the Republic of Serbia, a defendant and defence council have the right to question witnesses. As previously described, questioning is conducted through prosecutor, psychologist, pedagogue, social worker or other qualified person.

As already noted, when a juvenile has been questioned by using technical devices for transmitting of image and sound, the record of his testimony shall be read at the main hearing or a recording of the questioning heard in order to avoid victims presence.

However, a defendant and defense council has the right to contest legality of every obtained evidence through appeal against the adjudication.

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

JUDICIAL PROCEEDINGS Question 20. In the judicial proceedings:

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

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

[55] *Ibid.*, Recommendation 46

- Yes
 No

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

Technical conditions for video interviews exists in many courts and in some units in social protection system, but, still it is not regular practice for recording testimonies. (In recent case of mass murder in school in Belgrade, suspect, who is a child not criminally liable at the moment of act, was giving statement to the court via video link). Presence of the injured party is not mandatory by law. Everything is very much dependent on judge and how is he organizing hearing.

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

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

provide details.

[56] *Ibid.*, Recommendation 59

- Yes
 No

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

While suspect is inevitably in the court during hearing, victim is not necessary present in the court room. He /she could replace by representative (guardian, other parent, or attorney).

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

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

Please provide details.

[57] *Ibid.*, Recommendation 60

- Yes
 No

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

Yes, the age of a child plays a key role. If child is older, higher are chances to be in the court room, or questioned several times.

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

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

[58] *Ibid.*, Recommendation 47

- Yes
 No

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

In cases of minors, the answer is yes.

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

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

[59] *Ibid.*, Recommendation 48

No matter the position of influence, authority, or trust, presumed offender is detained, and thus prevented of having influence on victim, or witness. (In Serbia is well known case of actors' teacher, who was abusing his role and position of trust, sexually abusing his minor female students, who was detained immediately after first allegations of sexual abuse become public).

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

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

[60] *Ibid*

- Yes
 No

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

Yes, the purpose of video link is to avoid direct contact (presence) of victim and presumed abuser.

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

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

[61] *Ibid*

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

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

[62] *Ibid.*, Recommendation 49

Child's identity in terms of his/her name, city, or part of the city he/she lives, or school he/she attends are never publicly disclosed. Yet, this could not give 100% protection from media and disclosure of victim's identity.

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?](#)^[63] Please provide details.

[63] *Ibid.*, Recommendation 50

- Yes
 No

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

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

[64] *Ibid.*, Recommendation 51

- Yes
 No

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

If court (judge) is in the process deciding about representative by "line of duty" (guardian, or attorney), higher are chance that this person will be specialized for the cases of child sexual abuse. Yet, families are often deciding to hire (expensive) attorney, which is "famous" but not necessary specialized for the cases of children sexual abuse.

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

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

[65] *Ibid.*, Recommendation 52

Assistance, to the victim if he/she wants it and accepts it, starts even before final criminal justice decision. It continuous even after final criminal justice decision as victim choose such kind of support, but legally, it is not mandatory.

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

Contact

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