

## **Handbook for parliamentarians**

The Council of Europe Convention  
on the Protection of Children against  
Sexual Exploitation and Sexual Abuse  
(Lanzarote Convention)

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## **1. The Council of Europe and the Parliamentary Assembly**

The Council of Europe is the continent's oldest political organisation. Founded in 1949, it has 47 member states, representing more than 800 million Europeans, and five observer states (Canada, the Holy See, Japan, Mexico and the United States of America).

The main aims of the Organisation are:

- ▶ to protect human rights, parliamentary democracy and the rule of law in all member states;
- ▶ to develop continent-wide agreements to harmonise member countries' social and legal practices;
- ▶ to promote awareness of a European identity and greater unity based on shared values which cut across different cultures.

Since November 1990, the accession of 22 central and eastern European countries has given the Council of Europe a genuine pan-European dimension. Since then, its main job has been to act as a political anchor and human rights watchdog for all the democracies in greater Europe, to assist them in carrying out and consolidating political, legal and constitutional reform, and to facilitate the exchange of good practice in areas such as human rights, local democracy, education, culture and the environment.

The Council of Europe has its permanent headquarters in Strasbourg, France. By statute, it has two constituent organs: the Committee of Ministers, composed of the ministers for foreign affairs of the member states, and the Parliamentary Assembly (PACE), comprising delegations from the 47 national parliaments.

The 636 men and women who make up the Council of Europe Parliamentary Assembly (<http://assembly.coe.int>) come together four times a year to debate topical issues and common challenges, to request action from Europe's governments, and to hold those governments accountable for their acts. They speak on behalf of the 800 million Europeans whom they represent on any subject they choose, and Europe's governments – represented in the Council of Europe by the Committee of Ministers – are obliged to reply to them. They are greater Europe's democratic conscience.

## **2. Preface by the President of the Parliamentary Assembly**

Every child is a person who, like every other human being, is born free and equal in dignity and rights. The United Nations Convention on the Rights of the Child asserts the right of all children to be protected from “all forms of sexual exploitation and sexual abuse”. However, it is estimated that one child in five becomes a victim of sexual exploitation or abuse at least once in their lifetime: this includes various degrees of sexual aggression, but also child pornography and prostitution. These figures are frightening, and each and every one of us should feel concerned.

Any form of violence against children is an unacceptable crime which erodes the moral foundations of our society and directly threatens the future of humankind. Sexual violence against children is one of the worst forms of violence and a grave violation of the fundamental human rights and freedoms which we, at the Council of Europe, stand for.

This type of violence constitutes an attack on one of the most vulnerable groups in our society – children, who are often unable to speak up and defend themselves. Alarming, the majority of cases of sexual abuse of children in Council of Europe countries are committed by people in the child’s “circle of trust” – including parents, relatives, friends, teachers or care-givers. Children thus abused often find it difficult to report the crimes, or even to recognise that they have the right to protection. This leads to a large number of perpetrators escaping justice, free to re-offend, while their victims suffer in silence, often for a lifetime, as children’s early life experiences are known to affect their development, and ultimately their long-term capacity to live happy and fulfilled lives as adults.

It is up to us to break this vicious cycle and protect our children from sexual violence. Appropriate action is needed at legislative, administrative and political level. Determined to contribute effectively to the common goal of protecting children and of providing assistance to victims, the Council of Europe developed the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, CETS No. 201), which was opened for signature in July 2007.

This comprehensive, legally-binding instrument – based on over fifteen years of dedicated work with member states to fight the sexual exploitation and sexual abuse of children – is the first international treaty to require criminal legislative measures against various forms of sexual abuse of children, including when such abuse is committed in the home or the family. In this respect the convention fills the gaps in European legislation and is an excellent resource with a view to efficiently harmonising national legislation. Protecting our children is at the heart of this convention: it focuses throughout on their rights, ensures their well-being, puts their needs first, includes their views, and acts in their best interest.

The Lanzarote Convention came into force on 1 July 2010. But for the convention to protect all our children, all Council of Europe member states need to sign, ratify and implement it. The Parliamentary Assembly fully supports the Council of Europe “One in Five” Campaign to stop sexual violence against children, which was launched in Rome on 29 and 30 November 2010. The focus of the parliamentary dimension of the campaign will be on associating national parliaments with the campaign and promoting the Lanzarote Convention.

Parliamentary action is crucial to the success of this campaign. National parliaments are amongst the main stakeholders both when it comes to promoting international legal instruments and when raising the awareness of the general public. As the President of the Parliamentary Assembly, I invite parliaments of member states to lend their voices to the campaign. Nobody is better placed than parliamentarians to



promote the signing, ratification and implementation of the convention by member states.

This handbook is a practical tool which will allow us, as parliamentarians, to better understand and promote this convention. It provides the necessary tools for communicating the added value of the convention and highlights the sensitive issues which need to be tackled by national legislation.

All of us need to unite in combating sexual violence against children. We need to join together to protect the future of our society and mobilise all means to eradicate sexual violence against children. Let us make sure that our children can grow up happy and safe in their "circles of trust" and have the chance to live fulfilled and happy adult lives.

I hope this handbook will help you to help our children!

Mevlüt Çavuşođlu  
*President of the Parliamentary Assembly of the Council of Europe*



### **3. Overview**

*"The grief that does not speak  
Whispers the o'er fraught heart, and bids it break."*

William Shakespeare

#### **Introduction and objectives of the handbook**

In recent years, the issue of the sexual exploitation and sexual abuse of children has come to occupy a prominent position on the political agenda of the Council of Europe and its member states. Sexual abuse is a source of great suffering for children. All those concerned should fight it with equal determination, while taking specific action depending on the particular type of abuse or exploitation concerned.

At the 3rd Summit in Warsaw in May 2005, the heads of state and government of the Council of Europe committed themselves to eradicating all forms of violence against children and their sexual exploitation by taking specific action and, if appropriate, drawing up legal instruments. To follow up this decision, in 2006, the Committee of Ministers entrusted the European Committee on Crime Problems (CDPC) with the task of conducting a review of the implementation of the existing international instruments on the protection of children against sexual exploitation, with a view to evaluating the need for a new international instrument and, if necessary, drawing up such an instrument.

In Lanzarote, on 25 October 2007, the most advanced and comprehensive instrument at international level on the protection of children against sexual exploitation and sexual abuse was opened for signature following a wide consensus among the member states. On 1 July 2010, the Council of Europe Convention on the Protection of Children against

Sexual Exploitation and Sexual Abuse (CETS No. 201), also called the “Lanzarote Convention”, entered into force. To date, (December 2010), the convention has been ratified by 10 member states and signed by 32.

The convention’s originality and added value lie in its multidisciplinary approach. It aims to prevent the sexual exploitation and sexual abuse of children, to protect the child victims of these offences and to prosecute the perpetrators. The instrument may be described as both comprehensive and pro-active as it endeavours to tackle the various aspects of the fight against sexual crime and also introduces a monitoring mechanism to help the parties honour their commitments. Under certain conditions, states which are not members of the Council of Europe may also become a party to the convention, as may the European Union.

