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Committee of the Parties to the Council of Europe
Convention on the protection of children against sexual
exploitation and sexual abuse (T-ES)

1st implementation report

PROTECTION OF CHILDREN AGAINST SEXUAL ABUSE IN THE CIRCLE OF TRUST

THE FRAMEWORK

Adopted by the Lanzarote Committee on 4 December 2015

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Executive Summary

1. The 1st monitoring round of the implementation of the Lanzarote Convention focuses on the protection of children against sexual abuse in the circle of trust. Two reports will cover this theme in the 26 States (those which were Parties to the Convention at the time the monitoring round was launched).¹
2. This first report² provides the general framework to sexual abuse of children in the circle of trust, addressing four sets of issues: i) criminalisation of sexual abuse of children in the circle of trust; ii) collection of data on child sexual abuse in the circle of trust; iii) best interests of the child and child friendly criminal proceedings related to cases of child sexual abuse in the circle of trust; and iv) corporate liability with respect to such cases.
3. With regard to criminalisation of sexual abuse of children in the circle of trust, the Lanzarote Committee found that a majority of Parties protects children against sexual abuse within the context of certain specific relationships and settings (e.g. within the family, at school, in institutions). A few Parties more generally criminalise sexual abuse of children resulting from “abuse of a position, status or relationship”. None but one uses, in the definition of the crime, the broader Lanzarote Convention wording of “abuse of a recognised position of trust, authority or influence” by the perpetrator over the victim. The Lanzarote Committee regrets that the vast majority of Parties does not cover all possible persons in the child’s circle of trust who might abuse their position of trust, authority or influence (e.g. a parent’s friend or colleague, an older sibling’s friend, a neighbour, etc.).
4. As to data collection, the Lanzarote Committee found that in the majority of Parties, there are no specific data collection mechanisms or focal points tasked with collecting data on child sexual abuse generally, including with regard to sexual abuse committed in the circle of trust. Data is collected in a piecemeal manner within the broader context of all types of child abuse and neglect. Specific data on sexual abuse, including in the circle of trust, is however essential to develop, adjust and assess policies to protect children in this field. When the data collected is comprehensive, reliable and comparable internationally, it facilitates a better understanding and effective design of policies to tackle the phenomenon of sexual abuse in the circle of trust. The designation/setting-up of a coordinating agency/mechanism or focal point at the national or local level tasked with collecting and assessing such data and making the data available is thus urgent. Where a comprehensive system of reporting of cases of child sexual abuse committed in the circle of trust is in place, the data collected is more complete. In this respect the Committee notes that mandatory reporting has an impact on data collection as a larger number of cases are reported and consequently registered.

¹ An additional 13 States have since become Parties to the Convention. They will be part of the 2nd monitoring round.

² The structures, measures and processes in place to prevent and protect children from sexual abuse in the circle of trust will be the subject of the second report due early 2017.

5. As regards the best interests of the child and child friendly criminal proceedings in the context of a crime where the presumed perpetrator is someone in the child's circle of trust, the Committee found that Parties should pay more attention to the rules, procedures, measures and settings that have proven to be effective in reducing the child's trauma. The report thus identifies a series of promising practices in different specific areas. Such practices have been highlighted in the report as they have proven to contribute to minimising rupture in the child's life. In particular, the Lanzarote Committee stressed the positive impact on the child of a coordinated and comprehensive approach to cases of sexual abuse of children such as those delivered by Children Houses or similar set-ups. It observed that even though all Parties acknowledge that child victims of sexual abuse should be helped and assisted in a non-traumatising environment, adequate premises to achieve this aim do not exist in all Parties and over their whole territory.
6. The Committee found that all Parties except one have implemented legislation on the basis of which legal persons, such as commercial companies, associations and legal entities, can be held liable for acts of child sexual exploitation and sexual abuse. Most Parties do not exclude individual liability when corporate liability might be assumed in a particular case.
7. The main general recommendations by the Lanzarote Committee on steps to improve or reinforce the protection of children against sexual abuse in the circle of trust in the areas covered by this report are reiterated at the end of the document. Specific recommendations are at the end of each chapter. All chapters also highlight a number of promising practices. Cooperation between all relevant stakeholders, including civil society, is essential to ensure that effective measures against child sexual abuse are enacted.

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INTRODUCTION

1. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (“Lanzarote Convention”) provides that a specific monitoring mechanism be set up to ensure an effective implementation of its provisions by Parties (Article 1§2).

2. This report is the first implementation report developed by the Committee of the Parties to the Lanzarote Convention (the “Lanzarote Committee” or “the Committee”). It contains the Committee’s evaluation of the implementation by Parties of a selected number of provisions of the Lanzarote Convention which are relevant to assess the situation in Parties with respect to “the protection of children against sexual abuse in the circle of trust”.

Thematic monitoring

3. During its first meetings (September 2011 and March 2012), the Lanzarote Committee decided that its monitoring work (i.e. the assessment of the implementation of the Convention) would be based on a thematic approach.

4. The decision to start its monitoring rounds by first focusing on “the protection of children against sexual abuse in the circle of trust” was uncontroversial. International instruments preceding the Lanzarote Convention mainly had regard to sexual violence against children for commercial aims (prostitution, pornography, trafficking). The Lanzarote Committee thus wanted to put the spotlight on the fact that children are also frequently victims of sexual violence within the family framework, by persons close to them or in their “circle of trust”.

5. With a view to making its monitoring findings and recommendations known as soon as possible, the Lanzarote Committee decided to divide the 1st monitoring round into two parts:

- The first part of the 1st monitoring round (this report) assesses the criminal law framework and related judicial procedures with respect to sexual abuse of children in the circle of trust (“The Framework”);
- The second part of the 1st monitoring round (the next report – due early 2017) will evaluate the structures, measures and processes in place to prevent and protect children from sexual abuse in the circle of trust (“The Strategies”).

Parties involved in the 1st monitoring round

6. The 1st monitoring round concerns the following 26 Parties³ which had ratified the Convention at the time the monitoring round was launched: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, France, Greece, Iceland, Italy, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Portugal, Romania, San Marino, Serbia, Spain, “The former Yugoslav Republic of Macedonia”, Turkey and Ukraine.

³ Since the launching of the monitoring round 13 more countries ratified the Lanzarote Convention, which has 39 States Parties at the date of adoption of this report. The Parties that are not covered by the first monitoring round are: Andorra, Cyprus, Georgia, Germany, Hungary, Latvia, Liechtenstein, Monaco, Poland, Russian Federation, Slovenia, Sweden and Switzerland. See Appendix I for the state of signatures and ratifications of the Convention.

7. The above 26 Parties were monitored at the same time to create a momentum around specific aspects of the monitoring theme. This report therefore does not address the situation in each country separately. It presents an overview of the trends which emerged from the comparison of the situation in all Parties.

8. Article 41§1 of the Lanzarote Convention provides that the “*Rules of Procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention*”. Accordingly, Rules 24§3 and 26§3-4 provide that:

“Rule 24§3 The monitoring round shall be initiated by addressing a questionnaire⁴ on the implementation of the relevant provisions of the Convention with respect to the selected theme”.

“Rule 26 §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 unless otherwise requested by the party concerned.

§4 The secretariat also addresses the same questionnaire to representatives of civil society, NGOs and any other bodies involved in preventing and combating sexual exploitation and sexual abuse of children. The latter shall be invited to reply to the questionnaire in one of the official languages of the Council of Europe within the same deadline as the parties. The replies shall be made public if the NGO or other body submitting them so requests.”

9. The Committee appreciates that all the information submitted by the Parties and other stakeholders was made public and underlines that the replies to the questionnaires were its main source of information to prepare this report.⁵ In this respect the Committee regrets that the Parties submitted the requested information at different times and some well after the set deadline.⁶

10. The regular up-dating of the information provided during the Lanzarote Committee meetings reflects the dynamic nature of a monitoring process carried out by a body composed of representatives of Parties. The fact that Parties are the main actors of their own assessment has the advantage of triggering change while the monitoring is underway. In this respect, the Committee particularly values the initiation of negotiations to amend relevant legislation deemed not to be fully in compliance with the Convention before the adoption of this report. These initiatives are examples of a constructive impact of the monitoring process. They are therefore singled out in the report.

11. The Committee wishes to pay tribute to the representatives of ECPAT, Missing Children Europe and eNasco, as well as the representative of the Council of Europe’s Conference of International Non-Governmental Organisations, who regularly attended its meetings and provided constructive insight to its monitoring proceedings. It is also grateful to those

⁴ To initiate its first monitoring round, the Lanzarote Committee produced a “[Thematic Questionnaire](#)” to collect information on how the Parties implement the Lanzarote Convention in the specific situation of sexual abuse of children in the circle of trust. In parallel, it also produced a “[General Overview Questionnaire](#)” to take stock of the broader legislative and institutional framework to protect children against sexual exploitation and sexual abuse at the local, regional and national levels. The relevant questions are reproduced in Appendix II.

⁵ All replies to the questionnaires are online at www.coe.int/lanzarote under “monitoring rounds” – “[state replies](#)”, “[replies by other stakeholders](#)” and “[replies by question](#)”.

⁶ A table with the dates of submission of the replies to the questionnaires appears in Appendix III.

representatives of civil society who submitted replies to the questionnaires and in so doing enriched the Committee's sources of information.

12. Finally, the Committee thanks the representatives of the States who acted as Rapporteurs by preparing the preliminary observations which were the basis of this report.⁷

Structure of the report

13. This report has four main chapters:

- The first chapter is an examination of the criminal offence of sexual abuse in the circle of trust (Article 18§1.b, 2nd indent) and its possible aggravating circumstances (Article 28);
- The second chapter provides a scrutiny of the mechanisms for data collection or focal points that Parties should have set up or designated to observe and evaluate the phenomena (Article 10§2.b);
- The third chapter examines the measures to ensure the best interest of the child victim of sexual abuse in the circle of trust (Articles 14§§3-4, 27§4, 30§1, 31§4) and whether the judicial proceedings⁸ concerning sexual abuse of children in the circle of trust are conducted in a child friendly manner (Articles 30§2, 32 and 36§2);
- Finally, the last chapter deals with the issue of corporate liability (Article 26).

14. Each chapter:

- provides a comparative overview of the situation in the 26 Parties monitored, whilst a country specific summary of the information is appended to the report in the form of tables;⁹
- highlights promising practices identified by the Committee to effectively implement the Convention;
- pinpoints the shortcomings identified and recommends steps that Parties should take to improve or reinforce the protection of children against sexual abuse in the circle of trust.

15. Finally, in its recommendations to Parties, the Lanzarote Committee decided to use the verbs to “urge”, “consider” and “invite” to mark different levels of urgency as follows:

- “Urge”: when the Lanzarote Committee assesses that legislation or policies are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of a key obligation of the Convention is lacking;
- “Consider”: when the Lanzarote Committee agrees that further improvements are necessary in law or in practice to fully comply with the Convention;
- “Invite”: when the Lanzarote Committee believes Parties are on the right track but it wishes to point at one or several promising practices to reinforce the protection of children against sexual abuse in the circle of trust.

⁷ The Rapporteurs for the different sections of this report were respectively: (i) Ms M. Klein (Austria), (ii) Mr G. Nikolaidis (Greece), (iii) Ms J. Paabumets (Estonia), Mr C. Azzopardi (Malta) and Ms M.-J. Castello-Branco (Portugal) and (iv) Mr E. Planken (Netherlands).

⁸ In line with the Council of Europe Child Friendly Justice Guidelines, the Committee had regard to procedures before, during and after the proceedings.

⁹ See Appendix IV.

I CRIMINALISATION OF SEXUAL ABUSE OF CHILDREN IN THE CIRCLE OF TRUST

16. Article 18 of the Lanzarote Convention requires Parties to criminalise the sexual abuse of a child.¹⁰ The provision distinguishes two main types of abuse:

- Firstly, paragraph 1 (a) criminalises the fact of a person engaging in sexual activities with a child who has not reached the age as defined in domestic law below which it is prohibited to engage in sexual activities with him or her.
- Secondly, paragraph 1 (b) criminalises the fact of a person engaging in sexual activities with a child, regardless of the age of the child, in specific circumstances (i.e. where use is made of coercion, force or threats, or 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).

17. It should be highlighted that the intention of the Convention is not to criminalise consensual sexual activities between children of similar ages and maturity.¹¹ Were the consent not to be valid and informed, the situation would nonetheless need to be scrutinised to determine whether the situation amounts to one of the types of abuse referred to above.

18. This report focuses on the legislative and other measures taken by Parties to effectively protect children against the specific criminal offence of sexual abuse in the circle of trust (Article 18§1(b), 2nd indent – see Table A in Appendix IV). For a more comprehensive overview of the national provisions corresponding to the rest of Article 18 (including the criminalisation of the fact of a person engaging in sexual activities with a child who has not reached the age of sexual consent) please refer to Table B in Appendix IV.

I.1 Article 18§1(b), 2nd indent: Engaging in sexual activities with a child where abuse is made of a recognised position of trust, authority or influence over the child, including within the family¹²

Article 18 – Sexual abuse

1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised: (...)

b engaging in sexual activities with a child where:

- (...)

- abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or

- (...)

¹⁰ According to Article 3 (a) of the Lanzarote Convention a “child” is “any person under the age of 18 years”.

¹¹ See Article 18 §3 of the Lanzarote Convention as well as §129 of the Explanatory Report.

¹² The findings of the Lanzarote Committee on the implementation of Article 18§1(b), 2nd indent of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 10 of the Thematic Questionnaire and the relevant part of Question 16 of the General Overview Questionnaire prepared by Ms Martina KLEIN (Austria), who acted as a Rapporteur for this specific section of the report.

Explanatory Report

123. *The second indent relates to abuse of a recognised position of trust, authority or influence over the child. This can 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 of other relationships, such as where there is unequal physical, economic, religious or social power.*

124. *The second indent provides that children in certain relationships must be protected, even when they have already reached the legal age for sexual activities and the person involved does not use coercion, force or threat. These are situations where the persons involved abuse a relationship of trust with the child resulting from a natural, social or religious authority which enables them to control, punish or reward the child emotionally, economically, or even physically. Such relationships of trust normally exist between the child and his or her parents, family members, foster or adoptive parents, but they could also exist in relation to persons who:*

- *have parental or caretaking functions; or*
- *educate the child; or*
- *provide emotional, pastoral, therapeutic or medical care; or*
- *employ or have financial control over the child; or*
- *otherwise exercise control over the child.*

Volunteers who look after children in their leisure-time or during voluntary activities, for example at holiday-camps or in youth organisations, can also be viewed as holding positions of trust. This list is not exhaustive, but aims at giving a description of the wide range of the recognised positions of trust, authority or influence.

