

## **The third monitoring round of the implementation of the Lanzarote Convention – Russia’s civil society reply to the questionnaire**

**01 February 2024**

### **Information about the authors of the submission**

1. **Equality Now**<sup>1</sup> is an international human rights organisation with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our network of individuals and organisations in every region. Ending sexual violence, ending sexual exploitation, ending harmful practices and achieving legal equality are the main areas of Equality Now’s work. This submission is in reference to Equality Now’s 2019 report, “Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia”,<sup>2</sup> and its submissions to the UN Treaty Bodies,<sup>3</sup> in particular its recent submission to the Committee on the Rights of the Child (OHCHR) 94th Session.<sup>4</sup> These submissions identify gaps in the law, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes.
2. **Stichting Justice Initiative Project**<sup>5</sup> (‘SJI’) has been providing legal assistance to victims of human rights violations in the countries of the former Soviet Union since 2001. SJI has a particular focus on advocacy for the rights of survivors of gender-based violence in Russia. The organisation seeks to ensure that victims have guaranteed access to effective remedies at national and international levels, publishes research on women's and children's rights in Russia and carries out awareness-raising activities related to the prevention of gender-based and domestic violence. In 2019, SJI won the first cases before the European Court of Human Rights on behalf of victims of domestic violence,<sup>6</sup> including a case concerning stalking in Russia.<sup>7</sup> In 2023, SJI won an exemplary case in which the ECtHR ruled that Russian authorities failed to protect the personal integrity of an extremely vulnerable child in criminal proceedings concerning her alleged sexual abuse by several individuals leading to her secondary victimisation.<sup>8</sup>

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<sup>1</sup> <https://equalitynow.org/>

<sup>2</sup> Available at: [https://www.equalitynow.org/resource/roadblocks\\_to\\_justice/](https://www.equalitynow.org/resource/roadblocks_to_justice/)

<sup>3</sup> See the list: <https://equalitynow.org/resource-center/?ReType=56&CountryType=83>

<sup>4</sup>

<https://equalitynow.org/resource/russia-submission-to-committee-on-the-rights-of-the-child-ohchr-94th-session-october-2022/>

<sup>5</sup> <https://www.srji.org/en/>

<sup>6</sup> <https://hudoc.echr.coe.int/?i=001-194321>

<sup>7</sup> <https://hudoc.echr.coe.int/?i=001-211794>

<sup>8</sup> <https://hudoc.echr.coe.int/?i=001-222872>

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## Key notions

### 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?**<sup>9</sup> If yes, please provide a copy of the relevant provision(s).

No, it does not. Article 133 of the Criminal Code of Russia, “Coercion to engage in sexual acts”, involves any of the types of behaviour criminalised by the offences of rape (Article 131)<sup>10</sup> and assault of a sexual nature (Article 132)<sup>11</sup>, but they provide that they need to have been committed using either blackmail, threat to destroy, damage, or confiscate property, or the material or other dependence of the victim.

This offence is classified as a “less serious crime” and carries lower penalties, despite being classified as rape under regional and international standards.<sup>12</sup> The problematic assumption behind these definitions is that if an act is not committed using physical violence or serious threats to life and health, it cannot amount to rape and could only be criminalised as a minor crime.

Also, in practice, “the material or other dependence of the victim” does not cover situations of abuse of a recognised position of trust, authority or influence over the child and does not refer, for example, to situations where a relationship of trust has been established with the child, where the relationship occurs within the context of a professional activity (care providers in institutions, teachers, doctors, etc) or to other relationships, such as where there is unequal physical, economic, religious or social power.

- b. **[for 22 Parties + Belgium and Luxembourg] establish a separate offence of sexual abuse of children by someone in a recognised position of trust, authority or influence instead of considering the fact that the perpetrator holds that position just as an “aggravating circumstance”?**<sup>13</sup> If yes, please indicate the specific legal provision.

No, it does not.

- c. **list specific categories of adults in contact with children automatically qualifying as holding this position?**<sup>14</sup> If yes, please list these categories in your response.

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<sup>9</sup> 1<sup>st</sup> 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.

<sup>10</sup> Article 131(1) - non-aggravated rape: *rape, i.e. sexual intercourse with the use of violence or threat of violence against the victim or other persons or with the use of the victim's helpless state.*

<sup>11</sup> Article 132(1) - non-aggravated assault of a sexual nature: *sodomy, lesbianism or other acts of a sexual nature with the use or threat of violence to the victim (victim) or to other persons, or with the use of the victim's (victim's) helpless state.*

<sup>12</sup> E.g., Article 36 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence; GREVIO, ‘Baseline Evaluation Report Spain’ (adopted on 15 October 2020) available at: <https://rm.coe.int/grevio-s-report-on-%20spain/1680a08a9f>, para. 220

<sup>13</sup> *Ibid.*, Recommendation 2.

<sup>14</sup> *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

No, it does not.

**d. define the notion of “circle of trust”?<sup>15</sup> If yes, please provide the definition.**

No, it does not.

## **Victims’ age**

**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?<sup>16</sup> Please refer to the specific legal provisions.**

The Russian legal framework does not have a specific reference to “abuse by someone in a recognised position of trust, authority or influence”, even if the victim is under 18.

The Criminal Code of Russia differentiates between sexual intercourse with a minor under 16 years (statutory rape) and rape of/ assault of a sexual nature against a minor (committed by violence, the threat of violence or abusing the victim’s helplessness) and compulsion of a minor into sexual intercourse/actions.