This handbook for European parliamentarians has been prepared as part of the parliamentary dimension of the Council of Europe’s campaign to stop sexual violence against children, which is itself an aspect of the programme “Building a Europe for and with children”. The campaign, which was launched in Rome in November 2010, firstly seeks to encourage all Council of Europe member states to sign, ratify and apply the Council of Europe instruments to combat sexual violence against children, including the Lanzarote Convention. Secondly, it aims to raise the general public’s awareness about the extent of sexual violence within a child’s circle of trust, and the ways to prevent and report it.

The handbook is primarily designed to promote greater awareness among parliamentarians about all forms of sexual violence against children, a scourge which Europe has been fighting for many years. It also seeks to encourage all member states to sign, ratify and implement the Lanzarote Convention, the Council of Europe’s main instrument to combat sexual violence against children. For this purpose, it provides parliamentarians with a practical tool to use in their work in their parliaments and vis-à-vis their respective national governments. It is a tool which can help them to understand and promote

this new and thoroughly innovative instrument, and which also gives examples of how the provisions of the convention can be transposed into national legislation.

### **Examples of legislation – Preliminary remarks**

The Lanzarote Convention stipulates in Article 4 that “Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children” and then goes on to prescribe, article by article, the most specific measures to be taken. However, it provides no indication of the type of legislation in which the measures are to be enacted. In many cases, the articles of the convention are transposed into the member states’ criminal law. Some articles, however, could be implemented by means of other legislative instruments, for example in the field of child or youth protection and welfare, social services, etc. Some states have also included the right of children to protection in their constitutions.

The model examples of national legislation presented in this handbook (in unofficial translation) will accordingly refer to different types of legislation. They have been chosen according to four criteria:

- ▶ explicit reference to sexual abuse of children or minors;
- ▶ their innovative nature, where they include recent forms of abuse such as “grooming” or the dissemination of images of abuse via the Internet;
- ▶ the strong emphasis placed on prevention of sexual abuse, in addition to criminalisation of the acts in question;
- ▶ the existence of specific laws for the protection of children and adolescents outside criminal law.

The selection included in this publication is intended to illustrate the legislative measures which can be adopted by providing examples of

“good practice”, but without explicitly leaving aside or judging the legislation which has not been taken into consideration. Neither does the publication intend to anticipate the evaluation of national legislation to be undertaken under the monitoring mechanisms related to the convention by the Committee of the Parties.

## **Background**

The sexual exploitation and sexual abuse of children can be considered as the most severe violation of children’s rights, as it has profound short- and long-term repercussions on their physical health, psychological development and psychosocial well-being. It is now accepted that such acts are not uncommon, with one in five children being a victim of sexual violence at least once in their lifetime. However, the figures compiled by different sources – the police, judicial authorities, health services, non-governmental organisations (NGOs), humanitarian associations and other bodies – are just the tip of the iceberg. The acts are rarely brought to light at the time they occur. In general, victims only talk about them some months, or even years, later. It is often the case that the secret is only revealed when victims reach adulthood, if ever at all. According to a study in 2006 by the World Health Organisation (WHO), 150 million girls and 73 million boys under the age of 18 are estimated to have experienced forced sexual intercourse or other forms of sexual violence. According to estimates by the International Labour Organization (ILO) in 2000, some 1.8 million children have been sexually exploited in prostitution and pornography. UNICEF estimates that at least 2 million children across the world fall into the grips of the sex industry each year.

According to researchers on the subject, sexual abuse of minors refers to any participation by children or adolescents in sexual activities which they are incapable of understanding, which are inappropriate for their age and stage of psychosexual development, in which they have been forced to participate through violence or seduction, or which transgress

social taboos with regard to the roles of family members.<sup>1</sup> In international legal texts, the term “sexual abuse of children” constitutes ill-treatment through various acts, which may or may not entail bodily contact, such as incest, rape, forced mutual sexual contact, erotic kissing, prostitution, pornography, exhibitionism, participation in pornographic presentations and solicitation for sexual purposes.<sup>2</sup> As all these acts entail physical and psychological brutality, in criminal terms they are considered as indecent assault or rape.

More often than not, sexual violence is committed by persons from the child’s close environment who have the child’s trust, such as a family member or close relative, or someone from the child’s educational environment. About 80% cases of abuse occur in this context. It is very difficult for children to express their experience in words. To talk about sexuality and abuse gives rise to feelings of shame, both for the children personally and for their families. Children are often frozen into inaction by the psychological control exercised by their aggressor and a fear of reprisals, and they suffer in silence. They find it extremely difficult to reveal the abuse when they have a close relationship with the abuser or when they are dependent on the abuser for their survival. Sometimes the victims are unaware of the ways and means available to them to report the acts, or they lack confidence and do not think this would serve any purpose. Another reason for ignorance about the sexual exploitation and sexual abuse of children lies in the context in which they take place (clandestine networks for child prostitution and trafficking, closed family circles where there are taboos, institutional environments dedicated to child welfare and the juvenile justice system, orphanages, establishments for handicapped children or children with psychiatric illnesses, children living on the street, and so on).

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1. Some of the first to study this issue were R. Krugman and D. P. Jones (“Incest and other forms of sexual abuse” in *Battered Child*, University of Chicago, 1980) and R. S. Kempe and C. H. Kempe (*The Common Secret: Sexual Abuse of Children and Adolescents*. New York, NY, W. H. Freeman and Co., 1984).

2. The Lanzarote Convention introduces this new offence, known as “grooming”.

Children who have suffered abuse require particular attention and protection, given their very special nature, which stems from their great vulnerability in terms of age, and sometimes ethnic origin, disability or social status, as well as their dependence on adults. Children's security and interests should feature prominently in political debates and decisions concerning them, and in the training provided for those who work with and for them. Sexual violence inflicted upon children may be tackled from many different points of view, including human rights, public health, the education system, the justice system and the number of years of children's lives lost to suffering. The negative consequences can prove very costly to society in terms of expenditure on medical and psychiatric care for victims and for the perpetrators of sexual violence, and on running the criminal justice system, social welfare organisations, and so on.

To combat sexual violence effectively, it will be necessary for each member state to identify its existing legislative and structural shortcomings and make sufficient resources available to tackle risk factors and change the situation through information and prevention campaigns, teaching and vocational training strategies, victim support and compensation schemes, and policies aimed at fostering strong relationships and bonds of trust with children as well as the development of non-violent attitudes. To guarantee children's right to life, dignity, physical integrity and development, states must interfere in one of the most private areas of a person's life.

Even in those countries where there is a high level of awareness and where political programmes have already been developed and implemented, all possibilities for action have certainly not yet been found or exploited. International and European co-operation with a view to exchanging good practice does, therefore, remain an essential tool. Furthermore, international co-operation between states and with Europol and Interpol is vital if an effective battle is to be waged against these criminal activities, which often take place on a transnational basis. People who exploit and abuse children have developed new techniques



and misuse new technologies, for example the Internet and the new generation of mobile telephones, in order to commit their acts. It is particularly appalling that the sexual exploitation of children is increasingly organised and carried out on a commercial basis.