125. *The reference to “including within the family” clearly intends to highlight sexual abuse committed in the family. Research has demonstrated this to be one of the most frequent and most psychologically damaging forms of child sexual violence with long-lasting consequences for the victim. Further, the term “family” refers to the extended family.*

I.1.a Abuse of a recognised position of trust, authority or influence over the child

19. Regardless of the specific wording chosen by domestic law, the intention of the authors of the Lanzarote Convention was to ensure that relationships based on “trust”, “authority” or “influence” be all encompassed in the criminal offence defined by Article 18§1(b), 2nd indent (hereafter named “sexual abuse of children in the circle of trust” for ease of reference).

20. To this effect, the Convention’s Explanatory Report provides an open-ended list of situations where “abuse of a recognised position of trust, authority or influence over the child” may occur. In the same line, from the very outset of this monitoring round,¹³ the Committee embraced a broad interpretation of the notion of “circle of trust” holding that it should be understood to include members of the extended family, persons having care-taking functions or exercising control over the child, persons with which the child has relations, including his/her close peers (i.e. another child who may exert influence over the child and may thus obtain his/her invalid and non informed consent to engage in sexual activities).

21. Out of the criminal code provisions of the 26 Parties examined (Table A in Appendix IV compiles all the relevant provisions) none contain a definition of “circle of trust”.

¹³ The Lanzarote Committee opted for a broad definition of the notion of “circle of trust” when it elaborated the Thematic Questionnaire to collect information by Parties on the protection of children against sexual abuse in the circle of trust. (See [Thematic Questionnaire](#) Preliminary remarks, §9)

22. **Spain** however explicitly uses the Lanzarote Convention wording “abuse of a recognised position of trust, authority or influence over the child”. Article 182 of the recently revised Spanish Criminal Code reads “Whoever, by deceit or abuse of a recognised position of trust, authority or influence on the victim, engages in acts of sexual nature with a person over the age of sixteen¹⁴ and under the age of eighteen, shall be punished (...)”

23. Several Parties (**Bosnia and Herzegovina, Croatia, Finland, Montenegro, Serbia, “the former Yugoslav Republic of Macedonia”**) do not use the Lanzarote Convention exact wording but generally refer to “abuse of a position, status or relationship”. In these cases the definition of the criminal offence states who abuses such a position, status or relationship (e.g. a father, a teacher, a doctor, a police officer, etc). The Committee considers that when such an enumeration is open-ended (e.g. “or any other person in child’s circle of trust”/ “or any other trusted person by the child”), the situation is in conformity with the Convention as there is enough flexibility to determine on a case by case basis whether the alleged perpetrator abused his/her position of authority, influence or trust. Likewise, the situation is in conformity in Parties where the criminal offence is worded more broadly, such as in **France** where reference is made to abuse of authority “in fact and in law” and case-law has interpreted this as covering abuse of recognised positions of trust or influence (see Table A in Appendix IV).

24. While taking into account Article 7¹⁵ of the European Convention on Human Rights which requires criminal law to be precise, the Committee recommends that legislation be worded in a manner to allow enough margin of appreciation to the judicial authorities on a case by case basis. Sometimes, legislation that covers relationships within the family or relationships within the context of a professional activity but may exclude e.g. enlarged family, specific professionals, a family friend or neighbour, etc. Indeed, from the analysis of the information submitted by Parties and other stakeholders it emerged that there are loopholes in the protection of all children from sexual abuse in the circle of trust as Parties rarely cover all instances of abuse of a position of trust, authority or influence.

25. Abuse of a position of “trust” is specifically spelled out by **Greece** only. Other Parties more generally seem to identify a position of “trust” with relationships within the family and enumerate the persons to be considered within such context as a child is entrusted to him/her for up-bringing, custody or care. In this regard, a large number of Parties recognise that positions of trust/authority are not limited to consanguinity and also include step parents and adoptive parents. Foster parents and guardians who have similar positions towards a child are explicitly mentioned in some Parties’ legislation or case-law. Additionally, in **Belgium, Italy** and **Iceland** other persons living with the child (e.g. the life companion of a single parent) are also regarded as holders of a position of trust, authority or influence. In **Denmark** a parent’s life companion is considered to hold such a position of trust/authority even if he/she does not live with the child. Due to the change in family relations, the Committee encourages the inclusion not only of stepfathers and mothers in the criminal law provisions but also new partners of a parent who are not necessarily married to the parent.

¹⁴ The age of 16 corresponds to the age above which it is legal to engage in sexual activities in Spain.

¹⁵ Article 7§1 of the European Convention on Human Rights reads: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. (...)”

26. It should be underlined that the Explanatory Report (see above) specifically draws attention to the fact that volunteers who look after children in their leisure-time or during voluntary activities, for example at holiday-camps or in youth organisations, can also be viewed as holding positions of trust. Only **Denmark** and **Italy** pointed out that this specific category falls within their understanding of relationships of trust. Since anecdotal evidence suggests that sexual abuse of children is perpetrated also by persons in contact with them in the above mentioned contexts, the Committee encourages all Parties to fill in this gap.

27. Abuse of a position of "authority" is included explicitly in the criminal provisions of some Parties (**Albania, Austria, France, Greece, Iceland, Italy, Netherlands, Romania**). Others more generally identify the position of "authority" with specific professions (e.g. teacher, trainer of any kind, doctor, police officer, welfare authority representative, employee in a school, institution, prison, etc.) or the position of the victim with respect to the perpetrator. (i.e. the victim is entrusted to the perpetrator for up-bringing, education, custody, spiritual guidance, supervision).

28. In most Parties teachers and other educators commit a criminal offence if they engage in sexual activities with a pupil under the age of 18 years. Also persons having caretaking functions are specifically referred to in the criminal provisions of most of the Parties.

29. Only the **Greek** Criminal Code specifically refers to "trainers of any kind" which facilitates the protection against sexual abuse of children in sports. However in a number of Parties (**Denmark, France, Iceland**) case law concerning educators covers trainers of various kinds. Since anecdotal evidence suggests that sexual abuse of children is perpetrated also in the context of sports activities, the Committee encourages all Parties to fill in this gap.

30. Several Parties explicitly consider that positions of trust/authority may be abused in the context of medical and other therapeutic care (**Austria, Denmark, Greece, Iceland, Republic of Moldova, Netherlands, Portugal, Romania, "the former Yugoslav Republic of Macedonia", Turkey**).

31. A few Parties additionally indicate that positions of authority may be abused by public officers (**Austria, Iceland, Netherlands, Turkey**).

32. Abuse of a position of "influence" is rarely explicitly mentioned. If so, it is generally associated with dependency (**Albania, Bulgaria, Finland, Iceland, Lithuania, Romania**).

33. Additionally, none of the 26 reviewed Parties provided information on situations where the position of influence of a child may induce a younger and more vulnerable child to engage in sexual activities with him/her. The Committee invites Parties to consider how to take into account in their legislation the fact that a child may sexually abuse another child by taking advantage of his/her position of influence or trust. The Committee believes that Art 16§3 of the Convention is of particular relevance in these situations.

34. From the above examination, it results that most of the Parties enumerate specific types of relationships within which sexual abuse of a child may occur. None however, with the exception of the recent **Spanish** legislation which uses the Lanzarote Convention wording, may clearly be said to cover all possible relationships of trust, authority or influence. The Committee reiterates that where the detailed list of possible relationships are not open-ended there is a risk

of excluding certain relationships where positions of trust, authority or influence may be abused (e.g. with parents' friends/colleagues, older siblings' friends, neighbours, volunteers, sports trainers, etc). The Committee thus observes that provisions (like those in the vast majority of the Parties) which restrict the criminal offence to situations where abuse is made of a position of trust and authority are not in conformity with Article 18§1(b), 2nd indent as situations where the abuse of a position of influence are not covered.

35. The Committee thus recommends that Parties introduce in their legislations a clear reference to the possible "abuse of a recognised position of trust, authority or influence". Any rigid listing of very specific situations risks leaving other situations without protection, thus jeopardising the enjoyment by children of their right to be safe from sexualabuse in the circle of trust.

36. The Committee notes that in the legislation of some Parties (Belgium and Luxembourg), abuse of a recognised position of trust or authority is only an aggravating circumstance. However, the specificity of Article 18§1(b), 2nd indent is that it requires States to have a criminal offence where the abuse of such positions is a constituent element of the crime, not an aggravating circumstance.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges Parties to review their legislation to ensure effective protection of children from situations where abuse is made of a recognised position of influence;
- Urges **Belgium** and **Luxembourg** to establish in their legislation the offence of sexual abuse in the circle of trust instead of considering the fact that sexual abuse is committed by someone that has a recognised position of trust, authority or influence just as an aggravating circumstance of the offence of sexual abuse;
- Invites, Parties to introduce in their legislation a clear reference to the possible "abuse of a recognised position of trust, authority or influence" and to avoid any rigid listing of very specific situations as it risks leaving other situations without protection;
- Invites Parties to review their legislation to include a reference to the notion of "circle of trust" which would comprise members of the extended family (including new partners), persons having care-taking 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).

I.1.b Protecting all children, including those having reached the age for engaging in sexual activities

37. The specificity of all the offences provided by Article 18§1(b) is that it requires States to protect all children, notwithstanding whether they are below or above the age for engaging in sexual activities.

38. Most Parties' legislation (see Table A in Appendix IV for more details) either provides that all children/persons are covered by their provisions concerning sexual abuse based on the abuse of a position of trust/authority (**Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Denmark, Finland, Greece, Iceland, Lithuania, Luxembourg, Malta, Montenegro, Netherlands**). Some specify that in this specific case of abuse also the children that are above the age of sexual consent (**Croatia, France, Romania, Spain**) are covered (not just those below such age). The Committee holds that both kinds of provisions are in compliance with Article 18§1(b).

39. The legislation referred to below is instead not in compliance with the Article 18§1(b), 2nd indent as not all children under the age of 18 are clearly protected in cases where abuse may be made of a position of trust, authority or influence over the child.

- Article 189§2 of the Criminal Code of “**the former Yugoslav Republic of Macedonia**”, which refers to children under 14 years. Children above 14 years are not explicitly guaranteed the required protection;
- Article 156 of the **Ukrainian** Criminal Code, which concerns corruption of an individual under the age of 16. Children above 16 years are not explicitly guaranteed the required protection.

40. In some Parties (**Italy, Portugal, San Marino and Turkey**) the situation is complex as the protection of children against sexual abuse is addressed in separate provisions for different age groups above the age of sexual consent. Such provisions do not however cover the same circumstances.

41. In order to eliminate ambiguity and better guarantee that all children are protected against sexual abuse in the circle of trust, the Committee considers that domestic law should specify that the child's age is not relevant in the context of the criminal offence of sexual abuse in the circle of trust.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges “**the former Yugoslav Republic of Macedonia**” and **Ukraine** to review their legislation to specify that the child's age for engaging in sexual activities is irrelevant in the case of sexual abuse in the circle of trust;
- Considers that **Italy, Portugal, San Marino and Turkey** should review their legislation to clearly specify that every child up to 18 years is protected in the context of the basic criminal offence of sexual abuse in the circle of trust.

I.1c Criminalising sexual abuse in the circle of trust even where no coercion, force or threat is used by the perpetrator

42. Children in certain relationships (of trust, authority, influence) must be protected from sexual abuse even when the perpetrator does not use coercion, force or threat.¹⁶

43. Most countries criminalise incest as well as sexual intercourse between a professional working with children and a child. In most of the provisions examined the use of coercion, force or threat is indeed not a constituent element of the crime. It might be an aggravating circumstance in the determination of the sanctions.

44. In the case of **the Republic of Moldova** it is not sure that sexual abuse in the circle of trust is constituted also when the perpetrator does not use coercion, force or threats. Article 171 of the Criminal Code in fact refers to “sexual intercourse committed by the physical or mental coercion of the person”. There is instead no reference to coercion, force or threats in Article 201 of the said Criminal Code which concerns incest but, as mentioned above, not all sexual abuse resulting from abuse of a position of trust concerns just the circle of the family.

45. In **Belgium**, the criminal law provision which was indicated as the legal basis to criminalise sexual abuse in the circle of trust (Article 372 of the Criminal Code) does not apply to children under the age of 18 years who are emancipated through marriage. Protection against sexual abuse of a spouse aged 15 or above where no use of force is involved is thus not explicitly provided for. The Committee considers this situation not to be in compliance with Article 18§1(b), 2nd indent. It therefore welcomes the fact that following discussions in this regard, the Belgian authorities have informed it that the removal of the above mentioned exception is being examined.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges the **Belgian** authorities to ensure the protection of Article 18§1.b, 2nd indent to all children under the age of 18 years regardless of their marital status and invites all other Parties with legislation with exceptions concerning emancipation through marriage to lift such exceptions as well;
- Considers that the **Moldovan** legislation should clearly state that sexual abuse in the circle of trust is constituted even when the perpetrator does not use coercion, force or threats.

¹⁶ See § 124 of the Convention’s Explanatory Report.

I.2 Article 18: Issues concerning the criminal offence of sexual abuse in general

I.2.a Defining “sexual activities”

46. Only a few Parties define the term “sexual activities” in their legislation. However, in most Parties, physical contact is a prerequisite of the sexual activities constituting the criminal offence against children.

47. In some Parties other forms of contact are also covered (**Belgium, Bulgaria, Croatia, Italy and Malta**). In **Finland**, no physical contact between the offender and the victim is necessary; the offence may also be committed through, for example, visual connection. In a number of Parties the definition of “sexual activities” has been established through case-law of the Supreme Court (**Austria, Belgium, Italy and Luxembourg**). The **Italian** Supreme Court of Cassation has for example defined “sexual activity” in the context of sexual abuse as *“any act which constitutes an unsolicited and unwarranted intrusion in the sexual sphere of the victim, through any behaviour which may constitute the expression of sexual instincts. This includes, for instance, mere touching of bodily parts which may be generally considered as erogenous or even acts which, though not implying physical contact, may endanger the freedom of sexual determination of the victim.”*

Recommendation as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

Invites Parties to review their legislation to address all serious attacks on the sexual integrity of children by not limiting their criminal offences to sexual intercourse or equivalent acts.

I.2.b Criminalising sexual abuse without discrimination

48. The implementation of the provisions of the Lanzarote Convention has to be secured without discrimination on any other ground. The Committee did not identify discrimination based on any ground but that based on “gender” and “sexual orientation” which are amongst the prohibited grounds listed by Article 2 of the Lanzarote Convention.

49. The Committee notes that the Bulgarian Penal Code has a provision criminalising sexual abuse based on gender. The Committee considers that the singling out of women in the provision on rape is not in conformity with Article 2 of the Lanzarote Convention. The Committee welcomes the information provided by the Bulgarian authorities that this is in the process of being addressed.

50. It should be highlighted that practically none of the reviewed Parties make a distinction between sexual abuse of children depending on whether the abuse is committed within a heterosexual or homosexual sexual activity. Some exceptions were however identified:

- In **Bulgaria** the offence of sexual abuse of children is structured differently: depending on whether the sexual abuse of the child is committed within a heterosexual or a homosexual interaction, different minimum penalties are foreseen for heterosexual and homosexual contacts.
- In **Albania** and in **the Republic of Moldova** the sanctions for sexual abuse of a child within a heterosexual or a homosexual interaction are the same. However, the mere existence of a distinct reference to ‘homosexual activities’ is stigmatising.