Article 134 of the Criminal Code criminalises sexual intercourse of an adult with someone under 16. Under Article 134(1), the crime of sexual intercourse with a minor is defined as the sexual intercourse of an adult with someone aged 14-16. Even though the word “consent” is not mentioned in the article, it is presumed that the minor consents to the act, but the act still constitutes a crime since the consent of a minor under the age of 16 is immaterial. According to Article 134(2), same-sex “consensual” sexual relations between an adult and someone aged 14-16 is perceived as a more dangerous crime.<sup>17</sup> “Consensual” sexual intercourse of an adult with someone who is between the age of 12 and under 14 is a crime under Article 134(3) and is a more severe crime than the act committed against someone who has reached the age of 14.

All these crimes can only be committed by an individual who is 18 years of age or above and who knew or suspected that the victim was under 16.<sup>18</sup> In practice, this opens the door to impunity for perpetrators to claim that they did not know the age of the victim, as well as giving leverage to law enforcement to close such cases. Under the article, there is a very problematic assumption that the minor consented (even though she was legally incapable of consenting), wanted or even initiated sexual intercourse, which can put the blame on the

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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).

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid.*, Recommendation 6.

<sup>17</sup> A crime under Article 134(1) is punishable up to 4 years of imprisonment. A crime under Article 134(2) is punishable up to 6 years of imprisonment.

<sup>18</sup> Ruling No. 16 of the Plenum of the Supreme Court of Russia from 4 December 2014, para. 22

minor instead of the perpetrator and affect the way the perpetrator might be treated by the criminal justice system.

The Criminal Code provides that a minor under 12 years old is in a helpless state due to his or her age, i.e. unable to understand the nature and meaning of the acts perpetrated against him or her, and, because of these reasons, sexual acts committed against her or him are either rape (Article 131) or a violent act of a sexual nature (Article 132).

If the child is over 12 but under 16, sexual intercourse with the child (not involving violence or threats) is still a criminal offence, but there is no longer a presumption of helplessness to classify it as either rape or a violent act of a sexual nature, which results in lesser sentences for the perpetrator. However, a child between 12 and 15 years (but who has not reached 16), could also be considered helpless if their helpless state is established through a psychological and psychiatric assessment. In exceptional cases, a helpless state can also be considered when the accused takes advantage of the victim's particular gullibility or vulnerability.

The commission of an indecent assault<sup>19</sup> without the use of violence by a person who has attained the age of eighteen against a person under the age of sixteen is a crime under Article 135 of the Criminal Code. According to the Supreme Court, "acts in which there was no direct physical contact with the victim's body can also be considered as indecent assault, including those committed using the Internet or other information and telecommunication networks".<sup>20</sup> The commission of an indecent assault against children aged between 16 and 18, however, is not criminalised and does not constitute an offence.

Rape of a minor (as opposed to statutory rape, which is the crime where a 12-15 year old victim's consent is presumed but the consent is legally invalid) is committed if the perpetrator used violence, threat of violence or abused the helpless state of the victim. The crime defined as rape carries more severe punishments than so called consensual sexual acts with a child under 16 committed by an adult, as the act of rape is understood to be committed against the minor's will, using illegal methods. The younger the minor, the more severe penalties apply.

The Criminal Code of Russia distinguishes between rape and violent acts of a sexual nature, and coercion/compulsion into acts of a sexual nature. Under Article 133(1), the crime of coercion/compulsion into acts of a sexual nature involves any of the types of behaviour criminalised by the offences of rape and violent action of a sexual nature, but that have been committed using either blackmail, threats of destruction, damage or seizure of property or taking advantage of the material or other dependence of the victim(s). Under Article 133(2), this crime against a minor is punishable by up to 5 years of imprisonment. Coercion/compulsion is classified as a less serious crime than rape or violent acts of sexual nature. The problematic assumption behind these definitions is a myth that rape and violent action of a sexual nature must involve physical force. This presumption ignores other means which perpetrators use to overcome the resistance of the victim.

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<sup>19</sup>According to Ruling No. 16 of the Plenum of the Supreme Court of Russia from 4 December 2014, indecent acts in Article 135 of the Criminal Code include any acts, other than sexual intercourse, sodomy and lesbianism, committed against persons who have reached the age of twelve but have not reached the age of sixteen, which were aimed at satisfying the sexual desire of the guilty party, or at causing sexual arousal in the victim, or at arousing interest in sexual relations in the victim (para 17).

<sup>20</sup> *ibid*

A child who is 16 and older is protected only in cases where rape of/ assault of a sexual nature against a minor was committed by violence, the threat of violence or abusing the victim's helplessness. The Criminal Code of Russia does not criminalise a person engaging in sexual activities with a child between 16 and 18, when this person abuses a recognised position of trust, authority or influence over the child, or where abuse is made of a particularly vulnerable situation of the child.

- b. **[for 22 Parties + North Macedonia and Ukraine] indicate that the child's legal age for engaging in sexual activities is not relevant in the case of child sexual abuse by someone in a recognised position of trust, authority or influence?<sup>21</sup> Please provide details.**

See above.

### Scope of offence

3. **Does your national legal framework criminalise sexual abuse of children:**  
a. **where the offender abuses a recognised position of influence?<sup>22</sup>**

No, it does not.

- b. **[for 22 Parties + Belgium] where the victim is below 18 and emancipated through marriage, and the perpetrator is the victim's spouse or marital partner?<sup>23</sup>**

On the contrary, Russian criminal law provisions enable adult perpetrators to enjoy impunity for 'consensual' intercourse with a minor under the age of 16, which, under international human rights standards, should constitute rape since minors cannot consent, but the legislation of Russia does not define it as such. As provided by Article 3 of the Model Rape Law Report of the Special Rapporteur on violence against women, its causes and consequences, a person is considered incapable of giving genuine consent when they are a person below the age of 16.<sup>24</sup>

Firstly, Article 134 of the Criminal Code still expressly provides that if an adult (over the age of 18) marries a girl aged between 14 and 16 with whom he has had sexual relations with her supposed "consent," he will not be punished by the court as he is no longer considered to be socially dangerous. Not only does this exemption exonerate the perpetrator from punishment if he does register the marriage, but it also fails to protect the girl as a victim of sexual violence.