### **The main international standards in this field**

The international community has adopted several texts on the protection of children's rights:

- ▶ the United Nations Convention on the Rights of the Child (1989), which celebrated its 20th anniversary in November 2009. Article 34 requires states parties to protect children against "all forms of sexual exploitation and sexual abuse", including the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or for pornographic performances and materials;
- ▶ the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) supplements the convention by criminalising these acts, including attempts to commit such acts and complicity or participation in them;
- ▶ Convention 182 of the International Labour Organization concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) includes, in Article 3.b, "the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances" in the definition of the worst forms of child labour;
- ▶ the European Union's Council Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA) obliges member states to criminalise offences related to sexual exploitation, in particular prostitution and the use of force/threats or a position of trust/authority for sexual relations. People who commit child pornography offences should also be subject to criminal charges, whether or not these offences entail the use of a computer

system, as should people who instigate, aid, abet or attempt to commit the above-mentioned offences;

- ▶ the European Union's Council Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA) establishes special protection measures for the victims of crimes. States are required to encourage personnel involved in proceedings or working with victims to receive special training, in particular regarding the most vulnerable groups;
- ▶ the declarations of the three World Congresses against Commercial Sexual Exploitation of Children, which took place in Stockholm in 1996, in Yokohama in 2001 and in Rio de Janeiro in 2008. The Stockholm Declaration and Agenda for Action contains recommendations to criminalise the commercial sexual exploitation of children, to introduce criminal penalties for the perpetrators of such acts, and to encourage states to put in place extra-territorial legislation. It also establishes standards for child-friendly judicial procedures and strengthens victims' rights to legal, social and medical assistance. The Yokohama Global Commitment, adopted at the Second World Congress, reaffirms the recommendations made in Stockholm and also stipulates that all those concerned should take appropriate measures to address the negative aspects of new technologies, in particular child pornography on the Internet. The Third World Congress against Sexual Exploitation of Children and Adolescents in Rio de Janeiro made a strong commitment, in its Declaration and Call for Action, to continuing the combat and to extending it to other forms of sexual exploitation than solely commercial ones;
- ▶ the proposal of the European Parliament and Council for a directive on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA. This incorporates the input of the Lanzarote Convention, which it recognises as being of the highest international standard concerning

the protection of children against sexual exploitation and sexual abuse. It also contains a number of other items which provide added value, such as the introduction of new offences into criminal law, greater harmonisation of criminal penalties, the requirement for member states to adopt measures to prevent offenders from exercising activities involving regular contact with children, the introduction of a non-punishment clause for child victims, the strengthening of jurisdictional rules to make it possible to pass sentence on acts committed outside member states' territory, and the improvement of protection for victims and their families.

### **Council of Europe action in this field**

The right of children to be protected against all forms of sexual violence and exploitation is referred to in various Council of Europe instruments and texts and is regularly the subject of high-level debates:

- ▶ the Council of Europe's European Social Charter (1961, ETS No. 35) provides in Article 7 that children and young people have the right to special protection against physical and moral danger to which they are exposed. Sub-paragraph 1.b of Article 17 of the Revised Social Charter (1996, ETS No. 163) states that governments shall take all appropriate and necessary measures designed to protect children and young persons against negligence, violence or exploitation;
- ▶ the Council of Europe Convention on Cybercrime (2001, ETS No. 185) makes it a requirement for states to criminalise child pornography when use has been made of a computer network or system. Such acts include producing, offering/making available, distributing/transmitting, procuring and possessing child pornography;
- ▶ the Council of Europe Convention on Action against Trafficking in Human Beings (2005, CETS No. 197). After defining human trafficking in Article 4, the convention asks states to establish it as a criminal offence, giving particular attention to children under the age of 18.

Their recruitment, transportation, transfer, harbouring or receipt for the purpose of exploitation are considered as human trafficking, even when forms of coercion, force, deception or abuse of authority have not been used in order to secure their consent;

- ▶ Recommendation Rec(2001)16 of the Committee of Ministers to member states on the protection of children against sexual exploitation calls for the criminalisation of child prostitution, child pornography and the trafficking of children for sexual purposes. It provides that states should take special measures for child victims during court proceedings and ensure that their rights are safeguarded throughout proceedings. Judicial authorities should give priority to cases involving sexual exploitation of children and ensure that the limitation period for bringing criminal proceedings only starts to run when the victim has come of age. Also, it calls for improved international co-operation and the establishment of extra-territorial jurisdiction, without the requirement for dual criminality;
- ▶ in the Action Plan adopted by the 3rd Summit of Heads of State and Government of the Council of Europe (Warsaw, 2005), the heads of state and government committed themselves to specific action to eradicate all forms of violence against children by launching a programme of action and, if appropriate, drawing up legal instruments, with civil society involvement in this process. It was as a result of this that the Council of Europe launched a programme entitled "Building a Europe for and with children"<sup>3</sup> (2006-2011) and its 2009-2011 Strategy, which aims to promote children's rights and protect them from violence. The programme's main objective is to help all decision makers and players concerned to design and implement national strategies for the protection of children's rights and the prevention of violence against children.

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3. [http://www.coe.int/t/transversalprojects/children/default\\_en.asp](http://www.coe.int/t/transversalprojects/children/default_en.asp).

## **The involvement of national parliaments and the Parliamentary Assembly in efforts to combat sexual violence against children**

As policy makers and law makers, parliamentarians have a vital role to play in efforts to combat this phenomenon. The objectives of their action are to:

- ▶ promote the signature and ratification of the whole of the Lanzarote Convention in different ways, for example by:
  - instigating relevant parliamentary enquiries;
  - asking their respective governments specific questions on the subject;
  - organising debates at national level (within their parliaments) and local level (in their respective constituencies);
  - ensuring that all relevant documents can be obtained at their parliament’s documentation centre;
  - taking and supporting any sort of initiative with regard to the general public (articles in the press, events in schools, etc.);<sup>4</sup>
- ▶ set up a children’s committee within the national parliament, if there is not one already, in order to establish a mechanism for close monitoring of the issue;
- ▶ ensure compliance of national legislation with international commitments in the field, in particular the Lanzarote Convention once it is ratified;
- ▶ revise and strengthen national legislation by taking greater account of the needs of child victims of sexual violence during judicial proceedings and the best interests of children, from the

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4. See also a recent and extremely useful publication by the Inter-Parliamentary Union and UNICEF: *Eliminating violence against children – Handbook for Parliamentarians*, No. 13 – 2007, which sets out a wide range of possible measures which could be adopted by parliamentarians.

time when they report the acts until such time as they have recovered sufficiently to be able to resume a more or less normal life while being protected from the earlier abuse;

- ▶ strengthen legislation on the elimination of sexual violence against children, and ensure its effective implementation, if appropriate by increasing the severity of sentences, without which the prohibition of sexual violence serves no purpose;
- ▶ examine the issue of the limitation periods for initiating proceedings in order to consider extending them to take account of the gravity of the offence and only starting them once the child victim has come of age;
- ▶ strengthen legislation in order to make it possible, or even obligatory, for all categories of persons working with and for children to receive training on the specific issues related to sexual exploitation and sexual abuse of children, and to permit the setting up of information campaigns for children at school;
- ▶ adopt legislation that matches that of other European countries as closely as possible, with a view to achieving greater harmonisation, which will enhance the protection of children and facilitate effective international co-operation;
- ▶ grant sufficient resources, firstly to prevent and combat sexual violence against children, and secondly to compensate victims, even if initiatives are also required in terms of rehabilitation for perpetrators;
- ▶ set up a national data collection system to help identify vulnerable groups and the number of victims;
- ▶ set up an independent body responsible for promoting children's rights, as well as helplines and other support services aimed at providing advice to children or anyone wishing to report an incident.