51. The Committee reiterates that any discrimination should be removed in law and in practice.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges **Bulgaria** to review its legislation to guarantee gender equality;
- Urges **Bulgaria** to review its legislation to ensure equal sanctions for sexual abuse committed within a heterosexual or homosexual relationship;
- Urges the **Albanian** and **Moldovan** authorities to review the wording of their legislation to avoid stigmatisation of sexual relationships based on sexual orientation.

I.3 Article 28: Aggravating circumstances¹⁷

Article 28 - Aggravating circumstances

Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention:

- a. the offence seriously damaged the physical or mental health of the victim;*
- b. the offence was preceded or accompanied by acts of torture or serious violence;*
- c. the offence was committed against a particularly vulnerable victim;*
- d. the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;*
- e. the offence was committed by several people acting together;*
- f. the offence was committed within the framework of a criminal organisation;*
- g. the perpetrator has previously been convicted of offences of the same nature.*

¹⁷ The findings of the Lanzarote Committee on the implementation of Article 28 of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 12 of the Thematic Questionnaire.

Explanatory report

199. *The fourth aggravating circumstance concerns where the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority. This would cover various situations where the offence has been committed by a parent or other member of the child's family, including the extended family, or any person in loco parentis, such as a child-minder or other care provider. A person cohabiting with the child refers to partners of the child's parent or other persons living within the same household as the child. A person having authority refers to anyone who is in a position of superiority over the child, including, for instance, a teacher, employer, an older sibling or other older child.*

52. The Committee reiterates that engaging in sexual activities with a child where abuse is made of a recognised position of trust, authority or influence over the child, should be a criminal offence in itself as required by Article 18§1(b), 2nd indent.

53. Some of the Parties (**Austria, Finland, Iceland, Italy**) specified that the “aggravating circumstance” of such offence is constituted by the combination of the abuse of trust, authority, influence over the child with other circumstances such as the age of the child or the severity of the harm inflicted on the child. In **Greece**, the exploitation of the child's intimacy may be considered as an aggravating circumstance in addition to the exploitation of the position of trust, which is a constituent element of the crime in itself anyway.

54. Some Parties (**Belgium, Croatia, Greece and Malta**) attach the severity of the sanction for sexual abuse in the circle of trust to the degree of closeness of the relationship between the perpetrator and the victim. Thus, more severe sanctions are established when the perpetrator is a member of the victim's family.

55. Most of the other Parties (**Austria, Finland, Iceland, Luxembourg, Montenegro, Portugal, Romania, San Marino, Spain and Turkey**) do not subject the severity of the penalty to the nature of the relationship of trust: sanctions are just more severe when the perpetrator is part of the child's circle of trust as compared to a perpetrator who is a stranger to the child.

II. COLLECTION OF DATA ON CHILD SEXUAL ABUSE IN THE CIRCLE OF TRUST

II.1 Article 10§2(b): Mechanisms for data collection or focal points for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children¹⁸

Article 10§2(b) - National measures of co-ordination and collaboration

(...)

2 Each Party shall take the necessary legislative or other measures to set up or designate:

(...)

b mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection.

Explanatory Report

83. Paragraph 2 (b) requires Parties to set up or designate mechanisms for data collection or focal points at the national or local levels, in collaboration with civil society, for observing and evaluating the phenomenon of sexual exploitation and abuse of children. Although there can be no doubt that the sexual exploitation and abuse of children is a serious and increasing problem, there is a lack of accurate and reliable statistics on the nature of the phenomenon and on the numbers of children involved. Policies and measures may not be best developed and appropriately targeted if reliance is placed on inaccurate or misleading information. The obligation provided in paragraph 2 (b) aims at taking measures to address the lack of information.

84. The data referred to are not intended to cover personal data on individuals, but only statistical data on victims and offenders. Nevertheless, the negotiators wished to highlight the importance of respecting data protection rules in the collection of any data, by including the phrase “with due respect for the requirements of personal data protection”.

56. It is essential to have reliable data on child sexual abuse and exploitation committed in the circle of trust in order to frame, adjust and evaluate policies and measures in this field and assess the level of risk for children. As pointed out in the explanatory report, at the time it was drafted, there was a lack of accurate and reliable statistics on the nature of the phenomenon of sexual abuse and exploitation and on the numbers of children involved. This justified the inclusion in the Convention of an obligation for Parties to set up mechanisms for data collection or focal points at national or local level (Article 10, §2(b) of the Lanzarote Convention).

57. The Lanzarote Committee concluded from its evaluation that the situation in the Parties regarding data was generally cause for concern and, more specifically, that data on child sexual abuse committed in the circle of trust were non-existent in most Parties.¹⁹

58. In the majority of cases, there are no specific data collection mechanisms or focal points tasked with collecting data on child sexual abuse (and even less so with regard to child sexual abuse committed in the circle of trust). In contrast, there are general data collection mechanisms

¹⁸ The findings of the Lanzarote Committee on the implementation of Article 10§2(b) of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 1 of the Thematic Questionnaire prepared by Mr George NIKOLAIDIS (Greece), who acted as a Rapporteur for this specific section of the report.

¹⁹ See Table C in Appendix IV for specific replies by Parties.

relating to child abuse and neglect (of all types). The Committee reiterates that the Convention does not demand the setting up of specific mechanisms. Accordingly, general mechanisms may suffice, but these general mechanisms must make it possible to produce accurate and reliable data on the phenomenon of child sexual abuse committed in the circle of trust by means of specific sub-totals extrapolated from overall figures. This equates, therefore, for the Parties to an obligation of result not of means. Where, as in most Parties, the aggregated data on child victims that exist do not make it possible to produce accurate and reliable data on the phenomenon of child sexual abuse committed in the circle of trust, then the situation is not in compliance with the requirements of the Convention.

Promising practices

In **France**, the National Observatory for Children at Risk (ONED) is mandated to collect from all country's Departments case-based data of child abuse and neglect cases in all its forms thus including child sexual abuse committed in the circle of trust.

In **Spain**, the social services, schools, healthcare services and the police in each region report cases of child sexual abuse to the social health centres and public bodies responsible for the protection of minors (the information recorded covers age, sex, type of abuse, seriousness of abuse, source of the report and the nationality of the victim). The Ministry of Health, Social Services and Equality, in conjunction with the autonomous communities, manages a national online database containing the transferred data (Unified Child Abuse Register (RUMI)). All protection services can access this register.

59. The Committee notes a great variety of mechanisms for collecting data on child abuse and neglect. There are huge variations in the methods adopted, the variables used, the measurement and recording units used, the approaches adopted and the results obtained, even between various agencies in the same country.

60. The Committee observes that databases are developed by various agencies operating in separate sectors without any co-ordination between them.

61. There are significant disparities in the operational procedures, scope and focus of the data, depending on their primary target and the sector in which they are recorded. The most decisive factor impacting the type of data collected is the sector which is responsible for data collection.

62. There are at least four major sectors involved in dealing with cases of child sexual abuse, each collecting data:

- justice,
- the law enforcement agencies,
- health,
- social services/social welfare.

63. The volume and seriousness of the cases to be dealt with, and accordingly recorded, by each of these sectors differ depending on the specific area of interest of the sector in question. This explains why the data presented by the Parties is only partially or not at all comparable. For

example, two Parties may well produce different data for the simple reason that one records criminal cases of child sexual abuse resulting in prosecution or conviction while the other may record cases referred to social welfare centres which include suspicions for which there is no proof, or simple requests for therapeutic interventions. The different data collection mechanisms obtain their data from different sectors and, accordingly, refer to different aspects of the overall child sexual abuse phenomenon, inevitably resulting in incompatibilities between data.

64. Generally speaking, Parties use a primary source of data but may also have secondary sources. In some Parties different sources of data are complementary.

Sector	Primary source	Secondary source
Justice	Austria, Croatia, Finland, Luxembourg, Portugal, San Marino, Turkey, Ukraine	Belgium, Bosnia and Herzegovina, France, Iceland, Italy, Lithuania, Malta, Montenegro
Law enforcement	Albania, Austria	Belgium, Croatia, Denmark, Iceland, Finland, Spain
Health	Greece, Montenegro	Iceland, Portugal, San Marino, Serbia, Spain
Social services / Social Welfare	Belgium, Bosnia and Herzegovina, Bulgaria, Denmark, France, Iceland, Italy, Lithuania, Malta, Republic of Moldova, Romania, Serbia, Spain, “the former Yugoslav Republic of Macedonia”	Austria, Croatia, Montenegro, San Marino

65. In most Parties, social services (usually referred to as “social welfare” but there are also a variety of other terms used in the administrative structure of different Parties) represent the sector with the greatest involvement in the majority of the cases to be recorded.

66. The type and focus of the data collected serve different purposes depending on the sector or agency involved. As a general rule, the justice and law enforcement sectors collect data referring primarily to offences or their perpetrators and can offer information providing insight into the relationship between victim and offender. The agencies in the health and social services/social welfare sectors place a greater emphasis on the child victims, their families, the type of abuse and the measures (both social and law enforcement measures) taken. Collection mechanisms focusing on data relating to the (forensic) examination of the victim tend to provide additional information regarding the health status of victims; those focusing on offenders tend to cross-reference information from the offenders’ criminal record with information on their offending and reoffending history, etc. There are, however, some significant exceptions: for example, the justice and law enforcement sectors also gather information on victims, and the social services/social welfare sector sometimes gathers information on offenders and the offences committed. In general, case-based databases can provide aggregated data and tend to refer to (i) children-victims, (ii) offenders, (iii) families and (iv) offences committed.

67. These various factors illustrate the challenge involved in having compatible and comparable data collected by various agencies in the same Party, and – more importantly – in

drawing up a more complete and reliable statistical picture of the phenomenon of child sexual abuse committed in the circle of trust and identifying trends over time.

Promising practice

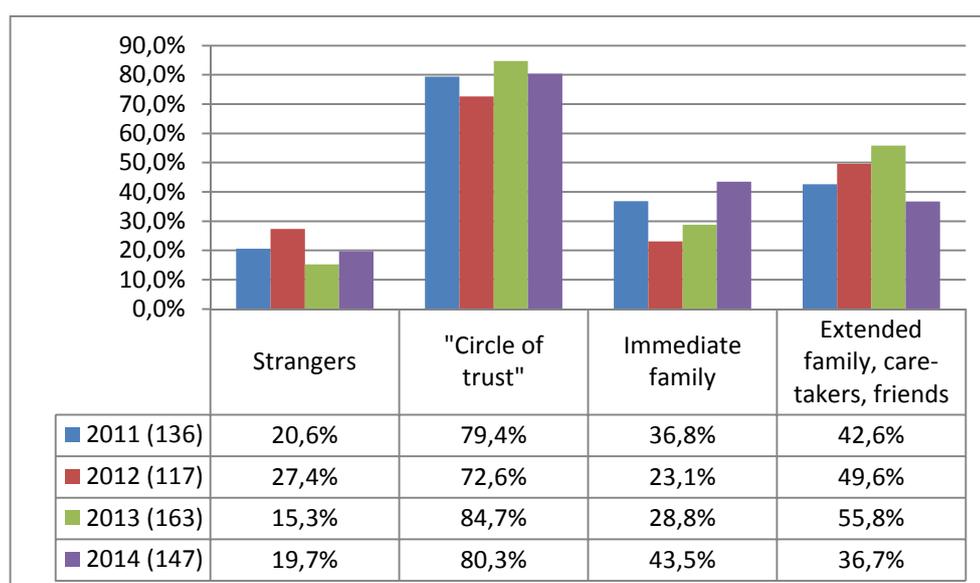
A minimum set of variables and practicable procedures to collect data on registered cases of child abuse was developed under the DAPHNE III programme (DG Justice of the European Commission). This tool, entitled "[Co-ordinated Response to Child Abuse and Neglect \(CAN\) via Minimum Data Set \(MDS\)](#)" is available for any Party interested in using it.

68. The Committee notes that data derived from judicial interviews or any other overall assessment of child victims carried out by specialist centres responsible for dealing with any cases notified to them (for example Barnahus, child advocacy centres, child protection centres) are a very good source of information having both disaggregated and aggregated data that can be made available in a variety of ways. Even where the primary focus of these centres is child abuse in general (and not exclusively child sexual abuse), it is relatively easy to produce series of data on different sub-types of child abuse, including child sexual victimisation; the same applies to quantifying the cases of child sexual abuse committed in the circle of trust. These centres have comprehensive information covering all the main aspects of child abuse, in particular the detailed statistics required for registering cases in a variety of potentially useful ways.

Promising practice

In **Iceland**, the [Barnahus](#) collects data on child sexual abuse committed in the circle of trust deriving from interviews conducted there. This data have been analysed since 2011 by the Government Agency for Child Protection.

Iceland: Degree of relationship between the child victim and the sexual offender, including within the "circle of trust" (2011-2014)



69. The Committee notes a great variety in the situation in the Parties.

70. Where the data recording unit is that of child victim cases, it is possible in Denmark, **Iceland, San Marino, Serbia** and in parts of **Belgium** to produce sub-totals highlighting reports of child sexual abuse from overall figures of child abuse. In other cases, where the recording unit is the type of offence committed (in this case, sexual abuse), bearing in mind that responsibility for keeping the registers falls primarily to the justice and law enforcement sectors, the availability of detailed data on child sexual abuse varies from country to country, depending on the national legislation in force. The Parties where this is possible are **Albania, Austria, Croatia, Finland, Greece, Iceland, Lithuania, Moldova, Portugal, San Marino** and **Spain**.

71. Some data referring to children as victims of sexual abuse are available in Parties such as **Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Iceland, Italy, Lithuania, Malta, Moldova, Romania, San Marino, Serbia** and **Spain**. Similarly, **Austria, Belgium, Bulgaria, Croatia, Denmark, Malta** and **Serbia** have some information on the perpetrators of child sexual abuse. In **Austria, Belgium, Bulgaria, Iceland, Lithuania, Malta, Montenegro, Portugal, Romania, San Marino, Serbia** and **Spain** data is recorded by type of case. **Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Denmark, Iceland, Lithuania, Malta, Portugal, Romania, San Marino** and **Spain** have aggregated data which can, nevertheless, be broken down into types of case. The Committee notes, in particular, the need for gender disaggregated data which may have strong implications in the way policies and measures are framed, adjusted and evaluated. The Committee also notes that there are ongoing initiatives to develop new systems or mechanisms for data collection in various sectors in **Greece, Italy, Portugal, Spain** and **Turkey**.

72. The Committee further points out that in the majority of Parties, there is a lack of data being collected relating specifically to child sexual abuse committed in the circle of trust, except in Parties which have registers containing reliable data on such cases. However, some registers contain details of the relationship between the child victim and the perpetrator of the sexual abuse (**Austria**, parts of **Belgium, Croatia, Denmark** and **Portugal**). Others refer to specific cases of “domestic” sexual violence against children, which represents only a proportion of child sexual abuse committed in the circle of trust.