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<sup>21</sup> *Ibid.*, Recommendation 5.

<sup>22</sup> *Ibid.*, Recommendation 1.

<sup>23</sup> *Ibid.*, Recommendation 7.

<sup>24</sup> A framework for legislation on rape (Model Rape Law) : report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, 15 June 2021, A/HRC/47/26/Add.1.

Secondly, according to Article 75(1) of the Criminal Code, a person who has committed a crime of light<sup>25</sup> or of medium gravity<sup>26</sup> for the first time may be released from criminal liability if, after the perpetration of the offence, he has given himself up, assisted in the exposure and investigation of this crime, compensated for the damage, or in any other way effected restitution for the damage caused as a result of this crime, and has ceased to be socially dangerous as a result of active repentance.

Thirdly, according to Article 76 of the Criminal Code, a person who has committed a crime of light or medium gravity for the first time may be released from criminal liability if he has reconciled with the victim and restituted any damage inflicted on the victim.

- c. **[for 22 Parties + the Republic of Moldova] where no coercion, force or threat is used by the perpetrator holding the position of trust, authority or influence?**<sup>27</sup>

See 2(a).

4. **Does your national legal framework:**

- a. **criminalise sexual abuse of children for acts other than sexual intercourse and equivalent actions?**<sup>28</sup> **Please specify which other acts are covered and whether violation of a child's "sexual integrity" specifically is criminalised.**

The commission of an indecent assault<sup>29</sup> without the use of violence by a person who has attained the age of eighteen against a person under the age of sixteen is a crime under Article 135 of the Criminal Code. According to the Supreme Court, "acts in which there was no direct physical contact with the victim's body can also be considered as indecent assault, including those committed using the Internet or other information and telecommunication networks".<sup>30</sup> The commission of indecent assault against children aged between 16 and 18, however, is not criminalised and does not constitute an offence.

- b. **[For 22 Parties + Bulgaria] ensure equal sanctions for sexual abuse committed within a heterosexual and homosexual sexual activity?**<sup>31</sup> **Please refer to the specific legal provisions.**

Article 131 (rape), Article 132 (assault of a sexual nature), Article 133 (coercion), and Article 135 (indecent assault) provide equal sanctions for sexual abuse committed within a heterosexual and homosexual sexual activity.

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<sup>25</sup> Applies to Compulsion to Perform Sexual Actions, Depraved Actions

<sup>26</sup> Applies to Compulsion to Perform Sexual Actions committed in respect of a minor boy (minor girl), Sexual Intercourse and Other Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years

<sup>27</sup> *Ibid.*, Recommendation 8.

<sup>28</sup> *Ibid.*, Recommendation 9.

<sup>29</sup> According to Ruling No. 16 of the Plenum of the Supreme Court of Russia from 4 December 2014, indecent acts in Article 135 of the Criminal Code include any acts, other than sexual intercourse, sodomy and lesbianism, committed against persons who have reached the age of twelve but have not reached the age of sixteen, which were aimed at satisfying the sexual desire of the guilty party, or at causing sexual arousal in the victim, or at arousing interest in sexual relations in the victim (para 17).

<sup>30</sup> *ibid*

<sup>31</sup> *Ibid.*, Recommendation 11.

According to Article 134(2), same-sex “consensual” sex between an adult and someone aged 14-16 is perceived as a more dangerous crime.<sup>32</sup>

- c. **[For 22 Parties + Albania and the Republic of Moldova] make any distinct reference to “homosexual activities” in the description of criminal offences involving sexual abuse and sexual exploitation of children?**<sup>33</sup>

Yes, it does. The Criminal Code of Russia describes sexual activities involving men who have sex with men using derogatory terminology, namely “sodomy, lesbianism” (Articles 132, 133, 134).

## **Ex officio prosecution**

### **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?**<sup>34</sup> Please refer to the specific legal provisions.

Yes, it does. Some criminal cases in Russia (including non-aggravated rape and non-aggravated assault of sexual nature) are subject to private-public prosecution, that is investigation in these cases begins only at the proactive request of the victims or their legal representatives. Cases of sexual violence against children are subject to public prosecution. It means that an investigator has the right, on their own initiative, to initiate proceedings. It is particularly helpful when it comes to children, especially those who are in vulnerable situations, e.g., suffer abuse by their own lawful representatives, relatives and carers. However, due to poor identification of sexual violence against children, it is not properly implemented in practice and children are not often afforded the protection provided by the law.

- b. **contain a requirement to continue the proceedings even if the victim has withdrawn his/her complaint/statements?**<sup>35</sup> Please refer to the specific legal provision(s).

Yes, it does. According to Article 20 of the Code of Criminal Procedure, cases which are subject to public prosecution cannot be terminated because the victim has withdrawn his/her complaint. However, as mentioned in section 3(b), the national legal framework has legal provisions allowing for impunity for perpetrators of sexual violence.

- 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,**

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<sup>32</sup> A crime under Article 134(1) is punishable up to 4 years of imprisonment. A crime under Article 134(2) is punishable up to 6 years of imprisonment.

<sup>33</sup> *Ibid.*, Recommendation 12.

<sup>34</sup> *Ibid.*, Recommendation 57.