With a view to developing the parliamentary dimension of the Council of Europe's campaign, the following action could be taken:

- ▶ exchange of information and expertise within the network of contact parliamentarians involved in the campaign to stop sexual violence against children;
- ▶ setting up of partnerships at national and international level (professional associations, non-governmental organisations (NGOs), the European Network of Ombudspersons for Children (ENOC), the United Nations, the European Union, the Inter-Parliamentary Union (IPU), etc.);
- ▶ support for lobbying of European institutions to promote the protection of children's rights and interests;
- ▶ contribution to the development of national strategies aimed at reducing children's vulnerability and increasing their security (for example through prevention campaigns);
- ▶ provision of technical/legal assistance to states that request it to help them introduce legislative reforms to tackle the problem;
- ▶ production of communication and campaign tools to be made available at national level (this handbook, USB flash drives containing legislative texts and campaign material on the subject).

Before examining the provisions of the Lanzarote Convention in greater detail, attention should also be drawn to the recent Recommendation 1934 (2010) of the Parliamentary Assembly of the Council of Europe on child abuse in institutions: ensuring full protection of the victims, which contains a number of proposals addressed to the member states and their parliaments concerning possible legislative, administrative and political action. As with the different bodies of the United Nations, the Parliamentary Assembly considers that legislative reforms are a precondition to the full protection of children, but that they need to be

complemented by other measures aimed at prevention, identification, investigation and treatment.<sup>5</sup>

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5. Corinne May-Chahal, Maria Herczog (co-ordinators): *Child sexual abuse in Europe*, Council of Europe Publishing (2004).



## **4. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote Convention (CETS No. 201)**

The Lanzarote Convention is a major step forward in the prevention of offences of a sexual nature. It guarantees extensive and comprehensive protection for children against sexual exploitation and sexual abuse and also deals with legal proceedings against the alleged perpetrators of these crimes. The text consolidates existing standards in the field and fills certain gaps: this is the first time an international treaty defines and criminalises sexual abuse of children in such a broad manner. Other strengths of the text include the emphasis given to prevention, the wide range of protection measures for children and victims, the reference to all children up to the age of 18 and the inclusion of clauses on new forms of violence such as the exploitation of children using information and communication technologies (ICT). Lastly, the convention introduces a strong monitoring mechanism in order to ensure effective implementation of these provisions by the parties and their compliance with them.

### **Purpose of the convention**

This convention has three main purposes:

- ▶ to prevent and combat sexual exploitation and sexual abuse of children;
- ▶ to protect the rights of child victims of sexual exploitation and sexual abuse;
- ▶ to promote national and international co-operation against this phenomenon.

### **Belgium**

Following the work of the National Commission against Sexual Exploitation of Children, the Belgian Parliament, when adopting the constitutional revision of 23 March 2000, incorporated into the constitution a specific provision recognising children as full “constitutional subjects”.

*Article 22bis of the Belgian Constitution*

Every child shall have the right to respect for his or her moral, physical, psychological and sexual integrity.

### **Non-discrimination principle**

The convention prohibits discrimination (a difference of treatment which has no objective and reasonable justification) in the implementation of its provisions by the parties, in particular concerning measures to protect the rights of victims. The list of grounds for discrimination is identical to those listed in Article 14 of the European Convention on Human Rights, and Protocol No. 12 thereto, namely sex, race, colour, language, religion, political or other opinion, national or social origin, membership of a national minority, property, birth or other status. The text also covers three further grounds: sexual orientation, state of health and disability.

### **Definitions**

Despite the diversity of legislation in the member states of the Council of Europe, common definitions have been agreed for the purposes of this convention:

- ▶ “child” – based on the definition given by the United Nations Convention on the Rights of the Child and the Council of Europe Convention on Action against Trafficking in Human Beings, a “child” is any person under the age of 18. It should be noted that in certain articles of the Lanzarote Convention a different age is specified –

the legal age for engaging in sexual activities without the acts being deemed to be a criminally punishable offence. The age of consent for sexual activity varies across Europe, ranging from 13 to 18. Spain has the lowest age of consent (13 years) and Turkey and Malta have the highest (18 years);

- ▶ “sexual exploitation and sexual abuse of children” – the convention seeks to cover abuse within the victim’s family or close social surroundings as well as acts committed for commercial or profit-making purposes. The following categories of behaviour are included: sexual abuse, child prostitution, child pornography, the corruption of children and the solicitation of children for sexual purposes. The fundamental idea is that all sexual offences against minors must be specifically criminalised;
- ▶ “victim” – a victim is a child who has been subjected to one of the offences listed in the convention. It is important to note that the facts of the sexual exploitation or abuse do not have to be established before a child is to be considered a victim.

Other definitions related to the sexual abuse of a child need to be examined in depth and to be specified in a given cultural context and have also been subject to controversial discussions between the parties during the preparation of the convention. This concerns, for example, boundaries between “normal” and abusive behaviour within families, between the “normal” sexual exploration among children and abuse committed by other minors (“peer abuse”), or between consensual sexual acts and those that have been “forced” in a context of unequal distribution of powers (such as sexual relations with an educator or teacher).<sup>6</sup>

### **Preventive measures**

To protect children against all forms of sexual exploitation and sexual abuse, the text lists a series of preventive measures to be implemented at national level. These include measures aimed at raising awareness

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6. Corinne May-Chahal, Maria Herczog (co-ordinators): *Child sexual abuse in Europe*, Council of Europe Publishing (2004).

among professionals and the public, organising training for people working with and for children, and providing children with information at school.

### **Portugal**

Placing a strong emphasis on prevention, as specified in the Lanzarote Convention, and explicitly referring to the latter, the Portuguese legislation defines detailed rules concerning the appraisal of staff to be appointed to functions where they will be in regular contact with children.

*Article 2 of Law 113/2009 of 17 September, establishing the measures to protect minors on the appraisal of suitability in access to functions that involve regular contact with children*

1 – In the recruitment to professions, jobs, duties or activities, public or private, even if unpaid, which involve regular contact with children, the recruiting party must ask the applicant to submit a criminal record certificate and weigh the information on the certificate when appraising the suitability of the applicant to fulfil the functions.

2 – When requesting the certificate, the party must specify the purpose for which it is intended and state the profession, job, duty or activity to be engaged in and whether this involves regular contact with children.

3 – The certificate requested by private individuals for the purpose stated in (1) should state if it is intended for engaging in duties that involve regular contact with children and contain, in addition to the information established in Article 11 of Law 57/98, of 18 August:

- a) Convictions for the crimes established in Articles 152, 152-A and in title I, chapter V, book II of the Criminal Code;
- b) Decisions applying supplementary penalties pursuant to Articles 152 and 179 of the Criminal Code or safety measures that prohibit the activity;

c) Decisions that are a consequence, object or execution of those indicated in the preceding sub-paragraphs and whose effect is not to cancel the record.