73. The Committee notes that in some cases, the quality of the data collected leaves much to be desired, whether in terms of completeness (not all cases are systematically recorded) or validity (not all required fields are filled in for each case, information is not always up-to-date or accurate, etc.).

74. Furthermore, the Committee notes that mandatory reporting is an additional factor in data collection, since where it is in force, a larger number of cases are reported and consequently registered.

75. Nonetheless, the Committee observes that one of the most important factors which is crucial for the availability of data on child sexual abuse committed in the circle of trust is undoubtedly the appointment of an agency tasked with producing a periodic report on aggregated data or recording case-based information on child abuse and neglect. In those Parties where such is the case, the information made available to the public (generally aggregated data) and authorised groups of users (generally case-based information) is, on the whole, much more reliable and complete.

76. Lastly, the Committee notes that Parties still need to address the issue of managing the effectiveness of the various mechanisms or focal points. The Committee stresses that this is vitally important as it is essential that data collection mechanisms are constantly assessed to ensure their ability to depict the actual situation on the ground and produce accurate and reliable data, bearing in mind that on the whole it takes several years before optimal functioning is achieved.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges Parties to take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points at national or local level and in collaboration with civil society, for the purpose of observing and evaluating in terms of quantitative data collection the phenomenon of the sexual exploitation and sexual abuse of children in general and child sexual abuse committed in the circle of trust, in particular;
- To this end, where such specific mechanism is not already in place, invites Parties to ensure that existing general data collection mechanisms are able to produce accurate and reliable data on the phenomenon of child sexual abuse committed in the circle of trust by means of specific sub-totals extrapolated from overall data on abuse;
- Considers that Parties must set up a national or local system for recording case-based data for child sexual abuse in the circle of trust cases in the various sectors liable to come into contact with children victims in such instances; such administrative data collection systems should be implemented allowing to compare and cross-check the data thus collected at national level and avoid duplication;
- Invites Parties to consider elaborating and subsequently implementing guidelines establishing a minimum set of variables and procedures to collect data on child sexual abuse cases, which could subsequently make data collected in different Parties internationally compatible and comparable between them;
- Invites Parties to disaggregate data on the basis of the gender of the child victim and of the perpetrator, should this not be already the case;
- Invites Parties to establish a comprehensive system of reporting of cases of child sexual abuse committed in the circle of trust, which will ensure the completeness of the data collected;
- To improve the extensiveness and quality of collected data, invites Parties to consider setting up data collection systems integrated with specific points of comprehensive management of child sexual abuse cases at the level of specialist centres such as, for example, the Children's Houses;

- Invites Parties to appoint a national or local agency tasked with providing periodic reports on aggregated data or recording information on child sexual abuse committed in the circle of trust;
- Invites Parties to ensure ongoing evaluation of the effectiveness of their mechanisms or focal points with regard to their ability to depict the actual situation on the ground and produce accurate and reliable data.

III BEST INTEREST OF THE CHILD AND CHILD FRIENDLY CRIMINAL PROCEEDINGS

77. Child sexual abuse is typically a very intimate and secretive act. Children are often too ashamed or too frightened to seek professional advice and support, and will frequently decide alone whether to disclose their sexual victimisation. In cases where they have been abused by a family member or by someone in their circle of trust, victims will face additional fears and concerns: will their disclosure have a negative impact on their family environment and friends, support and life overall? A child's ability and willingness to report their victimisation plays a crucial role in legal and therapeutic intervention. It represents the most valuable source of information and it is on this that the whole case may rest.

78. In this respect it is crucial to avoid the negative consequences which result from inappropriate and repetitive interviewing techniques and adverse facilities where these interviews may take place. To guarantee the rights and best interests of child victims of sexual abuse, authorities need to recognize that they have to act collectively, not just as a government or a judicial system, but all together as a society. Acting collectively means implementing measures to protect children, which are not confined to individual actions, such as incarcerating perpetrators or providing family therapy, but which are truly child-focused and comprehensive with regard to prevention, intervention and rehabilitation. An interdisciplinary and multi-agency approach delivered by all the different entities in society whose responsibility is to carry out these tasks is therefore paramount.

79. This chapter examines what specific legal safeguards have been taken by Parties to guarantee the best interests of children victims of sexual abuse in their circle of trust and that criminal proceedings are held in a child friendly way.

III.1 Article 30§1: Best interest of the child in investigations and criminal proceedings²⁰

Article 30 – Principles

1 Each Party shall take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child.
(...)

Explanatory report

215. This is why paragraphs 1 and 2 establish two general principles to the effect that investigations and judicial proceedings concerning acts of sexual exploitation and sexual abuse of children must always be conducted in a manner which protects the best interests and rights of children, and must aim to avoid exacerbating the trauma which they have already suffered.

²⁰ The findings of the Lanzarote Committee on the implementation of Article 30§1 of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 13 the Thematic Questionnaire and to Question 22(d) of the General Overview Questionnaire to which it refers prepared by Ms Joanna PAABUMETS (Estonia), who acted as Rapporteur for this part of the report.

80. The Lanzarote Committee stresses the overwhelming importance of the implementation of the best interest of the child in every aspect of the investigations and criminal proceedings concerning acts of sexual exploitation and sexual abuse of children in general. It goes without saying that this is fundamental also within the specific context of proceedings concerning sexual abuse of children in the circle of trust. As the UN Committee on the Rights of the Child, the Lanzarote Committee underlines that the respect of the child's best interests is a substantive right, a fundamental, interpretative legal principle and a rule of procedure.

United Nations Committee on the Rights of the Child: General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3 paragraph 1 Convention on the Rights of the Child)

"6. (...) The child's best interests is a three-fold concept:

*(a) **A substantive right:** The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.*

*(b) **A fundamental, interpretative legal principle:** If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.*

*(c) **A rule of procedure:** Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases."*

81. Article 30§1 of the Convention safeguards the rights and best interests of the child victim during investigations and criminal proceedings. The Committee underlines that, as specified in the Fundamental Principles of the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice "in assessing the best interests of the involved or affected children: a. their views and opinion should be given due weight; b. all other rights such as the right to dignity, liberty and equal treatment should be respected at all time; c. a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child" (Chapter B.2).

82. The Committee notes that although Parties mentioned respecting the child's best interest during proceedings and conducting a protective approach towards the child thereof, none (except **Austria, Croatia, Iceland**) indicated which legislative or other measures they took to ensure this nor which special criminal procedural regulations would apply for the child's best interest in cases where the alleged perpetrator is within the child's circle of trust.²¹

83. The Committee notes that, within the context of criminal procedure, there is, amongst the Parties, little use of the specific notion of circle of trust. Whether or not the abuse has been committed in the child's circle or trust, general measures of protection respecting the child's best interest must be applied.

84. If the child has no direct family support during the proceedings, the possibility for the child to understand his/her rights in the penal procedure, especially the right to participate, is paramount. In **Denmark** for example, prosecution will inform the child's legal guardian and counsel whether the suspect is prosecuted and whether the child has to testify in court.

85. Several Parties (**Austria, Belgium, Croatia**) have pointed out the importance of other stakeholders in informing and guaranteeing the child's rights and best interests during criminal proceedings. In **France** for example, non-governmental associations, financed by the Ministry of Justice, help to inform the child victim of his or her rights.

86. The Committee calls for more Parties to consider establishing or reinforcing a close cooperation between competent bodies and professionals assigned to cases involving child victims, such as in the examples from **Iceland, Denmark, France** and **Belgium**. A closer cooperation, such as required by Article 10 of the Convention, will not only offer children the possibility to quickly obtain emotional support which is paramount in cases of sexual abuse in the circle of trust, but will also push different stakeholders to focus on the child's best interest overall.

Promising practices

In **Bosnia and Herzegovina**, [Safe Houses](#)/*Medica Zenica* are structures for victims of violence in general, which also welcome child victims of sexual abuse. Children in the safe house are provided therapy and assisted in making contacts with relevant government agencies (police, Social Service center, judiciary, Prosecutor's Office, Municipality administration and other institutions) and other non-governmental organizations for comprehensively exercising their rights and fulfilling their needs. During their stay in the houses they are also involved in education and upbringing processes.

In **Denmark** a number of Children's Houses/*Børnehuse* have been set up to provide a nationwide framework for child-friendly and multiagency investigation of child abuse, including sexual abuse. This includes a mandatory referral of cases to the *Børnehuse* if either the police or the health service sectors are involved in the investigation of alleged sexual abuse in addition to the municipal authorities. In the *Børnehuse*, the police, the prosecution service, authorized healthcare professionals and the municipal authorities work and cooperate to help the child. In

²¹ See Table D in Appendix IV for specific replies by Parties.

this respect the authorities can exchange information in relation to the case regarding private matters concerning the child's personal and family circumstances where the exchange is considered necessary for the child's health and development.

In **Denmark**, a child victim receives the name and telephone number of a contact person from the police service whom she/he may call and talk to about the case.

In **France**, national law provides that non-governmental organisations may assist the child throughout his or her hearings.

In **Iceland**, [Children's House/Barnahus](#) represent a child-friendly, interdisciplinary and multiagency centre where different professionals work under one roof and investigate suspected child sexual abuse cases and provide appropriate support for child victims. The activities are based on a partnership between the State Police, the State Prosecution, the University Hospital and the local child protection services as well as the Government Agency for Child Protection which is responsible for its operation. The basic concept of Barnahus is to avoid subjecting the child to repeated interviews by many agencies in different locations.

Recommendations for the measures to be taken to improve the implementation in practice of the Lanzarote Convention

The Lanzarote Committee:

- Considers that when sexual abuse is inflicted by someone in the child's circle of trust, the child victim is in a particularly delicate situation of having to report a crime made by someone who he or she trusted, respected and possibly loved. This situation which can create a serious disturbance on the child's family life and overall wellbeing, needs to be addressed specifically by Parties;
- Considers that information and advice should be provided to child victims in a manner adapted to their age and maturity, in a language they understand and which is gender and cultural sensitive;
- Considers that Parties should address and encourage as much as possible the coordination and collaboration of the different players who intervene for and with the child victim during criminal proceedings. This comprehensive and interdisciplinary approach offers extra support to the child victim and in some cases, the possibility for intervention not to be delayed and appropriate support to be provided immediately after the disclosure;
- Invites Parties to ensure that the different agencies involved in the coordination and collaboration concerning child sexual abuse are allowed to share personal information as appropriate;
- Invites Parties to provide for interviewing the child without informing in advance the parents/legal guardians or acquiring their prior consent in cases in which there is a reasonable suspicion of sexual abuse in the circle of trust and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse.

III.2 Article 14§3, 2nd indent: Removing the victim from his/her family environment when parents or persons who have care of him/her are involved in his/her sexual abuse²²

Article 14 – Assistance to victims

(...)

3 When the parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse, the intervention procedures taken in application of Article 11, paragraph 1, shall include:

- the possibility of removing the alleged perpetrator;
- the possibility of removing the victim from his or her family environment. The conditions and duration of such removal shall be determined in accordance with the best interests of the child.

Explanatory report

99. Paragraph 3 provides for the possibility, where the parents or carers of the victim are involved in the case of sexual exploitation or abuse, of removing either the alleged perpetrator or the victim from the family environment. It is important to stress that this removal should be envisaged as a protection measure for the child and not as a sanction for the alleged perpetrator. (...) The other option may be to remove the child from the family environment. In such case, the length of time of the removal should be determined in the best interests of the child.

87. Article 14 of the Lanzarote Convention sets out the measures that Parties are required to take to assist victims of any of the offences of sexual abuse and sexual exploitation defined in the Convention. In the context of this 1st monitoring report the Committee chose to examine in particular whether and how Parties implement the possible removal of the victim from his/her family environment when parents or persons who care for him/her are involved in his/her sexual abuse in accordance with Article 14§3, 2nd indent.

88. Before outlining its findings with respect to the measures in place to remove the child from his/her family environment, the Committee wishes to highlight that when parents or persons who care for the child victim are involved in his/her sexual abuse, Article 14§3 of the Convention also refers to the possible removal of the alleged perpetrator. As pointed out by the Committee of Ministers of the Council of Europe in its Recommendation to member states on children's rights and social services friendly to children and families, "situations of child abuse and neglect require supportive and comprehensive services with the aim to avoid family separation for him or for her. Maintaining the family unity should not, however, be an aim in itself. In the best interest of the child and his or her protection, out-of-home placement is sometimes necessary. Moreover, when the parents are involved in the sexual abuse or exploitation of the child, the intervention procedures shall include the possibility of removing the alleged perpetrator from the family home."²³

²² The findings concerning the implementation of Article 14§3, 2nd indent, of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 9(a), 1st indent, of the Thematic Questionnaire prepared by Mr Charlie AZZOPARDI (Malta), who acted as Rapporteurs for this part of the report.

²³ Council of Europe Committee of Ministers [Recommendation Rec\(2011\)12](#) to member states on children's rights and social services friendly to children and families, adopted by the Committee of Ministers on 16 November 2011 at the 1126th meeting of the Ministers' Deputies, Guideline III, C.2.

89. The Committee thus considers that before resorting to the removal of the victim, the removal of the perpetrator should be preferred. The Committee holds that generally this measure corresponds better to the child's best interest as children tend to perceive their removal from their family environment as a punishment for having disclosed their abuse. Additionally, the removal of the child involves extra difficulties for him/her (e.g. having to change school), which may contribute to his/her secondary victimisation. To minimise rupture in the child's life as far as possible, the Committee recommends that the removal of the alleged perpetrator be taken into consideration first.

90. All the Parties generally indicated that removing either the alleged perpetrator or the victim are possibilities which are covered by their domestic law.²⁴ Most pointed out that the removal of the victim is generally allowed within an emergency context as a precautionary measure on the basis of a court order. In some Parties (**Denmark, Finland, Iceland**) however, this decision can be taken by the child protection services or social services.

91. Some Parties (**Denmark, Iceland, Italy, Montenegro**) specified that the removal of the victim is handled in a multidisciplinary framework to provide a safe, professional and coordinated effort with regard to the investigation of the alleged sexual abuse and the best interest of the child. These approaches are deemed to be in full compliance with the Convention.

92. In the same line, a few Parties (**Bulgaria, Finland, Iceland, Lithuania**) highlighted that the needs and rights of children are dealt with explicitly and specifically in a "Child Protection Act". The Committee acknowledges that where such acts exist, the repertoire of options for protecting the child's best interests appears to be wider. It however emphasises that it is important to ensure that such options, while available legally, are also implemented in practice.

93. The Committee holds that when the removal of the victim from his/her family environment is inevitable, to guarantee his/her best interests, it is paramount that Parties have an array of options to select from and clear procedures to follow. In this respect the Committee views it very useful that Parties bear in mind the overall guiding principles that should be applied whenever a child is placed outside the family and underlines that every placement must ensure that the child's human rights are fully respected as underlined by the Committee of Ministers of the Council of Europe in its Recommendation to member states on the rights of children living in residential insituations.²⁵

94. In this context, several Parties (e.g. **Austria, Bulgaria, Croatia, Denmark, Italy, the Netherlands, Portugal, Romania, Serbia, Turkey**) referred to different placement possibilities available depending on the specific circumstances and the best interest of the child.