<sup>35</sup> *Ibid*



**require the child victim to lodge a complaint as a prerequisite for investigation and prosecution?**<sup>36</sup>

## **Measures in respect of children who sexually offend and children displaying risky and harmful sexual behaviour**

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?<sup>37</sup> Please provide details.
  - b. differentiate between adults and children above the age of criminal responsibility in the application of sanctions for offences involving sexual abuse of children? Please refer to the specific legal provision(s) and specify the age of criminal responsibility in your legislation.**<sup>38</sup>

In accordance with Article 20(1) of the Criminal Code of Russia, the general age of criminal responsibility is 16 years. However, according to Article 20(2) of the Criminal Code of Russia, the age of criminal responsibility is 14 years for a number of offences. Such offences include rape (Article 131 of the Criminal Code) and violent acts of a sexual nature (Article 132 of the Criminal Code). The age of criminal liability for coercion to engage in acts of a sexual nature (Article 133) is 16 years. Under Articles 134 (sexual intercourse and other acts of a sexual nature with a person under 16 years of age) and 135 (indecent assault) of the Criminal Code, there is a special subject of a crime, i.e., a person aged 18 years or older.

Article 88 of the Code of Criminal Procedure provides types of punishments which can be imposed on juveniles and special rules for their sentencing. Juveniles who committed offences under the age of 16 can be sentenced to up to 6 years of imprisonment. Juveniles under 16 committed “extremely grievous crimes” (crimes for the commission of which the Criminal Code provides for a penalty of deprivation of liberty for a term exceeding ten years or a more severe penalty) and other juveniles under 18 can be sentenced to imprisonment which they serve in juvenile correctional facilities. The Criminal Code provides no imprisonment for juveniles who committed at the age of 16 or under a crime of small or average gravity for the first time, and also to other juveniles who committed crimes of small gravity for the first time.

When imposing a judicial sentence on a minor in the form of imprisonment for committing a grave crime or especially grave crime, the lowest limit of punishment provided by the relevant article of the Criminal Code is reduced by half.

## **Child victims’ rights to protection and parental rights**

7. Does your national legal framework:

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<sup>36</sup> *Ibid.*, Recommendation 56.

<sup>37</sup> 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.

<sup>38</sup> Question included for capacity-building purposes.

- a. provide for the possibility for child protection professionals to conduct exploratory interviews of a child without informing in advance the parents/legal guardians in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?<sup>39</sup> Please provide details.
- b. provide for the possibility for child protection professionals to conduct exploratory interviews of a child without acquiring the parents/legal guardians' prior consent in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?<sup>40</sup> Please provide details.
- c. allow for the removal of the suspected perpetrator from the family environment in case of reasonable suspicion of sexual abuse of a child living in the same environment together with the suspect?<sup>41</sup> Please provide details.
- d. consider the removal of the child victim from the family environment as a last resort procedure? Is that procedure clearly defined, and does it set out conditions for and duration of the removal?<sup>42</sup> Please provide details.
- e. ensure that the different agencies involved in the coordination and collaboration concerning child sexual abuse are allowed to share personal information as appropriate?<sup>43</sup> Please provide details.

**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?**<sup>44</sup> Please provide details.

Russian criminal and family legislation does not provide for the 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.

Article 69 of the Family Code of Russia provides, inter alia, as grounds for the withdrawal of parental rights: 1) child abuse, including physical and psychological violence against children, attempt on their sexual inviolability; 2) committing a deliberate offence against the life or health of their children, the other parent of the children, their spouse, including a non-parent of the children, or against the life or health of another family member.

In cases where a parent commits sexual violence against a child, the withdrawal of parental rights requires a criminal conviction that has entered into legal force, or a court ruling (ruling)

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<sup>39</sup> 1<sup>st</sup> Implementation Report "Protection of Children against Sexual Abuse in the Circle of Trust: The Framework", Recommendation 26.

<sup>40</sup> *Ibid*

<sup>41</sup> 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 1<sup>st</sup> implementation report).

<sup>42</sup> *Ibid.*, Recommendation 27.

<sup>43</sup> *Ibid.*, Recommendation 25.

<sup>44</sup> *Ibid.*, Recommendation 32.

or a decision of a preliminary investigation body to terminate the criminal case on non-rehabilitative grounds (e.g., termination of criminal proceedings due to the expiry of the statute of limitations for criminal prosecution). The question of the withdrawal of parental rights is considered by the court at the request of the other parent, the prosecutor or the guardianship authorities (Article 70 of the Family Code of Russia) in separate proceedings in accordance with the provisions of civil procedure and family law.

If the victim in a criminal case was a minor and had reached the age of 18 by the time of the verdict, withdrawal of parental rights is no longer possible, which violates the rights of the victims, since the parent who committed the offence retains special rights arising by virtue of kinship, including: 1) the right of incapable parents in need of assistance to demand maintenance and care from their able-bodied adult children (Article 87 of the Family Code of Russia); 2) right of inheritance; 3) the right of relatives and other family members or legal representatives to visit a patient in intensive care and to authorise surgical intervention if it is impossible to obtain consent or refusal directly from the patient.

The preservation of kinship ties with a parent limits the possibility of receiving education in universities and colleges sponsored by government agencies which prohibit the education of those whose parents have a criminal record.

It is worth noting that not only is there no provision for the suspension of parental rights as a protective measure during the investigation of a criminal case, but not in every case a person against whom a criminal case of sexual violence against a child has been brought is placed in pre-trial detention. There have also been cases where, in a case of systematic physical violence against a child, the parent was placed under house arrest in the same flat where the abused children live.

**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?<sup>45</sup> Please provide details.**

No, it does not.

- b. automatic withdrawal of parental rights of parents convicted of sexual abuse of own child?<sup>46</sup> Please provide details.**

No, it does not. A request from either the other parent, prosecutor, or the guardianship authorities is required.