4 – The provision in Article 12(2)(e) of Law 57/98 of 18 August does not apply to the certificate requested by individuals for the purpose established in (1) above.

5 – In the certificate requested by individuals for the purpose established in (1) above the decisions handed down by foreign courts shall also appear, equivalent to those envisaged in the sub-paragraphs of (3).

6 – The provision in (1) shall not prejudice the compulsion to comply with the prohibitions or inhibitions arising from the application of a supplementary penalty or safety measure the breach of which is punished pursuant to Article 353 of the Criminal Code.

7 – Failure to comply with the provision in (1) by the party recruited is an administrative offence punishable by a fine whose minimum and maximum amounts are as laid down in Article 17 of the legislation that institutes administrative offences and their procedures, approved by executive law 433/82 of 27 October and the supplementary sanctions established in Article 21 (b)(c)(e)(f) and (g) may also be applied, if the presumptions established in Article 21-A of the same law are also confirmed.

8 – Negligence is punishable.

9 – Fact-finding in administrative offence proceedings and the application of fines and supplementary sanctions are the responsibility of the administrative bodies with powers to supervise the relevant activities, and Article 34 of the law instituting administrative offences and the respective procedure is subsidiarily applicable.

10 – The monies derived from fines are shared between the service that has applied them and the State in the respective proportions of 40% and 60%.

11 – The recruiting party must ensure the confidentiality of any information that has come into its possession from the criminal record certificate.

*Recruitment, training and awareness raising of persons working in contact with children*

Sexual violence against minors is often surrounded by a shroud of secrecy and concealment, and is therefore often difficult to detect. It can only be brought to light in an environment that fosters transparency, vigilance and genuine assistance. The convention asks the parties to take the necessary measures to ensure that all people who have regular contact with children are sufficiently informed about the children's rights conferred by national and international texts and informed about matters related to sexual exploitation and sexual abuse, their consequences and possible signals given by children. To detect cases of sexual violence, persons working with children must know what they need to look out for. The categories of persons concerned by this provision are those who work with children in the education, health, social welfare, judicial and law-enforcement sectors or in the fields of sport, culture and leisure activities, persons doing voluntary work and foster families. The parties are thus invited to introduce stricter controls at the recruitment stage for professions which involve regular contact with children to ensure that candidates have not been convicted of acts of sexual exploitation or sexual abuse.

*Education for children*

Parents are the people closest to children. It is for them in the first instance to forge a stable, loving and trusting relationship with their children, educate them about sexuality issues in general and the risks of sexual exploitation and sexual abuse in particular, and instil in them a sense of independence and the strength to resist and ward off any sexual advances to which they may be subject. However, some parents may find this difficult and be reluctant to broach the subject with

their children. For this reason, without specifically referring to schools or making it compulsory to provide information within the educational curriculum, the convention asks the parties to ensure that children receive during their education information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, in a form that is suited to their level of maturity and does not reduce their esteem for adults. This information may be provided in a non-formal framework through visits or telephone assistance, with or without the involvement of the parents. It may also take the form of basic education on the development of sexuality, self-determination, potential risks and the ways to protect oneself and ask for help. With the advent of the Internet and new generations of mobile telephones allowing the transmission of data (pictures and videos), it is vital for children to be informed about the threats to their safety when using the Internet.

#### *Preventive intervention programmes or measures*

Preventive measures referred to in the convention include the possibility for persons who fear that they might commit a sexual offence against children to have access to intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed. This possibility is clearly necessary because otherwise children will remain at risk and the cycle of abuse may be perpetuated. This option is preventive in purpose and applies to persons who are not being investigated or prosecuted or serving a sentence.

#### **Germany**

Many countries have, as well as their criminal or penal codes, specific laws relating to the protection of and assistance to children and adolescents. This is, for example, the case in Germany where the 8th section of the Social Code (*Sozialgesetzbuch Buch VIII*) contains provisions on assistance to children and young people (*Kinder- und Jugendhilfe*). These are particularly interesting as examples for the legal formulation of prevention strategies.

*Sozialgesetzbuch, Buch VIII, § 8 a – Responsibility for protection in cases of threats to the well-being of children*

(1) If significant evidence of a threat to the well-being of a child or young person is brought to the notice of the Youth Welfare Office, it shall assess the risk potential in co-operation with a number of experts. The parents or guardian as well as the child or young person shall also be consulted if this does not put at risk the effective protection of the child or young person. If the Youth Welfare Office considers it appropriate and necessary to provide assistance to avert the threat, it shall offer it to the parents or guardian.

(2) In agreements with bodies or authorities that are responsible for facilities and services and provide services in accordance with the provisions of this book, care shall be taken to ensure that their specialist staff duly carry out the tasks set out in subsection 1 and consult a specialist when assessing the risk potential. In particular, a clause shall be inserted into these agreements to the effect that the experts have a duty to urge parents or guardians to accept help if they consider this necessary and to inform the Youth Welfare Office if the help accepted appears insufficient to avert the threat.

(3) If the Youth Welfare Office considers it necessary to involve the Family Court, it shall ask it to intervene. This also applies when the parents or guardians are unwilling or unable to become involved in assessing the risk potential. If there is an imminent danger and it is not possible to await a court decision, the Youth Welfare Office is obliged to take the child or young person into care.

(4) If action by other service providers, health-care facilities or the police is necessary to avert the threat, the Youth Welfare Office shall urge the parents or guardians to avail themselves of their assistance. If immediate action is necessary and the parents or guardians do not co-operate, the Youth Welfare Office shall itself call in the other bodies responsible for averting the threat.



**Romania**

Romania enacted the convention on the Rights of the Child in 1990 via Law nr. 18/1990, which has been amended by Law nr. 272/2004. In the latter, it clearly refers to the early identification of risk situations and prevention of abusive behaviour.

*272/2004 Art. 34*

(1) The public social security service will undertake all the necessary measures for the early identification of risk situations, which may determine the separation of the child from his or her parents, as well as for the prevention of abusive behaviours of the parents and family violence.

(2) Any separation of the child from his or her parents, as well as any restriction in exercising parental rights must be preceded by the systematic granting of services and assistance stipulated by the law, with a special emphasis on adequately informing the parents, providing counselling, therapy and mediation for them, based on a service plan.

*Measures aimed at the general public*

Strategies to raise the general public's awareness and inform it about types of sexual violence are vital. The organisation of information campaigns will help to mobilise the general public with regard to the problem and increase its vigilance. However, as stated in the convention, states must prevent or prohibit the dissemination of materials advertising the offences described in it.

*Participation of children, the private sector, the media and civil society*

When formulating their policies, a few countries work in collaboration with child protection agencies or welcome the direct participation of children. Other countries prefer to communicate all appropriate information to children rather than involve them in its production.

The convention encourages the participation of children in the fight against sexual violence, depending on their level of maturity (“stage of development”).

The participation of the private sector (information and communication technologies, tourism and travel, banking and finance sectors) in the prevention of sexual violence would also be beneficial.