- **Portugal** indicated the following options, some of which are common to other Parties: placing the child with another family member; confiding him/her to a suitable person; hosting of the child in another family or in an institution.
- **Italy** additionally referred to the experimental use of "neutral places" to monitor how the situation evolves in the cases in which a child has been removed from the family because of

²⁴ See Table E in Appendix IV for specific replies by Parties.

²⁵ Council of Europe Committee of Ministers [Recommendation Rec\(2005\)5](#) to member states on the rights of children living in residential institutions, adopted by the Committee of Ministers on 16 March 2005 at the 919th meeting of the Ministers' Deputies.

intra-family violence and there is a reason to believe that neither parent may take care of the child and there is a multiple case of neglect. In these cases, the adult-child relationship is observed and evaluated in order to decide whether the child can be reunited with his/her parents or with the non-abusing adult, as well as in the judicial proceedings to investigate allegations of abuse.

Promising practices

Having clear victim removal procedures based on the best interests of the child.

In this context, the following specific procedures were highlighted as promising:

- Providing various time frames for removal, including emergency removal, short and long term removals, plus other options like indefinite removal (**Croatia**);
- Since August 2015, the child protection act of **Portugal** has been amended, authorizing the judiciary, following a complaint to the latter by the Commission for the protection of children and young people at risk, to remove a child victim of sexual violence from his family environment, without obtaining the consent of a parent or legal guardian who has been indicted or suspected of having committed such a crime against a child;
- Specifying that the type of placement and intervention is age specific and attention has to be given to placing siblings together (**Romania**).

95. The Committee noted that in many Parties (**Albania, Greece, Malta, the Republic of Moldova, Montenegro, Serbia, “the former Yugoslav Republic of Macedonia”**) the removal process (be it of the child or the perpetrator) is foreseen within the context of a “Domestic Violence” law. The Committee holds that in such cases Parties should ensure that a specific reference is included to child sexual abuse. Where this is not the case, children might not sufficiently be guaranteed against sexual abuse in the circle of trust. The Committee therefore recommends that where this is not the case, legislation be reviewed to include an explicit reference to sexual abuse within the context of domestic violence.

96. From the information submitted by some Parties, it emerged that NGOs play a crucial role in promoting the child’s best interests with respect to the assistance of victims, including within the removal process. In this respect, the Committee was of the view that it would be useful if local, national and international NGOs could be supported to better share their good practices.

97. Finally, the Committee stresses that temporarily or totally suspending the parental rights of the parent who is the alleged perpetrator should be made possible, as an accompanying measure to protect the child. In such a case, the urgency principle of the proceedings allowing for such a suspension of parental rights should be applied to provide a speedy response. The Committee holds that judicial or other appropriate authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interest of the child.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Considers that, in the context of sexual abuse in the circle of trust, the removal of the victim from his/her family environment should be foreseen as a last resort procedure, which should be clearly defined, setting out the conditions for and duration of the removal;
- Considers that interventions and measures which are taken in the context of domestic violence operate on a different *modus operandi* to those established in child sexual abuse cases. An explicit mention of sexual abuse should therefore be included in all protection measures with regard to domestic violence;
- Invites Parties to support the exchange of good practices developed by civil society to ensure that the best interest of the child principle is respected while determining the most appropriate assistance to children who have been sexually abused within the circle of trust.

III.3 Article 14§4: Therapeutic assistance, including emergency psychological care for persons close to the victim of sexual abuse in the circle of trust

Article 14 – Assistance to victims

(...)

4. *Each Party shall take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care.*

Explanatory report

100. *The negotiators recognised that the application of paragraph 4 would be limited, but felt that in certain particularly serious cases it would be justified for those persons close to the victim, including for example family members, friends and classmates, to benefit from emergency psychological assistance. These assistance measures are not meant to benefit the alleged perpetrators of sexual exploitation and abuse, who can instead benefit from the intervention programmes and measures in Chapter V.*

98. This part of the report assesses specifically whether Parties have taken measures to assist the non-offending persons close to the victim. Assisting the victim *per se* is not addressed in this specific section.

99. Half of the 26 Parties monitored provided some answer to this question (**Austria, Bosnia & Herzegovina, Denmark, Croatia, Greece, Iceland, Italy, Luxembourg, Netherlands, Montenegro, Portugal San Marino and Spain**). The Committee regrets that notwithstanding the numerous appeals to submit the relevant info, this was not always done and it is therefore difficult to truly assess the situation.²⁶

100. **Italy, Portugal and San Marino** point out that the services offered are meant to face emergency situations and provide immediate support, including of psychological nature, but they

²⁶ See Table F in Appendix IV for specific replies by Parties.

are also aimed at subsequently taking care of the victim and persons close to him/her in the medium-term, also for the purpose of recovering family relationships.

101. A few Parties (**Bosnia and Herzegovina, Denmark, Iceland**) highlighted that child protection multidisciplinary structures (see previous section) provide assistance (crisis support and psychological counselling) also to persons close to the victim.

Promising practice

In **Croatia**, the health-care system provides for the non-offending parent specific treatment such as counselling with a professional. The parent will have the opportunity to not only discuss and focus on the child victim, but also share his or her feelings in relation to the sexual abuse of his or her child.

The Children's House in **Iceland** provides medical and psychological help to the child and to the persons close to the victim. Iceland also offers temporary housing and financial assistance if need be.

102. From the rest of the information submitted it emerged that a specific legal framework for the provision of services to close relatives of children victims of sexual abuse is lacking. However, services may be provided through the national social and health welfare services or through NGOs. These services seem to be part of generic services and are not dedicated services tailored for sexual abuse of children and the persons close to them.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges Parties that have not yet done so to take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care.
- Invites Parties, when determining the support required to the victim and the persons close to him/her, to take into account the fact that child's disclosure should not worsen his/her situation and that of the other non-offending members of the family.

III.4 Article 27§4: Measures in relation to perpetrators, such as withdrawal of parental rights or monitoring or supervision of convicted persons²⁷

Article 27 – Sanctions and measures

(...)

4. Each Party may adopt other measures in relation to perpetrators, such as withdrawal of parental rights or monitoring or supervision of convicted persons.

Explanatory report

191. The Convention provides also for the possibility for Parties to adopt other measures in relation to perpetrators, such as the withdrawal of parental rights. This measure could be taken, for instance, in relation to a person who was removed from the family environment as an assistance measure to the victim in accordance with Article 14 paragraph 3.

192. Other measures designed to make it possible to monitor and supervise convicted perpetrators of offences might be considered in order, for example, to facilitate assessment of the risk of re-offending or to ensure that intervention programmes and measures are effective. Such measures might include placing under supervision convicted persons, persons subject to suspended sentences or conditional release, as well as persons who have served their sentences.

Withdrawal of parental rights

103. The Committee stresses that what is at stake in Article 27§4 of the Convention, is the withdrawal of parental rights as a protective measure to the victim once the perpetrator has been convicted. Article 27§4 does not address the issue of suspension of parental rights as a measure to protect the child during the judicial proceedings before the court reaches a decision.

104. The Committee notes that Parties often confuse these two aspects in their law and practice.²⁸ Indeed, Parties foresee some kind of withdrawal of parental rights in cases where the alleged perpetrator is a parent or guardian. This decision is often taken within the civil procedure (i.e. regardless of the criminal procedure or court decision) but may also be a complementary or accessory penalty decided within the criminal procedure with a court decision (**Romania and Spain**). However, this withdrawal differs from one Party to another, especially with regard to length and to what this withdrawal covers overall.

105. **Finland** indicated that although a child may be placed into care, it is not possible to permanently withdraw parents of their rights. **San Marino** specified that the loss of parental rights may take different forms, depending on the duration of punishment. Finally, **Bosnia and Herzegovina** stated that even if without rights, parents still have the duty to support the child.

106. For any child victim, the ability and willingness to disclose his or her abuse can be extremely frightening. Moreover, in cases where the abuse has been committed by a parent, it can be even more difficult. The child usually knows that the disclosure may have devastating outcomes for his or her family as a whole, with for example, other members of the family remaining loyal to the abuser and taking sides.

²⁷ The findings concerning the implementation of Article 27§4 of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 13 the Thematic Questionnaire prepared by Ms Joanna PAABUMETS (Estonia) who acted as Rapporteur for this part of the report.

²⁸ See Table G in Appendix IV for specific replies by Parties.

107. Some Parties such as **France** and **Belgium** have stated that the parental right of the offending parent may be withdrawn with regard to all of his or her children even if the prosecuted case concerns only one child. The Committee stresses that such decisions should be made on a case-by-case basis, based on risk assessment for recidivism, safety and best interest of the child. Automatic withdrawal of parental rights of the offender, including with respect to the siblings of the child victim, may have the adverse effect that the child victim may refrain from or delay disclosing or recant disclosure because of inevitable consequences.

108. The following Parties did not provide information on their national situation with regard to the removal of parental rights: **Lithuania, Malta, and Ukraine**.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

Invites Parties to clearly distinguish in their legislation and practice:

- 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 had convicted the said parent.

Monitoring or supervision of convicted person

109. According to Article 27§4 Parties may monitor or supervise the convicted person. The aim of monitoring and supervision of the convicted person is to make sure that the offender is precluded from the possibility of repeating his or her offence. This is particularly relevant in cases where the offender was in the child victim's circle of trust and may therefore likely be in a position to be in contact with the child again.

110. The Committee notes that Parties share no common interpretation of what is meant by "supervision of convicted person" and none gave information on the assessment tools or monitoring procedures of convicted sex offenders.²⁹

111. The Committee holds that the safety of children should be a primary concern for all the Parties and urges them to implement Article 27§4 of the Convention.

112. Furthermore, the Committee emphasises that, in order to prevent the sexual abuse of children, intervention programmes or measures targeting sex offenders should be proposed. These interventions programmes are covered by Articles 15 to 17 of the Convention "Intervention programmes or measures", provisions which are however not covered by the current monitoring cycle.

113. Other protective measures are also highlighted, though in a different context, by other Articles of the Convention such as Article 30§2 which calls Parties to adopt a protective approach

²⁹ See Table G in Appendix IV for specific replies by Parties.

towards victims and Article 14§3, 1st and 2nd indents, where Parties have the possibility to remove either the alleged perpetrator or the child victim from his or her family environment (see above, section III.2).

114. Parties such as **Albania, Austria, Bosnia-Herzegovina, Bulgaria, Denmark and Iceland** have reported the possibility to implement protection orders for the child victim. **Lithuania** states the possibility to prohibit the offender to approach the victim up to expiry of time laid down by the court or the obligation to live separately from the victim. The content of these orders can therefore vary: prohibition to enter a specific area close to the victims' place of residence (**Denmark**); in **Spain**, the protection order is sent to the coordinating points of the autonomous regions.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

Invites Parties to envisage taking steps to monitor or supervise the persons convicted of child sexual abuse in the child's circle of trust.

III.5 Article 31§4: Appointment by the judicial authorities of a special representative for the victim to avoid a conflict of interest between the holders of parental responsibility and the victim³⁰

Article 31 – General measures of protection

(...)

4. *Each Party shall provide for the possibility for the judicial authorities to appoint a special representative for the victim when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim.*

Explanatory report

227. *Paragraph 4 makes provision for the situation in cases of sexual abuse within the family, in which the holders of parental responsibility, while responsible for defending the child's interests, are involved in some way in the proceedings in which the child is a victim (where there is a "conflict of interest"). In such cases, this provision makes it possible for the child to be represented in judicial proceedings by a special representative appointed by the judicial authorities. This may be the case when, for example, the holders of parental responsibility are the perpetrators or joint perpetrators of the offence, or the nature of their relationship with the perpetrator is such that they cannot be expected to defend the interests of the child victim with impartiality.*

115. When a child victim is involved in criminal proceedings, courts will often decide on what type of services, actions and orders will best serve him or her. These measures should be made

³⁰ The findings concerning the implementation of Article 31§4 of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 13 the Thematic Questionnaire prepared by Ms Joanna PAABUMETS (Estonia) who acted as Rapporteur for this part of the report.

by considering a number of factors related to the child's best interest, such as the child's ultimate safety and well-being.

116. Parents, or more generally the person(s) holding parental responsibility, are chosen to represent the child in such legal process. However, when the parent is the alleged perpetrator, an adequate and independent representation from the parents should be guaranteed. Article 31§4 of the Convention requires Parties to provide, by law, for the possibility for the judicial authorities to appoint a special representative for the child victim where there is a conflict of interest with the holders of parental responsibility. This special representative may either be a guardian *ad litem* or another independent representative.

117. This possibility is of the upmost importance in cases of sexual abuse within the family in order to defend with impartiality the interests of the child victim.

118. As specified in Guidelines 42 of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, the function of a guardian *ad litem* or other special representative differs from the functions of a legal counsel. The guardian is appointed by a court, not by a 'client' *per se*, and should help the court in deciding what is in the best interests of the child. The essence of a special representative is to assist the child during the criminal proceeding and to make sure investigation and procedures do not violate the child's interests.

119. Most Parties foresee the possibility of appointing a special representative for a child in the case of conflict of interest with the child's legal representative.³¹

120. However the Committee notes that there are no common practices among the Parties. Special representatives may be appointed for different instances with different responsibilities: **Bulgaria's** special representative will for example act as a trustee during the penal procedure; in **Portugal** the prosecutor has the power to represent the child and in **Spain** a defender represents the child in and out of the court.

121. Furthermore, the Committee highlights that some Parties did not specify what the tasks of the special representatives are.

122. The Committee regrets **Malta's** indication that no official legal impositions are made for a child victim to be represented by an independent person when the parents have a conflict of interest to assist the child. In **Malta**, although it appears that an "understanding" with judiciary and the police prosecuting the case offers social workers the possibility to accompany the child before and after the interview, they are not allowed to be part of the overall proceeding as this is often seen as a mean which can influence a child's testimony.

123. The Committee underlines that regardless whether a guardian *ad litem* or a special representative is appointed by judicial authorities, all should receive appropriate legal knowledge and necessary information to ensure and safeguard the best interests of the child during the criminal investigations and proceedings. As outlined in Guidelines 14 of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, all professionals working with and

³¹ See Table H in Appendix IV for specific replies by Parties.

for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on the proceedings that are adapted to them.

124. However, combining the functions of a lawyer and a guardian *ad litem* in one person should be avoided due to the potential conflict of interests that may arise.³² The reason for this is that because of the emotional assistance and support attached to the guardian's role, children should be given the opportunity to request a guardian or representative of their choice. Children should also, as available in **Luxembourg**, be able to replace their guardian or representative if no good relationship has been produced during the child's interview. The Committee therefore also welcomes **Iceland's** policy where both a legal counsel and a guardian are appointed to a child victim.