## **Guarantees of protection for persons reporting suspected offences**

**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**

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<sup>45</sup> Question included for capacity-building purposes, i.e. to map whether there are Parties that have a particular legal framework in such cases.

<sup>46</sup> *Ibid*

## **bound by professional confidentiality rules, does not get prosecuted or punished by judicial proceedings for defamation, libel or similar offences?<sup>47</sup>**

According to Article 56(3) of the Family Code, “officials of organisations and other citizens who become aware of a threat to a child's life or health or a violation of his or her rights and legitimate interests must report this to the guardianship and custody agency”. They can also report abuse of a child to law enforcement authorities.

There is a mandatory reporting provision about criminal activity against a patient which shields doctors against liability for breach of confidentiality (Article 79(1)(9) of the Federal Law of 21.11.2011 N 323-FZ “On the Fundamentals of Health Protection of Citizens in the Russian Federation”).

The Criminal Code provides criminal liability only for knowingly giving false evidence (Article 306). According to the Resolution of the Plenum of the Supreme Court of the Russian Federation of 28.06.2022 N 20 “On some issues of judicial practice in criminal cases of offences against justice”, “[t]he person’s good faith misconception as to the event of the offence and (or) its material circumstances, including the involvement of specific persons in that offence, excludes the wilful nature of his actions and the occurrence of criminal liability under Article 306 of the Criminal Code of the Russian Federation”.

Civil protection is also afforded by the law. Under Article 152 of the Civil Code, “[a] person has the right to demand in court the refutation of information defaming his honour, dignity or business reputation, unless the person who disseminated such information proves that it corresponds to reality”. According to para. 10 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 24.02.2005 N 3 “On Judicial Practice in Cases of Protection of Honour and Dignity of Citizens, as well as Business Reputation of Citizens and Legal Entities”, “[c]ourts should bear in mind that, in the event that a citizen applies to the above-mentioned bodies with a statement in which he or she provides certain information (for example, to law enforcement bodies with a report of an alleged, in his or her opinion, or of a crime committed or being prepared), but this information is not confirmed in the course of their verification, this circumstance in itself cannot serve as a basis for bringing that person to civil liability under Article 152 of the Civil Code of the Russian Federation, since in the above-mentioned case, the law enforcement bodies may not be held liable for civil liability under Article 152 of the Civil Code of the Russian Federation.”

However, in Russia, there are issues around women’s right to speak out about gender-based violence, including those suffered in the past.<sup>48</sup>

## **Assistance to third parties**

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<sup>47</sup> 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.

<sup>48</sup>

<https://www.forbes.ru/forbes-woman/481616-neproporcional-naa-reakcia-kak-v-raznyh-stranah-zensiny-rasskaz-yvaut-o-nasilii>

**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?<sup>49</sup>**

Assistance to the relatives of victims is not provided for by the law. However, they can get free emergency psychological assistance in crisis centres, often anonymously, by calling various helplines and writing to crisis mail. Most of these centres are NGOs which are often under-funded and do not receive state's support. Therefore, the number of such centres and the number of specialists working in them is not enough to assist everyone.

**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?<sup>50</sup>**

### **Monitoring of offenders**

**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?<sup>51</sup> Please provide details.**

Administrative supervision is imposed on a person released from places of deprivation of liberty, if that person has served a sentence for an offence against the sexual inviolability and sexual freedom of a minor (Article 173.1 of the Criminal Penal Code of Russia).

According to Article 4 of the Federal Law "On Administrative Supervision of Persons Released from Places of Deprivation of Liberty", there are mandatory and additional restrictions. The mandatory restrictions are: 1) compulsory appearance of the supervised person from one to four times a month to the body of internal affairs at the place of residence, stay or actual location for registration; 2) prohibiting a person under supervision who has an unspent conviction for committing an offence against the sexual inviolability and sexual freedom of a minor from travelling outside the territory specified by the court; 3) prohibiting a supervised person who has no place of residence or stay from travelling outside the territory established by the court.

The additional restrictions are: 1) prohibition to stay in certain places; 2) prohibition to attend and participate in mass and other events; 3) prohibition to stay outside the supervised person's place of residence or other premises at certain times of the day; 4) prohibition of travelling outside the limits of the territory specified by the court; 5) compulsory attendance from one to four times a month at the internal affairs body at the place of residence, stay or actual location for registration.

On the one hand, there is a large number of persons who are under administrative supervision. According to the Ministry of Internal Affairs, 230,000 persons formally subject

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<sup>49</sup> 1<sup>st</sup> Implementation Report "Protection of Children against Sexual Abuse in the Circle of Trust: The Framework", Recommendation 30.

<sup>50</sup> *Ibid.*, Recommendation 31.

<sup>51</sup> *Ibid.*, Recommendation 33.

to or under administrative supervision and 69,000 persons who commit offences in the area of family and domestic relations are under the control of district police officers.<sup>52</sup>

On the other hand, the effectiveness of administrative supervision to prevent repeat offences is a very controversial issue. The authorities believe that repeat offences can be avoided in this way. However, media provides the following statistics: “in 2014-2015, the share of "recidivists" among convicts reached 63-64 per cent, although before 2012 it did not exceed 50-53 per cent. Recall that the law on administrative supervision was introduced in 2011”.<sup>53</sup>

Moreover, statistics demonstrate that the conditions of administrative supervision are violated quite often. In the first half of 2023 alone, 102,908 persons were brought to administrative responsibility under Article 19.24 (Non-compliance with administrative restrictions and failure to fulfil the obligations imposed under administrative supervision) of the Code of Administrative Offences.<sup>54</sup>

- b. sharing with other countries data concerning persons convicted of child sexual abuse?<sup>55</sup> Please provide details.