The advent of cybercrime gives sexual violence a new dimension, hence the importance of involving Internet access providers and mobile telephone and search engine operators in the preparation of preventive measures and policies. Internet users should be made more aware of the existence of agencies specialised in fighting Internet crime and these agencies should disseminate information on the threats to children. Users should be able to rapidly report shocking images or behaviour encountered on the Internet.

The travel and tourism industry is included specifically to target the growing “sex tourism” phenomenon.<sup>7</sup> This is *à la carte* prostitution, which is itself just a real-life variation of the situations proposed by pornography, in which the two worlds come together in order to exploit human beings and industrialise their bodies.<sup>8</sup> A good approach to prevention would be to inform travellers about the risks of criminal proceedings to which the perpetrators of sexual crimes committed abroad are exposed, through the dissemination of brochures, audiovisual messages and statements on airline companies’ websites. In 1998, a “Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism”, was drawn up by ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), an international network of organisations working together for the elimination of child prostitution, child pornography and the trafficking of children for sexual purposes, in collaboration with the World Tourism Organisation.

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7. Travelling to less legally restrictive or economically poorer countries in order to have sexual relations with local people, usually in exchange for payment.

8. Franck Michel, *Le Monde diplomatique*, August 2006.

The inclusion of the finance and banking sectors is very important because of the possibility for financial institutions, in co-operation with law-enforcement agencies, to disrupt the functioning of financial mechanisms supporting pay-for-view paedophile websites and to contribute to dismantling them.

The convention also encourages the media to inform and raise the general public's awareness about the issue of sexual exploitation and sexual abuse of children. The media clearly have an important role to play in educating the general public and in realistically tackling the issue in documentaries and television films on sexual relationships, the role of parents and sexual health. This function must be fulfilled with due respect first for the principles of the independence of the media and freedom of the press, and second for the right to privacy of all child victims.

Other players active in the field include non-governmental organisations (NGOs) and the voluntary sector, covered by the term "civil society", whose work must be acknowledged and built upon. States are invited to encourage the financing of civil society projects and programmes aimed at preventing sexual exploitation and sexual abuse and protecting children against these acts.

### **Specialised prevention authorities and co-ordinating bodies**

The convention invites states to adopt, within national and local plans, a multidisciplinary approach to prevention, along with efficient co-ordination between the different players concerned. In practice, this would entail:

- ▶ co-ordination between the education and health sectors, social services, law enforcement and judicial authorities;
- ▶ the setting up of independent institutions for the promotion and protection of children's rights and for the evaluation of the impact of social policies on children;

- ▶ the appointment of a person or body whose task would be to raise the general public's awareness about sexual exploitation and sexual abuse of children.<sup>9</sup> A number of countries have created such positions which are known by different names – Children's Ombudsperson, Children's Advocate, Child Rights Commissioner, Committee on Child Rights, etc. It is also clearly important that the development of such an approach is resourced properly and given clear responsibilities;
- ▶ the setting up of mechanisms for data collection, in collaboration with civil society, for observing and evaluating the phenomenon of sexual exploitation and abuse of children and to remedy the lack of information, with due respect for the requirements of personal data protection;
- ▶ the encouragement of co-operation between competent state authorities, civil society and the private sector in the prevention of and fight against sexual exploitation and abuse of children.

### **Protective measures and assistance to victims**

Although the main objective of the fight against sexual abuse and sexual exploitation is to prevent them, it is also essential to ensure that the child victims of these offences and any person having a close relationship with them receive the best support and assistance possible.

#### *Reporting suspected sexual exploitation or sexual abuse*

Health professionals are key players in the protection of children's interests owing to their regular contacts with them or their families. It is important to recognise that their role should not be limited to correcting the family dysfunctions that lie at the root of the problems, but

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9. The Parliamentary Assembly has already suggested that a European ombudsman for children should be appointed (see Recommendation 1460 (2000)).

should also include raising the alarm about violence committed and alerting the relevant services. Without making it compulsory to do so, the convention gives doctors, psychiatrists, psychotherapists and other persons working regularly or occasionally with children the possibility to breach professional secrecy rules so that they can report to the child welfare services any situations where they have fair reason to believe that children are victims of sexual exploitation or sexual abuse. Any other person who knows about or suspects sexual exploitation or sexual abuse of children is encouraged to report it to the competent services.

#### **Norway**

The Norwegian civil legislation also outlines clear rules regarding the duty to contact the police or in other ways prevent serious offences from being committed (explanations provided by the Ministry of Justice and the Police).

- The General Civil Penal Code 1902 section 139 was amended by law 25.06.2010 no 47 to strengthen the duty to prevent serious offences.
- According to the amendment, it is sufficient for a person to suspect that a crime is being, or is about to be, committed, and reliable evidence is no longer necessary.
- Also, it is stated that the duty to prevent crime precedes the duty to maintain professional secrecy.
- Furthermore, the duty to prevent crime, and the punishment for not doing so, is extended to additional types of crime, such as family violence and several sexual crimes against children (section 199 regarding sexual activity with a foster-child, step-child or any other person under 18 years of age who is under the care of the person, and section 200, paragraph 2, regarding sexual acts with a child under 16 years of age, or misleading such child to behave in a sexually offensive or otherwise indecent manner).

### **United Kingdom**

The UK Sexual Offences Act 2003 prescribes certain notification requirements with a view to preventing further offences relating to sexual abuse, including sexual abuse of minors.

#### *Section 80 of the Sexual Offences Act 2003*

Persons becoming subject to notification requirements

(1) A person is subject to the notification requirements of this Part for the period set out in section 82 ("the notification period") if:

- (a) he is convicted of an offence listed in Schedule 3;
- (b) he is found not guilty of such an offence by reason of insanity;
- (c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or
- (d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.

(2) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a "relevant offender".

#### *SCHEDULE 3 – Sexual offences for purposes of Part 2: England and Wales*

1 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).

2 An offence under section 5 of that Act (intercourse with girl under 13).

3 An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.

4 An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.

5 An offence under section 12 of that Act (buggery) if:

- (a) the offender was 20 or over; and
- (b) the victim or (as the case may be) other party was under 18.

6 An offence under section 13 of that Act (indecenty between men) if:

- (a) the offender was 20 or over; and
- (b) the victim or (as the case may be) other party was under 18.

7 An offence under section 14 of that Act (indecent assault on a woman) if:

- (a) the victim or (as the case may be) other party was under 18; or
- (b) the offender, in respect of the offence or finding, is or has been:
  - (i) sentenced to imprisonment for a term of at least 30 months; or
  - (ii) admitted to a hospital subject to a restriction order.

8 An offence under section 15 of that Act (indecent assault on a man) if:

- (a) the victim or (as the case may be) other party was under 18; or
- (b) the offender, in respect of the offence or finding, is or has been:
  - (i) sentenced to imprisonment for a term of at least 30 months; or
  - (ii) admitted to a hospital subject to a restriction order.