125. Considering that the level of family support is one of the most important predictors of the degree to which the child can adjust following his or her disclosure; when the alleged perpetrator is part of the child's family environment, family support can be heavily disrupted. In **Belgium** and **Croatia** the non-offending parent will often be appointed as special representative if this is in the child's best interest. However, although this option, if in the child's best interest, can provide valuable emotional support for the child's future wellbeing, it may also create a conflict of interests with the child, especially if the non-offending parent is involved emotionally.

126. Finally, the Committee considers that the appointment of a guardian *ad litem* or a special representative should be free of charge for the child victim, such as guaranteed by **Austria**, **Denmark** (if the victim is not privately insured), **Iceland**, **Luxembourg** and **San Marino**.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges **Malta** to appoint a special representative or a guardian *ad litem* when there is a conflict of interest with the child. This person should be allowed to be present throughout the criminal proceedings;
- Invites Parties to ensure that guardians *ad litem* and special representatives receive appropriate training and legal knowledge to ensure and safeguard the best interests of the child victim during criminal investigations and proceedings;
- Invites Parties to avoid combining the functions of a lawyer and a guardian *ad litem* in one person;
- Invites Parties to provide a guardian *ad litem* or special representative free of charge for the child victim.

³² See Explanatory Memorandum of the Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, §105.

III.6 Article 30§2: Protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate³³

Article 30 – Principles

(...)

2 Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate.

(...)

Explanatory Report

211. Existing international legal instruments on the protection of children give only an indication of the need for a special judicial procedure adapted to the child victim. Recommendation Rec (2001) 16, which is certainly the most detailed such instrument, recalls in particular the need to safeguard child victims' rights without violating the rights of suspects, the need to respect child victims' private life and to provide special conditions for hearings with children. The Optional Protocol to the Convention on the Rights of the Child, which deals exclusively with the sale of children, child prostitution and child pornography, provides in Article 8 for recognition of child victims' vulnerability, adaptation of procedures to their special needs, their right to be kept informed of the progress of proceedings and to be represented when their interests are at stake, protection of their privacy and, lastly, protection from intimidation and retaliation. In Resolution 1307 (2002) the Parliamentary Assembly of the Council of Europe calls on member States to give priority attention to the rights of child victims unable to express their views.

212. Beyond these objectives, the definition and implementation of rules of procedure adapted to child victims are left to the discretion and initiative of each State. Recent analyses, including REACT, highlight the differences and discrepancies in the area.

213. The negotiators considered that a number of provisions should be made to implement a child-friendly and protective procedure for child victims in criminal proceedings. However, paragraph 4 underlines that these measures should not violate the rights of the defence and the principles of a fair trial as set out in Article 6 ECHR.

214. The central issue has to do with the child's testimony which constitutes a major challenge in the procedures of numerous States, as witnessed by a number of cases that have received intensive media coverage and the changes that criminal procedure systems have undergone in the last decades. In this context, it has become urgently important for States to adopt procedural rules guaranteeing and safeguarding children's testimony.

215. This is why paragraphs 1 and 2 establish two general principles to the effect that investigations and judicial proceedings concerning acts of sexual exploitation and sexual abuse of children must always be conducted in a manner which protects the best interests and rights of children, and must aim to avoid exacerbating the trauma which they have already suffered.

127. Adopting a protective approach to child victims of sexual abuse in judicial process (from the investigation phase to the one after the court decision) contributes to fulfilment of the principle of the child's best interests recalled in Article 30§1. This approach is still more important when placed in the context of a crime when the accused person is a member of the victim's immediate family or a person in a recognised position of trust, authority or influence vis-à-vis the victim. Article 30§2 of the Convention concentrates on two specific obligations for the

³³ The findings concerning the implementation of Article 30§2 of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 14 of the Thematic Questionnaire prepared by Ms Maria-José CASTELLO-BRANCO (Portugal) who acted as Rapporteur for this part of the report, and takes into account findings of the European Union Commission in its [studies on children's involvement in judicial proceedings](#).

victim's protection: not to aggravate the trauma experienced by the child because of the investigations and criminal proceedings, and to provide for assistance to the child accompanying the criminal justice response, where appropriate.

Investigations and criminal proceedings not aggravating the trauma experienced by the child

128. The Committee stresses that the obligation arising from the Lanzarote Convention in this respect is an obligation to achieve a result, that of not aggravating the trauma experienced by the child during the investigations and criminal proceedings. The Convention requests Parties to adopt a protective approach to child victims and thus leaves it to their discretion to choose the means of achieving this. It therefore does not impose any specific solution on the Parties. The Committee's subsequent conclusions take account of this situation which consequently points more to promising practices than to national situations where the approach adopted by the Parties would not meet the requirements of the Convention. The Committee stresses, however, that some of the measures presented below, avoiding aggravation of the trauma experienced by the child, are obligations under Article 35 of the Convention.

129. Additionally, the Committee highlights that all child victims regardless of the age of sexual consent should be protected in the investigation and criminal proceedings, especially in cases where the abuse has occurred in the circle of trust.

130. In the Committee's view, this approach protecting the child victim should begin as from the initial lodging of the complaint or of any other reporting of the case to the competent authorities, which is to be regarded as the first stage of the investigation.

131. First of all, and in general, the Committee regrets that in most Parties the specificity of sexual abuses committed in the child's circle of trust does not receive more attention as regards the risk of aggravating the trauma for the child victim, when this trauma is obviously aggravated by the simple fact that the sexual abuse has been committed by someone in the child's entourage. An enhanced protective approach should consequently apply to a child victim of sexual abuse committed in his or her circle of trust.

132. Moreover, and more specifically, as regards the phase of the interview of the child victim during the investigation, the Committee stresses that it is one of the particularly sensitive phases when there is a significant risk of aggravating trauma for the child. The Parties have developed a series of promising rules and practices to allow the investigation to proceed under good conditions and the child victim to be heard, while reducing the risks of aggravating trauma.

133. The Committee notes that in some Parties child victims of sexual abuse are able to give their statement at the initial stage of the criminal investigation under the auspice of a court judge (**Bulgaria**, children up to 15 years, **Barnahus Iceland**) or the police (children up to 12 years, **Børnehuse Denmark**) with the aim of saving the child from repeating his/her statement and avoid confrontation with the suspected person in the courtroom if an indictment is made at a later stage. This requires that the human rights principle of the "due process" must be met, including the principle of "equality of arms". Therefore, the defence must be able to observe the interview and submit questions to the child via the interviewer as appropriate. This is video-recorded and is accepted as valid evidence in court proceedings, if the case is prosecuted, a procedure which

has been established as just by the case-law of the European Court of Human Rights (*Kovač v. Croatia*, no. 503/05, 12 July 2007, §30). This arrangement can be seen as beneficial for all child victims of sexual abuse as it avoids the aggravating trauma involved in waiting for long duration of time (months, possibly years) in order to testify during the main hearing of the case. This is especially true for child victims of sexual abuse within the family.

European Court of Human Rights, Kovač v. Croatia, no. 503/05, 12 July 2007

“25. (...) All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. This does not mean, however, that the statement of a witness must always be made in court and in public if it is to be admitted in evidence; (...)

*26. The Court further reiterates that the use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected. As a rule these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he was making his statements or at a later stage of the proceedings (see, among other authorities, *Isgrò v. Italy*, judgment of 19 February 1991, Series A no. 194-A, p. 12, § 34; and *Lucà v. Italy*, no. 33354/96, §§ 40-43, ECHR 2001-II).*

*27. In appropriate cases, principles of fair trial require that the interests of the defence are balanced against those of witnesses or victims called upon to testify. In this respect, the Court has had regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question whether or not in such proceedings an accused received a fair trial, the victim's interest must be taken into account. The Court therefore accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence. In securing the rights of the defence, the judicial authorities may be required to take measures which counterbalance the handicaps under which the defence labours (see *S.N. v. Sweden*, no. 34209/96, § 47, ECHR 2002-V with further references).*

(...)

*30. (...) The Court notes that the applicant was not provided with an opportunity to observe the manner in which the child was questioned by the investigating judge. This could have been arranged, for instance, by the applicant watching M.V. giving her statement in another room via technical devices. Furthermore, because M.V.'s statement to the investigating judge was not recorded on videotape, neither the applicant nor the trial court judges were able to observe her demeanour under questioning and thus form their own impression of her reliability (see *Bocos-Cuesta v. the Netherlands*, no. 54789/00, § 71, 10 November 2005). The applicant was not at any stage of the proceedings provided with an opportunity to have questions put to her. Thus, he was not given any opportunity to contest her statement. (...)*”

134. The Committee underlines that child sexual abuse is not only a judicial issue as other sectors assume important responsibilities with regard to the safety and physical and

psychological recovery of the child. In order to carry out these responsibilities the relevant agencies need to access the child's disclosure to ensure appropriate intervention. Thus parallel with the criminal investigation, a social investigation is of particular importance in situations of sexual abuse within the family for the purpose of assessing the best interest of the child victim, for example with regard to alternative care other measure of support. The Committee points out that joint investigative interviews of law enforcement and child protection/social services are likely to alleviate the aggregated trauma by reducing the number of interviews the child victim is subjected to in different locations.

135. Traditionally children have given evidence during the investigation or court proceedings mainly in police stations and court houses and this is still a common practice in Europe. The Committee considers that interviews with children, whether during the trial or pre-trial stages of the proceedings should be carried out in facilities designed and adapted for that purpose (see Article 35§1 b) of the Lanzarote Convention). A large number of Parties are paying heightened attention to organising interviews with the child within a structure and an environment suited to him or her (**Albania, Austria, Belgium, Bulgaria, Croatia, Denmark, "the former Yugoslav Republic of Macedonia", Finland, France, Iceland, Luxembourg, Republic of Moldova, Montenegro, Portugal, Spain and Ukraine**). These efforts should be continued to ensure that all children benefit from this. The Committee indicates that such interviews should take place in a room separate from the usual premises where investigation and interviews are conducted, and located outside police, hospital or court premises. In fact this makes it possible firstly to avoid the child's being overawed by the building itself (court or police station) and secondly to limit substantially the risk of the child victim's encountering the offender. The room where the child is received is therefore generally adapted in order that the child's surroundings are more welcoming and comforting. Some Parties have set up child-friendly houses for the purposes of conducting forensic interviews and court statements (**Denmark, Iceland**).

136. By child-friendly setting, the Committee means a place where the interview is conducted should, for example be decorated in a colourful "non-institutionalized manner" and have posters, toys if relevant to the age of the child, books. This place should be set up so that the child feels at ease. The person interviewing the child should be seated at the level of the child so as not to appear as being overwhelming to the child.

137. The Committee nevertheless observes that although the Parties seem to have realised the need to receive child victims in a non-traumatising environment, these premises do not exist in all Parties and throughout their territory.

138. Although the Parties acknowledge how important it is for the child victim's interview to be conducted by a qualified, well-trained professional (see Article 35§1 c) of the Lanzarote Convention), the Committee notes that this is not always so in practice.

139. For instance, it appears that, in some Parties (**Bulgaria, Lithuania, Malta, Romania**), there are neither special units within the police that deal with child victims nor has provision been made to provide individual members of the regular police force with training on how child victims should be treated.

Promising practices

Europol organises training for police officers in Europe and beyond which focuses on child sexual abuse cases.

In **Croatia**, the police officers assigned to interview children undergo six weeks' training in interviewing techniques for children.

In **Iceland**, interview sessions with child victims are entrusted to childhood specialists trained in techniques of forensic interviewing in child-friendly facilities (*Barnahus*).

Officers who form part of the Youth Protection department of **Luxembourg's** national police must attend a three-week training course at the Police Academy of Freiburg (Germany) that offers a multi-disciplinary programme (juvenile criminal law, child psychology, communication with children, social questions, crime prevention, forensics). This is followed by another two-week training course that focuses on the specific issue of sexual abuse of children. The Youth Protection department of Luxembourg's national police also organises a seminar on 'cognitive hearing', which is a special interview technique aimed at creating a positive relationship between the child and the investigator in order to avoid traumatising.

140. As to the question of having the child accompanied in the interview room by a support person, the Committee observes that authorisation should be granted on a case by case basis, after hearing the opinion of the child concerned. Indeed, the Committee notes that the child ought not to be accompanied, in the interviewing room, by someone who might influence him or her emotionally if only by their presence. This is still more significant in case of sexual abuse in the circle of trust. This presence may furthermore have adverse effects on the subsequent judicial procedure since the defence might use the argument of such influence to refute the child's testimony (see Article 30§4 of the Convention).

141. It is also essential, in order to avoid aggravating trauma, to interview the child victim as soon as possible after the disclosure of the offence (**Denmark, Portugal and Spain**) (see Article 35§1 a) of the Lanzarote Convention) and also to limit the duration and number of interviews (**Belgium, Croatia, Denmark, Greece, Iceland, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Portugal, San Marino, Spain and Turkey**) (see Article 35§1 e) of the Lanzarote Convention) having regard to the child's age and attention span. If another interview proves indispensable, the Committee stresses that it should be conducted by the person who performed the first (**Belgium, Denmark, Greece, Luxembourg, Montenegro and Romania**) (see Article 35§1 d) of the Lanzarote Convention) and under the same material conditions, to contain the impact of this further interview on the child.

Promising practice

Belgium stresses the need to respect the child's natural rhythm to avoid interviews late in the evening or at night.

142. In **Serbia**, the child can be interviewed on several occasions during proceedings. The Committee finds that repetitive interviews are common practice in various Parties whilst the number of interviews should be limited in so far as strictly necessary for the purpose of criminal proceedings. The Committee holds that these Parties should not pursue such practices.

143. One of the effective means used to avoid having to interview the child victim again is video recording of the interview, a practice applied in a large number of Parties (in particular **Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Greece, Iceland, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Portugal, Romania, San Marino, Spain, “the former Yugoslav Republic of Macedonia”, Turkey and Ukraine**). It must be possible to use this recorded testimony as evidence in the trials (see Article 35, paragraph 2 of the Lanzarote Convention). When the defence had been offered the possibility of contesting the child’s disclosure during the interview by posing questions, use of video also obviates the need for the child to be present in the court room during the proceedings, whether through projection of the interview recorded beforehand during the investigation or through remote interview of the child by the judges.

144. The phases of the criminal proceedings following the interview of a child victim of sexual abuse in his or her circle of trust are also important moments during which the Parties must take every step to avoid aggravating the trauma experienced by the child victim.