## Measures in respect of professionals and legal persons

14. Does your national legal framework:
  - a. allow for the immediate removal or suspension of a professional or volunteer working with children suspected of sexually abusing a child?<sup>56</sup> Please provide details.
  - b. ensure that professionals working in the public, private or voluntary sectors failing to report offences of child sexual abuse occurring in “out-of-home care”<sup>57</sup> settings are held liable?<sup>58</sup> Please provide details.
  - c. ensure that legal persons failing to protect children in their care from sexual abuse are held liable?<sup>59</sup> Please provide details.

## Special representatives

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<sup>52</sup> [https://xn--b1aew.xn--p1ai/upload/site1/document\\_journal/Schit\\_i\\_mech\\_43\\_2023.pdf](https://xn--b1aew.xn--p1ai/upload/site1/document_journal/Schit_i_mech_43_2023.pdf), p. 8

<sup>53</sup>

<https://meduza.io/cards/ivan-nepomnyaschih-uehal-iz-rossii-nesmotrya-na-administrativnyy-nadzor-a-chto-tako-e-administrativnyy-nadzor>

<sup>54</sup> Судебный департамент при Верховном Суде РФ – Сводные статистические сведения о деятельности федеральных судов общей юрисдикции и мировых судей за 1 полугодие 2023 года – № 1-АП «Отчет о работе судов общей юрисдикции по рассмотрению дел об административных правонарушениях»

<sup>55</sup> Based on Article 38 of the Lanzarote Convention.

<sup>56</sup> Based on Article 27§3(b) of the Lanzarote Convention.

<sup>57</sup> 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 25<sup>th</sup> 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).

<sup>58</sup> Based on the [Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse](#), point 6.

<sup>59</sup> *Ibid.*, see point 7.

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:
- receive appropriate training and legal knowledge to ensure and safeguard the best interests of the child victim during criminal investigations and proceedings?<sup>60</sup>
  - avoid combining the functions of a lawyer and guardian *ad litem* in one person?<sup>61</sup>
  - are provided free of charge for the child victim?<sup>62</sup>
16. **[For 22 Parties + Malta]**
- Do you appoint a special representative or guardian *ad litem* when there is a conflict of interest between the holders of parental authority and a child?<sup>63</sup> Please provide details.
  - Is this person allowed to be present throughout the criminal proceedings?<sup>64</sup> Please provide details.

### Support for child victims in investigative and judicial proceedings

17. In investigative and judicial proceedings how does your national legal framework ensure that:
- protection measures are available to all children irrespective of their age?<sup>65</sup> Please provide details.
  - specificities of sexual abuse committed in respect of a child by someone in a recognised position of trust, authority or influence are taken into account in the measures and procedures applied during criminal investigations and proceedings in order not to aggravate the trauma experienced by the child?**<sup>66</sup>

Russia's legal framework does not ensure that 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.

For general measures, see answers to the questions 19 and 20 below.

- a child who is a presumed victim of sexual abuse is supported by a professional trained to safeguard children's psychological well-being?<sup>67</sup>
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

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<sup>60</sup> 1<sup>st</sup> Implementation Report "Protection of Children against Sexual Abuse in the Circle of Trust: The Framework", Recommendation 35.

<sup>61</sup> *Ibid.*, Recommendation 36.

<sup>62</sup> *Ibid.*, Recommendation 37.

<sup>63</sup> *Ibid.*, Recommendation 34.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*, Recommendation 38.

<sup>66</sup> *Ibid.*, Recommendation 39.

<sup>67</sup> Based on *N.Ç. v. Türkiye* (no. 40591/11), 9 February 2021.

accommodates more fully the specificities attached to the participation of children as victims in proceedings and not solely as perpetrators of criminal offences?<sup>68</sup> Please provide details.

***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.***

## **Investigation**

### **19. In the investigation phase:**

- a. are interviews of child victims arranged in a child-friendly setting separate from the usual premises where investigations and interviews are conducted (such as police, hospital or court premises), and are such settings provided throughout your territory?<sup>69</sup> Please provide details.**

Such conditions are not available throughout the territory of Russia. The so-called “Green Rooms”, i.e., specially equipped adjoining rooms with a two-way mirror and audio and video equipment, when during the conversation between the psychologist and the child there is an investigator behind the mirror who can ask the child clarifying questions through the psychologist are ideal for such meetings with children. However, only a few cities have such rooms so far. Lawyers and private psychologists can conduct interviews in their office, at the child’s home or the premises of crisis centres.

- b. are all staff responsible for interviewing child victims required to undergo suitable qualifying training?<sup>70</sup> Please provide details.**

The law does not provide for mandatory training for investigators, judges, lawyers and psychologists on how to interact with children victims of sexual violence.

Under Article 191 (1) of the Code of Criminal Procedure, the participation of a teacher or psychologist in the interrogation of a minor victim under 16 years of age is mandatory. If the victim has reached the age of 16, the teacher or psychologist is invited at the discretion of the investigator (Article 191(2) of the Code of Criminal Procedure). In accordance with Article 191(4) of the Code of Criminal Procedure, when conducting interrogation, confrontation, identification and verification of testimony with the participation of a minor victim or witness

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<sup>68</sup> 1<sup>st</sup> Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework”, Recommendation 40.

<sup>69</sup> *Ibid.*, Recommendation 41.

<sup>70</sup> *Ibid.*, Recommendation 42.



who has not reached the age of sixteen or who has reached that age but suffers from a mental disorder or has a mental disability, in criminal cases involving offences against the sexual inviolability of minors, the participation of a psychologist is mandatory.