9 An offence under section 16 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.

10 An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on a girl under 16).

### *Helplines and assistance to victims*

It is essential to develop means whereby people can safely reveal that they know about or have been victims of sexual abuse or sexual exploitation, or simply talk to a person outside their usual environment. Child welfare professionals and political decision makers increasingly believe that children's helplines are an essential resource to facilitate the provision of assistance to children, find out about their experiences and direct them towards the appropriate services. The telephone plays a particular role because it enables children to express themselves when they wish, confidentially, and without feeling threatened by face-to-face contact. States should encourage the setting up of helplines to listen to children and provide advice. These should be as widely available as possible and employ staff who are suitable for work with children.

Proper assistance to victims should comprise two strands: firstly, assistance all through the high and low points of the crisis triggered by the revelation of the facts, and secondly, treatment of the physical and psychological trauma caused by sexual violence. In addition to this, there is very clearly a need to protect victims from further abuse.

The convention lists the measures the parties should take with regard to the victims:

- ▶ assist victims, in the short and long term, in their physical and psychosocial recovery. Depending on the seriousness of the damage done, the assistance should last as long it takes to ensure the child's complete recovery. Care should focus on the physical consequences and psychological effects, and promote the child's long-term healthy development. There are issues surrounding the consequences of sexual violence which last into adulthood. Measures should be taken to enable adults who were victims during their childhood to talk about it, if this is still necessary, and to access appropriate help;
- ▶ remove alleged perpetrators or take the victims away from their family environment when the children's parents or carers have been



involved in the acts committed against them. The decision to bring an immediate end to all contact is important. In cases of sexual violence within the family, it is usually the child who is taken away, even though it might seem more appropriate to remove the perpetrator, but this would mean that the other parent would have to be able to look after and support the child;

- ▶ provide those close to the victim with therapeutic assistance, if necessary and if desired. It would also be beneficial for persons close to the victim to receive treatment for their distress and feelings of powerlessness and guilt;
- ▶ establish partnerships between public authorities and NGOs or other organisations involved in providing assistance to victims.

## **Intervention measures**

### *Intervention programmes or measures for sexual offenders*

Many therapists argue that the prevalence of sexual abuse in society and within families can be linked to the fact that the perpetrators were themselves sexually abused as children. Tragically for them, the suffering caused by their childhood experiences has probably never been expressed or heard. These traumatic experiences pervade the subconscious and then find an outlet in similar practices. Other therapists argue that this cycle of abuse over the generations is not a given fact; a great many child victims do not become perpetrators of sexual abuse and a great many adult perpetrators of sexual abuse have not been victims themselves. Although the acts in themselves should in no way be tolerated, it should also be accepted that the perpetrators of such behaviour are people who need to be helped and considered as patients in need of treatment. As public awareness of sexual abuse grows, and with the current trend towards tougher sentencing, it is also important to offer

treatment programmes for sex offenders and to give such programmes an appropriate place in the allocation of sometimes limited public resources and the setting of policy priorities. Without this, realistic protection for current and future victims is inconceivable.

One of the areas of added value of the convention lies in the possibility it offers for three categories of persons to have access, at any time, to intervention measures or programmes with psychological as well as medical and social components, in order to reduce the risk of re-offending and assess the danger they pose. The three categories of beneficiaries are:

- ▶ persons prosecuted for a sexual offence: in accordance with the principle of presumption of innocence, it is up to the persons concerned, in this category in particular, to decide freely whether they wish to benefit from programmes or measures. They may do so during the investigation of the case or during the trial, under conditions which respect their defence rights and the requirements of a fair trial;
- ▶ persons convicted of a sexual offence: this means persons who have received a final judgment of guilt from a judge or a court;
- ▶ children who sexually offend: persons under the age of 18 who are still below the age of criminal responsibility may benefit from programmes or measures adapted to meet their developmental needs and address their sexual behaviour problems.

Programmes and measures do not necessarily have to be part of the criminal punishment system, and they can instead be included within the healthcare and social welfare systems. Psychological intervention may take the form of cognitive behavioural therapy or therapy using a

psychodynamic approach.<sup>10</sup> Medical intervention principally refers to anti-hormone therapy (medical castration). Finally, social intervention concerns measures introduced to regulate and stabilise the offender's social behaviour (for example, a prohibition on going to certain places or meeting certain persons), as well as structures facilitating re-integration (such as assistance with administrative matters, job search).

#### *Information and consent*

Before any form of intervention is put in place, the person concerned must first be informed of the reasons for his or her being offered an intervention programme or measure. His or her free and informed consent must then be obtained regarding the proposals made. The success of the intervention greatly depends on the beneficiary's genuine adherence to it. Proposals may be accepted or refused. If a proposal is refused, the person must be informed of the consequences (for example, the rejection of a measure suspending or alleviating the sentence).

Referring frequently to the parties' domestic law, the convention limits itself to establishing a number of fundamental principles, without entering into detail about possible measures and programmes. However, it is the parties' responsibility to regularly evaluate the effectiveness and results of programmes and measures in order to assess their scientific benefit. Furthermore, the results depend on both the training and supervision of therapists and a favourable institutional framework. The text states the need for co-ordination between the different services

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10. There are two fundamental approaches in psychology: 1) the cognitive approach is based on a model in which an individual's evaluation of a situation is a determining factor of emotions and behaviour, which in turn influence thought processes. Evaluation of the situation is based on the individual's deep-rooted beliefs about him or herself and the world. Psychotherapeutic support aims to develop appropriate behaviour in order to better control psychological states and deal with the problems; 2) the psychodynamic approach to analysis places great emphasis on the concept of the subconscious: an individual's problems are perceived as having their origins in unresolved childhood conflicts. The classical analytical method consists in interpreting what the individual says and does in order to shed light on the unresolved conflicts.

involved, in particular health services, social services, prison authorities and, with due respect for their independence, judicial authorities.

## **Criminalisation of acts**

### *Substantive criminal law*

When states ratify the convention, they become legally bound to apply it, and this in turn leads to harmonisation of national criminal laws. Harmonisation facilitates action against sexual exploitation and sexual abuse of children for a number of important reasons. Firstly, the convention criminalises a series of acts and the harmonisation of definitions and legislation makes it impossible for people to go to a state party with more a lenient legal system to commit illegal acts there. Secondly, shared definitions can also assist research and promote comparability of data, thus making it easier to gain an overall picture of sexual crime against children. Thirdly, international co-operation is facilitated because efforts to combat sexual violence against children (prevention, protection, procedures) are based on uniform legislation.

### **Bulgaria**

Bulgaria, like many other countries, has entered provisions concerning the protection of children against sexual abuse or sexual violence into different laws.

#### *Protection from violence according to Article 11 of the Law for Protection of the Child*

(1) Each child shall have the right to protection from being involved in activities unfavourable to his physical, psychological, moral and educational development.

(2) Each child shall have the right to protection from methods of tuition impeding his dignity, from physical, psychological or other violence and forms of influence against his interests.

(3) Each child shall have the right to protection against being forced into begging or prostitution and being used for the distribution of pornographic materials or receiving unlawful material incomes as well as protection from sexual harassment/abuse.

*Criminal Code of Bulgaria*

*Art. 155*

(1) Whoever incites another person to prostitution or procures others for the purposes of sexual gratification shall be punished by imprisonment of up to three years and a fine of 300-600 BGL.

(2) Whoever provides premises to different persons for sexual intercourse or for fornication shall be punished by imprisonment of up to five years and by a fine of 100-500 BGL.