145. One way is to take adequate measures to guard against the child’s renewed contact with the presumed offender during the criminal proceedings³⁴. Several types of measure are conceivable. There may be a strict ban on confronting the child victim with the presumed offender (**Croatia, Montenegro** for children up to 14 years). It may also be a matter of providing the possibility for the child victim to be questioned without the physical presence of the presumed offender (**Austria, Denmark, Finland, Lithuania**). Certain Parties have set up a system enabling the offender to observe the child’s interview without being physically present in the same room as the child (through an observation mirror or on closed circuit television – **Iceland** – or by videoconferencing – **Iceland, Spain**). Another way is to make sure that the presumed offender and the victim are not invited to come and testify at the same time on the same premises, in order to avoid their meeting (**Belgium, Denmark**). The Committee recalls for this purpose Guideline 70 of the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010) stressing that the existence of less strict rules on testimony by the child victim should not in itself diminish the value given to a child’s testimony or evidence

146. Protecting the privacy of a child victim of sexual abuse committed in his or her circle of trust is also among the means to avoid aggravating the child’s trauma. This protection must operate as from the initial phase, throughout the whole investigation and the court proceedings, and even after the trial and in the subsequent years. The Parties have established an array of measures to protect the privacy of these children. For instance, access to information may be restricted (**Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, Iceland and Portugal**). Moreover, making the identity of a sexually abused child public is treated as an offence in **Croatia, Denmark, France, Greece, Lithuania** and **Luxembourg**. Also, dissemination in the media of the child’s personal data and photos is limited in **Belgium, Italy** and **Portugal**. In

³⁴ The question of restrictions on contact between the child victim and the presumed offender outside the context of the criminal proceedings is not addressed in this chapter.

Finland, sensitive information which may be detrimental to the child must remain secret. The Committee recalls in that regard Guideline 6 of the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010) stressing that no information or personal data may be made available or published, particularly in the media, which could directly or indirectly disclose the child's identity, including images, detailed descriptions of the child or the child's family, names or addresses, audio and video recordings, etc. It invites the Parties to prevent violations of these privacy rights by the media through legislative measures or monitoring of media self-regulation mechanisms (Guideline 7).

147. Another measure taken by some Parties to limit the trauma experienced by the child in the criminal proceedings is to set up specialized courts (including specially adapted court rooms in ordinary / adult courts) which are competent to adjudicate on cases with child victims (**Belgium, Croatia, France, Luxembourg, Malta, Romania**).

Promising practice

France's Juvenile Courts (*Juges pour Enfants*) are involved whenever there are strong grounds for believing that a child is a victim. The Juvenile Court can take actions of a civil nature when the child is in need of protection. Juvenile Courts are attached to High Courts (*Tribunaux de Grande Instance*) and are present throughout the French territory. In addition, special brigades have been set up within France's national police force (*brigades de protection des mineurs*) and national gendarmerie (*brigades de prévention de la délinquance juvénile*) to deal with juvenile justice matters. These brigades are responsible for conducting the investigation and interviews of child victims (and, depending on the case, also child witnesses).

Criminal justice response accompanied by assistance, where appropriate

148. The Lanzarote Convention is not specific about what is signified by the requirement of assistance accompanying the criminal justice response as inferred from Article 30§2. The Committee nevertheless recalls that the assistance accompanying the criminal justice response must be understood in the light of the obligations arising from Article 14§1 of the Convention regarding assistance (in general) to victims (not the subject of this report on implementation). The Committee stresses that the child's best interests require a child victim of sexual abuse in the circle of trust to be assisted throughout the criminal proceedings, including after the criminal justice decision has been taken.

Promising practice

In **Belgium**, if a minor is a victim of sexual abuse in his or her family, the police officer must refer the minor to a trusted centre for ill-treated children in the Flemish Community and to the "SOS-enfant" teams in the Wallonia-Brussels Federation (14 approved teams). The functions of reception, mentoring and information in the context of criminal proceedings, coming within the ambit of assistance to victims, have been assigned to the victim support services attached to the public prosecution departments and the courts, established as from 1993 and incorporated into the Service des maisons de justice in 1999 (their tasks are defined in joint circular no. 16/2012 of 12 November 2012 of the Ministry of Justice and the College of State Prosecutors attached to the

courts of appeal concerning reception of victims in prosecution departments and courts). The victim support service is responsible for providing victims and their family members with all types of assistance and specifically information on their case throughout the judicial proceedings (from the lodging of the complaint to the execution of sentence).

149. The fact that the sexual abuse has been committed in the child victim's circle of trust does not seem to have an influence on the types of assistance proposed by the Parties.

150. Various types of professionals may assist child victims during the interview phase, for example psychologists or psychiatrists (**Albania, Austria, Belgium, Croatia, Finland, France, Italy, Lithuania, Republic of Moldova, Montenegro and San Marino**), police officers specialising in questions relating to children (**Albania, Belgium, Croatia, Denmark, Spain and "the former Yugoslav Republic of Macedonia"**), an investigator from the child welfare department (**Denmark and Romania**, for trafficking) or the social services (**"the former Yugoslav Republic of Macedonia"**), a paediatrician or an ad hoc administrator (**France**), a specialist in childhood questions appointed by the judge (**Iceland**).

151. Assistance to the child victim consists notably in legal assistance at the various stages of the criminal proceedings, particularly through a representative (**Albania, Austria, Belgium, Croatia, Denmark, Finland, France, Iceland, Lithuania, Luxembourg, Republic of Moldova, Montenegro, San Marino, Serbia and "the former Yugoslav Republic of Macedonia"Turkey**). This role may be held by a guardianship authority (**Bosnia and Herzegovina, Italy, Luxembourg, Republic of Moldova, Ukraine**) or even by an NGO (**Romania**).

152. In most Parties, the child can receive free legal aid or assistance before the court (**Albania, Austria, Belgium, Bulgaria, Croatia, Denmark, Spain, "the former Yugoslav Republic of Macedonia", Finland, France, Greece, Iceland, Italy, Lithuania, Luxembourg, Malta, Republic of Moldova, Portugal, Romania, San Marino, Serbia and Turkey**), albeit sometimes subject to conditions such as the victim's level of income (**Austria – with regard to legal aid only, not to trial assistance, France and Greece**) or help in defraying court costs (**Italy**).

153. The Committee stresses the importance for the child victim of being entitled to representation by a lawyer in his/her own right, particularly in proceedings where a conflict of interest is liable to arise between the child and his/her parents or other parties concerned. This right is even more important in case of sexual abuse committed in the child's circle of trust (Guidelines 37 and 43 of the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010)). Lawyers representing these children should be trained and well-acquainted with children's rights and related questions, and be capable of communicating with children at their level of understanding (Guideline 39).

Promising practice

In **Croatia, Montenegro and "the former Yugoslav Republic of Macedonia"**, lawyers appointed to represent children must have recognised knowledge of children's rights.

154. The Committee notes that the Parties do not seem to have made provision for assistance to child victims once the criminal justice decision has been taken. Such assistance may take the

form, for instance, of an explanation of the court decision in a manner suited to the child's age and degree of maturity and in a language which he or she can understand.

155. Finally, the Committee notes that Article 30§2 of the Convention applies only to victims and not also to children who have witnessed sexual abuse committed in their circle of trust. It stresses, on the other hand, that the Istanbul Convention on preventing and combating violence against women and domestic violence, adopted some years after the Lanzarote Convention, affords child witnesses protection and support. Although the Parties to the Lanzarote Convention have not legally undertaken to adopt a protective approach to child witnesses of sexual abuse, the Committee notes that several Parties also include them as this follows in particular from the application of the principle of the child's best interests.

Promising practice

In **Austria**, the interview of children witnesses is made in order to prevent secondary traumatisations. This takes place in a separate room without the physical presence of the parties, in particular the accused, and with the possibility to be interviewed by a psychologist instead of a judge. It is even compulsory when the child witness is less than 14 (section 165 of the Code of Criminal Procedure).

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee invites the Parties:

- to ensure that protection measures in investigative and judicial proceedings are available to all children irrespective of their age, especially in cases where the abuse has occurred in the circle of trust;
- to take account of the specificities of sexual abuse committed in the child's circle of trust in the measures and procedures applied during criminal investigations and proceedings in order not to aggravate the trauma experienced by the child;
- to ensure that their justice system more fully accommodates the specificities linked with minors as victims and no longer solely as perpetrators of criminal offences;

As to the investigation phase:

- to arrange the interview of the child victim in a child friendly setting separate from the usual premises where investigations and interviews are conducted, (such as police, hospital or court premises), by taking into consideration the best practices in this field, and to provide such settings throughout their territory;
- to ensure that all staff responsible for interviewing child victims have undergone suitable qualifying training;

- to amend their procedures so as to embody the principles of conducting the interview with the child victim as soon as possible after the offence, to limit the duration and number thereof, and to take account of the child's age and attention span;

- to amend their procedures so as to embody the principle that, where it is absolutely indispensable to interview the child victim more than once, the interviews should, if possible and where appropriate, be conducted by the same person and under the same material conditions as the first.

- to ensure that the child's age and attention span are taken into account when determining the duration of interviews;

- to offer the defence the possibility of contesting the child's disclosure during the interview by posing questions, which obviates the need for the child to be present in the court room during the proceedings;

As to the court proceedings

- to make systematic use of video equipment to record the interview of the child victim or enable him/her to testify remotely during the proceedings;

- to regard the video recording of the interview of the child victim as admissible evidence;

- to take all appropriate measures to guard against any further contact between the child victim of sexual abuse in his or her circle of trust and the presumed offender during the criminal proceedings, particularly by taking the child's testimony without the presumed offender being present and ensure that face-to-face confrontation with the defendant during the proceedings does not take place;

- to prevent, through legislative measures or verification of self-regulation mechanisms, the child victim's rights relating to privacy from being violated by the media by disclosure or publication of personal information or data capable of directly or indirectly revealing the child's identity, notably images, detailed descriptions of the child or of his/her family, names and addresses, audio and video recordings;

- to grant free legal aid to child victims of sexual abuse in their circle of trust under the same conditions as, or more lenient conditions than, adults;

- to grant child victims of sexual abuse in their circle of trust the right to be represented in their own name by a lawyer trained in these questions;

- to provide assistance intended for child victims of sexual abuse in their circle of trust, once the criminal justice decision has been taken;

- to extend to child victims of other forms of sexual abuse the application of the measures taken in respect of child victims of sexual abuse in their circle of trust.

The Lanzarote Committee considers that:

- **Serbia** should find alternative means in order for child victims not to be repeatedly interviewed during the proceedings.

III.7 Article 32: Necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements³⁵

Article 32 – Initiation of proceedings

Each Party shall take the necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements.

Explanatory Report

230. Article 32 is designed to enable the public authorities to prosecute offences established in accordance with the Convention without the victim having to file a complaint. The purpose of this provision is to facilitate prosecution, in particular by ensuring that victims do not withdraw their complaints because of pressure or threats by the perpetrators of offences.

156. It is essential to aid the conduct of investigations and prosecutions of offenders of sex offences committed against children. Indeed, this contributes to better protection of children in guarding against the sex offender's reoffending either against the initial child victim or against other children.

157. That is why there is no need, under the Lanzarote Convention (Article 32), for a child victim to lodge a complaint in order to commence an investigation or prosecution. Likewise, where the child victim has lodged a complaint, its withdrawal should not terminate the prosecution. The Parties to the Convention should take legislative or other measures to that effect.

158. This provision of the Lanzarote Convention is still more important in the case of a sex offence committed in the circle of trust as the child victim is more under the influence of the sex offender who, in particular, can pressure or threaten him or her to withdraw his or her statements.

Commencement of investigations and prosecution

159. It emerges from the assessment made by the Lanzarote Committee that most Parties have a system based on the possibility of instituting proceedings *ex officio*, without the prior

³⁵ The findings concerning the implementation of Article 32 of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 14 of the Thematic Questionnaire prepared by Ms Maria-José CASTELLO-BRANCO (Portugal) who acted as Rapporteur for this part of the report.

lodging of a complaint (**Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, France, Greece, Iceland, Italy, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Romania, Serbia, Spain and Turkey**).

160. It emerges from the assessment, that even though it is possible to institute proceedings ex officio, without the prior lodging of a complaint, for sexual abuse crimes against children in **Albania**, this is not possible in the cases of sexual abuse with children in the circle of trust. In these cases, the proceedings will stop if the complaint is withdrawn.

161. The legislation of **Portugal** provides for the possibility of instituting proceedings ex officio, without the prior lodging of a complaint, except in cases of crimes linked with sexual activities with adolescents (children from 14 to 16 years) unless the victim dies (Articles 173 and 178§3 of the Penal Code).

162. “**the former Yugoslav Republic of Macedonia** did not provide information of its national situation in this regard:

Withdrawal of the child victim’s complaint

163. Likewise, it emerges from the assessment made by the Lanzarote Committee that in most Parties, when the proceedings have been instituted after the lodging of a complaint by a child victim, such proceedings can continue even where the complaint is withdrawn (**Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Greece, Iceland, Italy, Malta, Republic of Moldova, Turkey and Ukraine**).

164. If proceedings have been instituted ex officio, even if there has been a complaint by the child victim, its withdrawal plainly has no effect on the continuation of the proceedings (this is so in: **Austria, Bulgaria, Luxembourg, Montenegro, Serbia**).

165. The following Parties have not provided information of their national situation in this regard: **Albania, Lithuania, Netherlands, “the former Yugoslav Republic of Macedonia”**.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges **Portugal** to remove the exception concerning adolescents aged 16-18 years requiring them to lodge a complaint when they are victims, so that the proceedings are instituted ex officio in these cases also;
- Urges **Albania** to review its legislation in order to make proceedings ex officio possible in all cases of alleged sexual abuse in the circle of trust and to enable the proceedings to continue even though a complaint made is to be withdrawn;

- Invites the Parties who have not provided information of their national situation, to examine their situation in the light of the foregoing considerations, and urges them, where appropriate, to bring it into line with the requirements of the Convention.

III.8 Article 36§2: Necessary legislative or other measures to ensure, according to the rules provided by internal law, that: a. the judge may order the hearing to take place without the presence of the public; b. the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies³⁶

Article 36 – Criminal court proceedings

(...)

2 Each Party shall take the necessary legislative or other measures to ensure, according to the rules provided by its internal law, that:

- a the judge may order the hearing to take place without the presence of the public;
- b the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

Explanatory Report

242. Paragraph 2 contains provisions adapting certain principles governing criminal proceedings in order to protect children and make it easier to interview them. These principles concern the presence of the public and arrangements for ensuring that both parties are represented. Thus, sub-paragraph a allows the judge to order the hearing to take place without the presence of the public, and sub-paragraph b enables the child to be heard without necessarily being confronted with the physical presence of the alleged perpetrator, in particular through the use of videoconferencing.

166. Protecting child victims is a crucial factor in their ability to recover from the violence they have suffered and avoid re-victimisation. At the same time, the criminal trial must be able to be conducted properly, in a way that respects the rights of the alleged perpetrator (see Article 30, paragraph 4, of the Convention). Article 36, paragraph 2, of the Convention helps to reconcile these two sometimes seemingly disparate approaches, in that it provides for the possibility of adapting the principles governing the conduct of criminal trials, such as a public hearing and adversarial proceedings, in order to enable children to be heard and make it easier to interview them, while at the same time affording them the best possible protection. Article 36, paragraph 2, of the Convention accordingly provides that the judge must be able to order the hearing to take place without the presence of the public and that the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

167. This provision of the Lanzarote Convention is particularly important when the alleged perpetrator is in the child's circle of trust, as a face-to-face confrontation with this person may be very difficult for the child and could jeopardise the post-traumatic recovery process, notably by re-victimising him or her.