However, a psychologist may not have received any specialised training or have expertise specifically in assisting children, in particular in assisting those who have experienced sexual violence. In practice, teachers and psychologists from the victim's school or in-house forensic psychologists are invited. The victim's representatives may also invite a specialist whom they trust, but it is possible that this may be negatively perceived by the investigation. Additionally, it incurs financial costs for a victim.

If a psychologist has experience in participating in investigative actions, they may have acquired expertise and can effectively support a child victim in the investigative proceedings, but if a psychologist or teacher is invited from school, their participation is highly likely to be formal and ineffective for the victim. Additionally, there is a risk that information will be disclosed within the school.

- c. does your national legal framework require that interviews with child victims are conducted as soon as possible after the offence, that their duration and number are limited, and that in their organisation account is taken of the child's age and attention span?<sup>71</sup> Please provide details.**

A complaint must be considered within 3 days (Article 144(1) of the Code of Criminal Procedure). This period may be extended to 10, and in some cases - up to 30 days (Article 144(3)). After that, an investigator decides whether to institute criminal proceedings or not. In fact, a child may not be interviewed immediately within this consideration process. This depends, among other things, on the availability of a psychologist whose participation can be mandatory (see above).

The duration of the interviewing of a minor is limited. Article 280 of the Code of Criminal Procedure provides that interviewing with the participation of a minor victim or witness under the age of seven cannot last without a break for more than 30 minutes and a total of more than one hour, for those aged from seven to fourteen years - more than one hour and a total of more than two hours, over fourteen years - more than two hours and a total of more than four hours a day.

There is no provision in the Code of Criminal Procedure that limits the number of interviews with minors. With the consent of the legal representative, video recording of the interrogation of a minor is mandatory (Article 191(5) of the Code of Criminal Procedure). The idea behind this provision is to avoid repeated interrogations, including in court. However, investigators are not always ready to video record interviews due to the lack of specialised skills and qualifications and do not explain to legal representatives the importance of the video recording, i.e., that recording the interrogation will help reduce their number in the future. Therefore, investigators ask legal representatives to express their lack of consent.

In February 2023, the ECtHR delivered its judgement in an emblematic case, *B v. Russia* (App. no. 36328/20), which showed that in total, in the course of the investigation and trial proceedings, the victim had to retell the circumstances of her sexual abuse at least 23 times;

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<sup>71</sup> *Ibid.*, Recommendation 43.

the identification of suspects was organised so that she had to see them in person; she had to participate in lengthy (2 hours and 20 minutes, and 55 minutes with a ten-minute break) confrontations with the alleged perpetrators, despite the experts' opinion that her meetings with them should be excluded. During the confrontations, she had to answer questions from the accused, their male lawyers and an investigator. The ECtHR found a violation of Article 3 of the ECHR (prohibition of torture).

There is no mandatory provision to interview minors in specially equipped facilities (the so-called "Green Room"). If there is no specially equipped room in the premises of the investigative unit for the interrogation of minor victims and witnesses, the victim's representatives may request that the interrogation be conducted in any children's institution where there are appropriate conditions (this may be a children's home, rehabilitation centre, or office of a practising child psychologist). However, in practice, interrogations in special premises are rarely conducted, including due to their shortage and victims' lack of knowledge about this right.

The existing methodologies for the investigation of offences against sexual inviolability within law enforcement are not mandatory. Therefore, a lawyer, representing a victim cannot refer to the fact that the actions of the investigator do not comply with the adopted methodologies.

- d. **[for Serbia]** how do you ensure that child victims of sexual abuse by someone in a recognised position of trust, authority or influence are not repeatedly interviewed during the proceedings?<sup>72</sup>
- e. **where it is indispensable to interview the child victim more than once, does your national legal framework require that the interviews should, if possible and where appropriate, be conducted by the same person and under the same material conditions as the first?**<sup>73</sup> Please provide details.

There are no provisions in the Code of Criminal Procedure limiting the number of investigators working on a case. A case may be transferred to another investigator, for example, because of frequent staff changes in the department.

There is an example when sexual violence was committed in A. region and the victim moved to B. region. To question the victim, an investigator from A. sends a request to interview the victim to investigators in B. The victim is interviewed by those investigators who are available. So far, the victim has been interviewed by three different investigators.

- f. **does your national legal framework offer criminal defence the possibility to contest a child's disclosure during the interview through questions, thus obviating the need for the child to be present in the court room during the proceedings?**<sup>74</sup> Please provide details.

Often the defence insists on a confrontation (Article 192 of the Code of Criminal Procedure). Also, investigators may also want to conduct a confrontation between the child and the

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<sup>72</sup> *Ibid.*, Recommendation 54.

<sup>73</sup> *Ibid.*, Recommendation 44.

<sup>74</sup> *Ibid.*, Recommendation 45.

accused in order to increase the evidence base. But in practice, the confrontation has no meaningful effect on the investigation, yet it is extremely traumatising for the victims. In order to ensure that the procedural rights of the defence in connection with the refusal to hold a confrontation are not restricted, contradictions in the victim's testimonies (if any) can be eliminated by conducting an additional interrogation of the suspect/accused with viewing the video recording of the interrogation of the minor. If, in the opinion of the investigator, contradictions in the testimony cannot be eliminated in any other way, the confrontation may be conducted using videoconferencing facilities (Article 189.1 of the Code of Criminal Procedure) for the safety of the minor. However, it is very rarely done so.