³⁶ The findings concerning the implementation of Article 36§2 of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 14 of the Thematic Questionnaire prepared by Ms Maria-José CASTELLO-BRANCO (Portugal) who acted as Rapporteur for this part of the report.

Possibility that the judge may order the hearing to take place without the presence of the public

168. Although the Parties consider that the principle of a public hearing is very important for ensuring due process, hearings may also be held behind closed doors in cases involving child victims of sexual abuse committed in their circle of trust.

169. The Committee notes that in some Parties, closed hearings are mandatory in cases of this kind, either for the duration of the trial or at certain stages of the proceedings (**Bosnia and Herzegovina, Croatia, France, Iceland, Republic of Moldova, Portugal, Romania and San Marino**). In the other Parties, the judge can order the hearing to take place without the presence of the public.

170. The Committee notes that there are several grounds which can be invoked to support a closed hearing, whether they be grounds for closed hearings in general or grounds which apply specifically in child sexual abuse cases: protecting the identity of witnesses (**Austria, Republic of Moldova**); protection of privacy (**Austria, Belgium, Bulgaria, Finland, Greece, Lithuania, Portugal, Romania**); safeguarding the child's interests (**Bosnia and Herzegovina, Finland, Montenegro, Portugal, Romania, Serbia**); observing official, professional or commercial secrecy (**Lithuania**); preserving morality (**Bulgaria, Montenegro, Romania, Spain**); protecting people related to the victim from a threat directed at life or health (**Finland**); avoiding intense emotional suffering on the part of the child (**Greece**) or re-victimisation (**Netherlands**); keeping certain information secret (**Austria and Montenegro**); respecting public order (**France, Montenegro, Spain**); protecting the personal or family life of the accused or the injured party (**Montenegro**); defence of the individual (**Romania**); and taking into account the interests of the victim or his or her family (**Spain**).

171. Certain individuals may attend a hearing even if it is closed, such as certain officials, academics or prominent public figures and, at the request of the alleged perpetrator, his or her spouse, partner or close relatives (**Croatia, Denmark and Romania**).

Possibility that the child victim may be heard in the courtroom without being present

172. The Committee stresses that being present in the courtroom can be damaging to child victims. It also recognises, however, that children should be able to be present during the trial if they so wish, as is the case in **Austria**. To prohibit child victims from being present in court would be a step too far.

173. The solution proposed in the Lanzarote Convention to enable child victims to be heard in the courtroom without being physically present is to use appropriate communication technologies, in particular videoconferencing. Audio-visual testimony or other appropriate communication technologies are thus used in courtrooms in a number of Parties (**Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Greece, Iceland, Lithuania, Luxembourg, Republic of Moldova, Montenegro, Portugal, Serbia, Spain, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine**). In this way, child victims can be heard "live" in the courtroom and take part remotely.

174. The reasons given for using live video or audio-visual links vary, and include protecting identity (**Albania, Denmark, Ukraine**), protecting social morality (**Albania**), preventing the

disclosure of data to be kept secret (**Albania, Austria**), ensuring that the hearing proceeds in an orderly manner (**Albania**), protecting witnesses (**Albania, Austria**), obtaining new testimony (**Denmark**), protecting minors through *pro memoria* statements (**Portugal, Spain**).

175. The Committee notes that no Party has introduced legal provisions to ensure the right of children to give their testimony in the courtroom without being present, albeit some countries have identified certain age limits (Iceland) or age/circumstances (Finland) that allow for it.

176. Another way in which child victims can testify in court is through video-recorded interviews conducted with them beforehand, during the investigation. The Committee refers to its detailed comments on this point (see above, under Article 30§2) and also to its recommendation.

177. The Committee notes that most of the Parties provide protection for child victims if they have to physically attend court to give evidence. The purpose of these measures is to protect the child victim and to prevent the presence of the alleged perpetrator from inhibiting him or her from speaking at the hearing. Examples include putting up a curtain or other type of partition so that the child cannot see the alleged perpetrator (“**the former Yugoslav Republic of Macedonia**”) or the possibility of requiring the alleged perpetrator to leave the room (**Austria, Denmark, Finland, Iceland, Malta, Republic of Moldova, Montenegro, Portugal, Romania and Serbia**). The Committee stresses, however, that such measures should be employed only if the child’s physical presence in court is essential; if that is not the case, arrangements should be made for the child to testify remotely.

178. The Committee wishes to point out that, whatever methods are used to protect child victims, they need to be strictly regulated in order to ensure that the rights of the defence and the requirements of a fair and impartial trial are observed (see Article 30§4, of the Convention).

179. The following Parties have not provided information of their national situation in this regard: **Belgium, Bosnia and Herzegovina**.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Invites the Parties to review the conditions under which a closed hearing may be held in cases involving child sexual abuse committed in the circle of trust, in the light of the practices identified in this report;
- Invites Parties to make every effort to obviate the need for child victims to be physically present during the proceedings, including when they are giving evidence, by deploying appropriate communication technologies to enable them to be heard in the courtroom without being present;
- Invites Parties to ensure to all child victims, regardless of age, the right to be heard in the courtroom without being present as well as being present in the courtroom;

- Invites the Parties, in cases where the child’s testimony requires that he or she be physically present in court, to provide for the possibility of requiring the alleged perpetrator to leave the courtroom, having due regard to the rights of the defence and the requirements of a fair and impartial trial;
- Invites the Parties who have not provided information of their national situation, to examine their situation in the light of the foregoing considerations, and urges them, where appropriate, to bring it into line with the requirements of the Convention.

IV. CORPORATE LIABILITY

IV.1 Article 26: Corporate liability³⁷

Article 26 – Corporate liability

1 Each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable for an offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person;
- c an authority to exercise control within the legal person.

2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Explanatory report

177. Article 26 is consistent with the current legal trend towards recognising corporate liability. The intention is to make commercial companies, associations and similar legal entities (“legal persons”) liable for criminal actions performed on their behalf by anyone in a leading position in them. Article 26 also contemplates liability where someone in a leading position fails to supervise or check on an employee or agent of the entity, thus enabling them to commit any of the offences established in the Convention.

178. Under paragraph 1, four conditions need to be met for liability to attach. First, one of the offences described in the Convention must have been committed. Second, the offence must have been committed for the entity’s benefit. Third, a person in a leading position must have committed the offence (including aiding and abetting). The term “person who has a leading position” refers to someone who is organisationally senior, such as a director. Fourth, the person in a leading position must have acted on the basis of one of his or her powers (whether to represent the entity or take decisions or perform supervision), demonstrating that that person acted under his or her authority to incur liability of the entity. In short, paragraph 1 requires Parties to be able to impose liability on legal entities solely for offences committed by such persons in leading positions.

179. In addition, paragraph 2 requires Parties to be able to impose liability on a legal entity (“legal person”) where the crime is committed not by the leading person described in paragraph 1 but by another person acting on the entity’s authority, i.e. one of its employees or agents acting within their powers. The conditions that must be fulfilled before liability can attach are: 1) the offence was committed by an employee or agent of the legal entity; 2) the offence was committed for the entity’s benefit; and 3) commission of the offence was made possible by the leading person’s failure to supervise the employee or agent. In this context failure to supervise should be interpreted to include not taking appropriate and reasonable steps to prevent employees or agents from engaging in criminal

³⁷ The findings of the Lanzarote Committee on the implementation of Article 26 of the Convention are based on the analysis of the replies by Parties and other stakeholders to Question 11 of the Thematic Questionnaire and to Question 17 of the General Overview Questionnaire to which it refers prepared by Mr Erik PLANKEN (Netherlands), who acted as a Rapporteur for this specific section of the report.

activities on the entity's behalf. Such appropriate and reasonable steps could be determined by various factors, such as the type of business, its size, and the rules and good practices in force.

180. Liability under this article may be criminal, civil or administrative. It is open to each Party to provide, according to its legal principles, for any or all of these forms of liability as long as the requirements of Article 27 paragraph 2 are met, namely that the sanction or measure be "effective, proportionate and dissuasive" and include monetary sanctions.

181. Paragraph 4 makes it clear that corporate liability does not exclude individual liability. In a particular case there may be liability at several levels simultaneously – for example, liability of one of the legal entity's organs, liability of the legal entity as a whole and individual liability in connection with one or other.

General remarks

180. The Committee notes that all Parties except **Ukraine** have implemented legislation on the basis of which legal persons, such as commercial companies, associations and legal entities, can be held liable for acts of child sexual exploitation and abuse as provided for by Article 26 of the Convention and its explanatory report: first, one of the offences described in the Convention must have been committed; second, the offence must have been committed for the entity's benefit; third, a person in a leading position must have committed the offence (including aiding and abetting); fourth, the person in a leading position must have acted on the basis of one of his or her powers (whether to represent the entity or take decisions or perform supervision).³⁸

181. Most Parties do not exclude individual liability when corporate liability might be assumed in a particular case. This is in accordance with the rationale of Article 26 as explained in the explanatory report.

182. However, the Lanzarote Committee could not assess, due to lack of information, whether the legislation in place is implemented or not and, if so, how. No indications are found in the replies on typical case scenarios in which legal persons are held liable. The Lanzarote Committee stresses that, in its own context, the Group of Experts on Action against Trafficking in Human Beings (GRETA) also often notes in the country reports that there have been no criminal cases regarding the involvement of legal persons and raises the issue to find out why. The Lanzarote Committee therefore requests Parties to examine the reasons why no accused legal persons have been held liable for acts as those described in Article 26 of the Convention to date and, in the light of such findings, take the necessary measures to ensure that the liability of legal persons can be acted upon in practice.

183. In addition, the Lanzarote Committee notes that public bodies, such as state and local and regional authorities, are excluded from the scope of corporate liability by the Convention and in most Parties. The Lanzarote Committee recalls that, according to Article 26 of the Convention, the legal person is held liable for an offence committed for its benefit. Such an offence would mainly take the form of child pornography or other forms of sexual exploitation and not that much of sexual abuse within the circle of trust. In any case, the Lanzarote Committee notes that reported cases of corporate liability are extremely rare in this context.

³⁸ See Table I in Appendix IV for specific replies by Parties.

Specific remarks in the context of sexual abuse of children in the circle of trust

184. Cases of corporate liability are even more rare in the context of the specific theme of the monitoring round, namely, sexual abuse of children in the circle of trust. Legal persons may fall within the circle of trust of children in specific sectors and areas such as the education, health, social protection, judicial and law-enforcement sectors and areas relating to sport, culture and leisure activities. National legislations on corporate liability do not envisage specificities related to the circle of trust. The Lanzarote Committee encourages Parties to add, as an aggravating circumstance, in their legislation on corporate liability, the fact that a case of sexual abuse is committed in the circle of trust of a child.

185. In practice, cases of sexual abuse in the circle of trust of a child are committed by individuals (natural persons) on their own behalves and not for the benefit of a legal person. These cases are therefore not included in the scope of corporate liability. It may however happen in very specific circumstances that an individual creates a legal entity in order to serve as a place to attract children with a view to abuse them. Obviously, in such a case the legal entity would be held liable. The Lanzarote Committee considers that the general legislation in place in the Parties is sufficient to address this type of cases.

186. Legal persons could also be held liable in some cases of sexual abuse of a child committed by employees in the context of their work and abusing their position of trust, when such abuse is committed for the benefit of the legal person. The Lanzarote Committee is of the view that such cases could fall within the remits of Article 26 of the Lanzarote Convention if the legal person does not intervene and covers the employees' acts for the benefit of the legal person.

187. **Malta** has not provided information on its national situation in this regard.

Recommendations as to steps to be taken to improve the effective implementation of the Lanzarote Convention

The Lanzarote Committee:

- Urges **Ukraine** to implement legislation on the basis of which legal persons can be held liable for acts of child sexual exploitation and abuse;
- Invites Parties to examine the reasons why no accused legal persons have been punished for acts as those described in Article 26 of the Convention to date and, in the light of their findings, to take the necessary measures to ensure that the liability of legal persons can be acted upon in practice;
- Invites **Malta** to examine its national situation in the light of the foregoing considerations, and urges it where appropriate to bring it into line with the requirements of the Convention.

MAIN RECOMMENDATIONS EMERGING FROM THE REPORT CONCERNING ALL PARTIES³⁹

AS TO THE CRIMINALISATION OF SEXUAL ABUSE OF CHILDREN IN THE CIRCLE OF TRUST

The Lanzarote Committee:

- Urges Parties to review their legislation to ensure effective protection of children from situations where abuse is made of a recognised position of influence;
- Urges Parties, where appropriate, to review their legislation to clearly set forth that within the context of the criminal offence of sexual abuse in the circle of trust, the age limit for engaging in sexual activities is irrelevant and the use of force, coercion or threat is not a constituent element of the crime.

AS TO COLLECTION OF DATA ON CHILD SEXUAL ABUSE COMMITTED IN THE CIRCLE OF TRUST

The Lanzarote Committee:

- Urges Parties to take the necessary legislative or other measures, to set up or designate mechanisms for data collection or focal points at national or local level and in collaboration with civil society, for the purpose of observing and evaluating in terms of quantitative data collection the phenomenon of the sexual exploitation and sexual abuse of children in general and child sexual abuse committed in the circle of trust, in particular.

AS TO THE BEST INTEREST OF THE CHILD AND CHILD FRIENDLY CRIMINAL PROCEEDINGS

The Lanzarote Committee:

- Considers that Parties should establish or reinforce a coordinated and comprehensive approach of all the relevant bodies and professionals involved in criminal proceedings to ensure the child's best interest in cases of sexual abuse;
- Invites, in this respect, Parties to support exchanges of good practices developed by relevant stakeholders, including civil society, to ensure that the best interest of the child principle is respected while determining the most appropriate assistance to children who have been sexually abused within the circle of trust;
- Invites Parties to take account of the specificities of sexual abuse committed in the child's circle of trust in the measures and procedures applied during criminal investigations and proceedings in order not to aggravate the trauma experienced by the child;

³⁹ Recommendations addressed to specific Parties are to be found in the recommendation boxes of each chapter of the report.

- Considers that, in the context of sexual abuse in the circle of trust, the removal of the victim from his/her family environment should be foreseen as a procedure of last resort and that the requirements for this procedure should be clearly defined, setting out the conditions for and duration of the removal;
- Invites Parties to make every effort to avoid the need for child victims to be physically present during the proceedings, including when they are giving evidence, by deploying appropriate communication technologies to enable them to be heard in the courtroom without being present;
- Urges Parties that have not yet done so to take the necessary legislative or other measures to ensure that persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care;
- Invites Parties, when determining the support required to the victim and the persons close to him/her, to take into account the fact that a child's disclosure should not worsen his/her situation and that of the other non-offending members of the family.

AS TO CORPORATE LIABILITY

The Lanzarote Committee:

- Invites Parties to take the necessary measures to ensure that the liability of legal persons can be acted upon in practice.