## Judicial proceedings

### 20. In the judicial proceedings:

- a. **is systematic use of video equipment made in order to record interviews of child victims or enable him or her to testify remotely during the proceedings?**<sup>75</sup>  
**Please provide details.**

There is no provision in the Code of Criminal Procedure that limits the number of interviews with minors. With the consent of the legal representative, video recording of the interrogation of a minor is mandatory (Article 191(5) of the Code of Criminal Procedure). The idea behind this provision is to avoid repeated interrogations, including in court. However, investigators are not always ready to video record interviews due to the lack of special skills and qualifications and do not explain to legal representatives the importance of the video recording, i.e., that recording the interrogation will help reduce their number in the future. Therefore, investigators ask legal representatives to express their lack of consent. In the absence of such explanations, legal representatives may decide against the video recording, and there is a high risk that children will be interrogated repeatedly, including in court.

- b. **does your national legal framework make an exception in the requirement to be physically present at court hearings for child victims of sexual abuse, including when they are giving evidence?**<sup>76</sup> **Please provide details.**

Interviewing of a minor can be conducted by means of videoconferencing (Articles 277 and 278.1 of the Code of Criminal Procedure).

Under Article 281(6) of the Code of Criminal Procedure, the disclosure of the testimony of a minor victim or witness previously given during the preliminary investigation or court proceedings, as well as the demonstration of photographic negatives and photographs and transparencies taken during interrogations, the reproduction of audio and video recordings and film footage of interrogations may be carried out in the absence of the minor victim or witness without interrogation. At the request of the parties or on its own initiative, the court issues a reasoned decision on the need to re-examine the minor victim or witness.

Thus, the question of personal interrogation of a minor victim remains at the discretion of the court.

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<sup>75</sup> *Ibid.*, Recommendation 46.

<sup>76</sup> *Ibid.*, Recommendation 59.

- c. is there any difference in the scope of the application of this requirement based on the child's age?<sup>77</sup> Please provide details.**

No, there is not.

- d. are video recordings of interviews of child victims regarded as admissible evidence?<sup>78</sup> Please provide details.**

Yes, they are (Article 281(6) of the Code of Criminal Procedure).

- e. what measures do you take to guard against any further contact between a child victim of sexual abuse by someone in a recognised position of trust, authority or influence and a presumed offender during the criminal proceedings?<sup>79</sup>**

The measure of restraint in the form of pre-detention is often, but not always, chosen against the accused. There may also be other measures, such as restriction of travel order, prohibition of certain actions, house arrest. However, there was a case in which a father accused of physical violence against his children was placed under house arrest in the same flat where the children lived. The law also does not provide for protection orders. As a result, if an accused is not in custody, they may continue to try to contact the child they have sexually abused. Suspension of parental rights is also not provided by existing legislation.

- f. does your national legal framework allow taking the child's testimony without the presumed offender being present?<sup>80</sup> Please provide details.**

Yes, it does. However, it is at the discretion of the investigator and not the standard. There is no prohibition provided by existing legislation that an aggressor must not be present whether a child is.

- g. how do you ensure that face-to-face confrontation with the defendant during the proceedings does not take place?<sup>81</sup>**

- h. what measures do you take to prevent violation of the child victims' right to privacy by the media through disclosure or publication of personal information or data?<sup>82</sup>**

Under article 15 of Federal Law No. 262-FZ "On Ensuring Access to Information on the Activities of the Courts in the Russian Federation", the texts of judicial acts handed down in cases involving offences against sexual inviolability and sexual freedom of the individual are not posted on the Internet. Court proceedings in cases of sexual violence are closed.

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<sup>77</sup> *Ibid.*, Recommendation 60.

<sup>78</sup> *Ibid.*, Recommendation 47.

<sup>79</sup> *Ibid.*, Recommendation 48.

<sup>80</sup> *Ibid*

<sup>81</sup> *Ibid*

<sup>82</sup> *Ibid.*, Recommendation 49.

Nevertheless, there are cases when investigators sent in advance a summons for questioning to teachers from the school where the child is studying, which specifies the corpus delicti of the offence under which the criminal case was initiated. And so, at the stage of preliminary investigation of the criminal case, the school found out that the child had been subjected to sexual violence. This becomes a problem especially for small towns. For example, in a small town, parents of classmates forbid them to communicate with a 13-year-old girl who became pregnant as a result of rape by a neighbour, because they are worried that she will have a negative impact on their children.

The dissemination in the media of information relating to a minor victim of a crime against sexual inviolability is permitted for the purposes of investigating the crime, identifying persons involved in the commission of the crime, and tracing missing minors, to the extent necessary to achieve these goals and in compliance with the requirements of the Code of Criminal Procedure of the Russian Federation (Article 43 of the Law of the Russian Federation of 27.12.1991 N 2124-1 “On Mass Media”). However, sometimes it results in investigative departments publishing releases on their web-sites which may lead to disclosure of victim’s identity.

- i. does your national legal framework provide for free legal aid to child victims of sexual abuse by someone in a recognised position of trust, authority or influence under the same or more lenient conditions as that available to adults?<sup>83</sup> Please provide details.**

In accordance with Article 45(2.1) of the Code of Criminal Procedure, the participation of a lawyer as a representative of the victim is provided for minors under the age of 16 at the request of the legal representative. Often in practice, the investigator does not explain the content of this right and only formally mentions it when listing other rights of victims, without emphasising it. There is also no special training programme for lawyers to work with child survivors of sexual violence.

- j. does your national legal framework grant to child victims of sexual abuse by someone in a recognised position of trust, authority or influence the right to be represented in their own name by a lawyer trained in the relevant matters?<sup>84</sup> Please provide details.**

See above.

- k. what assistance, if any, do you provide to child victims of sexual abuse by someone in a recognised position of trust, authority or influence, once a criminal justice decision has been taken?<sup>85</sup>**

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<sup>83</sup> *Ibid.*, Recommendation 50.

<sup>84</sup> *Ibid.*, Recommendation 51.

<sup>85</sup> *Ibid.*, Recommendation 52.