(3) The punishment for the acts under paragraphs 1 and 2, committed for mercenary motives shall be imprisonment of one to six years and a fine of 500-1 000 BGL.

(4) Whoever has persuaded or compelled another person to use narcotic substances and/or their analogues for the purpose of prostituting, procurement, homosexual practices or fornication shall be punished by imprisonment of five to fifteen years and a fine of 20 000-50 000 BGL.

(5) If the act has been committed:

1. by a person acting on the orders of or in fulfilment of a decision of an organised criminal group;
2. against a minor, underage or insane person;
3. against more than two persons; or
4. repeatedly;

the punishment shall be from ten to twenty years' imprisonment and a fine of 100 000-300 000 BGL.

(6) Whoever involves minor persons in debauchery shall be punished with imprisonment of two to eight years.

*Article 155b (Last amendment, SG No. 26/2010)*

Whoever persuades a person who is under the age of consent or a person of 14 years to participate, to watch real, virtual or simulated sexual intercourse between individuals of the same or opposite sex, a carnal display of human genitals, sodomy, masturbation, sexual sadism or masochism, is subjected to a penalty of imprisonment for a term of up to three years, or to probation.

In view of the diversity of national legislation and case law on this point, the convention has no provisions concerning the alleged perpetrator's awareness or ignorance of the victim's age. Moreover, the text provides for the possibility of implementing, in certain circumstances where minors commit offences (such as the distribution of child pornography), more appropriate measures than criminal prosecution, which should be a last resort.

**Germany**

The German penal law (*Strafgesetzbuch*) explicitly covers the sexual abuse of children in separate sections and distinguishes different levels of severity of abuse.

*Section 176 Sexual Abuse of Children*

(1) Whoever commits sexual acts on a person under 14 years of age (a child), or allows them to be committed on himself by the child, shall be punished with imprisonment from six months to ten years, and in less serious cases with imprisonment for not more than five years or a fine.

(2) Whoever induces a child to commit sexual acts on a third person, or induces a third person to commit them on a child, shall be similarly punished.

(3) Whoever:

1. commits sexual acts in front of a child;

2. induces the child to commit sexual acts on his own body; or
3. exerts influence on a child by showing him pornographic illustrations or images, by playing him audio recordings with pornographic content or by using pornographically explicit language,

shall be punished with imprisonment for not more than five years or a fine.

(4) An attempt to commit such acts shall be punishable; this shall not apply for acts under subsection (3), number 3.

*Section 176a Serious Sexual Abuse of Children*

(1) The sexual abuse of children shall be punished with imprisonment for no less than one year in cases under Section 176 subsections (1) and (2), if:

1. a person over 18 years of age completes an act of sexual intercourse or similar sexual acts with the child, which are combined with a penetration of the body, or allows them to be committed on himself by the child;
2. the act is committed jointly by more than one person;
3. the perpetrator by the act places the child in danger of serious health damage or substantial impairment of his physical or emotional development; or
4. the perpetrator has undergone a final judgment of conviction for such a crime within the previous five years.

(2) Whoever, in cases under Section 176 subsections (1) to (4), acts as a perpetrator or other participant with the intent of making the act the object of a pornographic text (Section 11 subsection (3)), which is to be disseminated pursuant to Section 184 subsections (3) or (4), shall be punished with imprisonment for not less than two years.

(3) In less serious cases under subsection (1), imprisonment from three months to five years shall be imposed, in less serious cases under subsection (2), imprisonment from one year to ten years.

(4) Whoever, in cases under Section 176 subsections (1) and (2):

1. by the act seriously physically maltreats the child; or
2. by the act places the child at risk of death,

shall be punished with imprisonment for not less than five years.

(5) The time in which the perpetrator is in custody in an institution pursuant to order of a public authority shall not be credited to the term indicated in subsection (1), number 4. An act as to which judgment was rendered abroad shall be deemed equivalent in cases under subsection (1), number 4, to an act as to which judgment was rendered domestically, if under German criminal law it would have been such an act under Section 176 subsections (1) or (2).

*Section 176b Sexual Abuse of Children Resulting in Death*

If by the sexual abuse (Sections 176 and 176a) the perpetrator even recklessly causes the death of the child, then the punishment shall be imprisonment for life or for not less than ten years.

*Sexual abuse*

For the first time in an international treaty, the crime of sexual abuse of a child is defined as intentional conduct of the following two kinds:

- ▶ engaging in sexual activities with a child who has not reached the legal age for sexual activities;
- ▶ engaging in sexual activities with a child, of whatever age, by
  - using coercion, force or threats; or
  - abusing a recognised position of trust, authority or influence over the child, including within the family; or



- abusing a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

### **Croatia**

Croatia's Penal Code contains relatively detailed provisions concerning the abuse of a position of trust.

*Sexual intercourse by abuse of position, Article 191 of the Penal Code*

(1) Whoever, by abusing his/her position, induces another person to submit to sexual intercourse or a sexual act of the same nature and where that person is dependent on him/her due to material, family, social, health or any other conditions or circumstances shall be punished by imprisonment for three (3) months to three (3) years.

(2) A teacher, educator, parent, adoptive parent, guardian, step-parent or other person who abuses his/her power or relationship to a minor entrusted to that person for the purposes of teaching, education, guarding or caring, to commit sexual intercourse or an equivalent sexual act with that minor, will be punished by a prison sentence lasting from six (6) months to six (6) years.

### **France**

The French penal code explicitly incriminates rape or other forms of sexual aggression committed against particularly vulnerable persons.

*ARTICLE 222-24*

Act No. 1998-468 of 17 June 1998 Article 13 Official Journal of 18 June 1998

Rape is punished by twenty years' imprisonment

1° where it causes mutilation or permanent disability;

- 2° where it is committed against a minor under the age of 15 years;
- 3° where it is committed against a person whose particular vulnerability, due to age, sickness, disability, psychological or physical deficiency or to a state of pregnancy, is apparent or known to the perpetrator;
- 4° where it is committed by a legitimate, natural or adoptive ascendant, or by any other person having authority over the victim;
- 5° where it is committed by a person misusing the authority conferred by his or her functions;
- 6° where it is committed by several persons acting as perpetrators or accomplices;
- 7° where it is committed with the use, or threatened use, of a weapon;
- 8° where the victim was brought into contact with the perpetrator through the use of a telecommunications network for the dissemination of messages aimed at an undetermined audience;
- 9° where it was committed by reason of the victim's sexual orientation.

*ARTICLE 222-29*

*Ordinance No. 2000-916 of 19 September 2000, Article 3, Official Journal of 22 September, in force 1 January 2002*

Sexual aggressions other than rape are punished by seven years' imprisonment and a fine of € 100 000 where they are committed against:

- 1° a minor under the age of 15 years;
- 2° a person whose particular vulnerability due to age, sickness, disability, to a psychic or physical deficiency or to a state of pregnancy, is apparent or known to the perpetrator.

**Switzerland:**

Switzerland is one of a number of countries where there are explicit provisions on sexual acts with dependent persons.

*Article 188 of the Criminal Code – Sexual acts with dependent persons*

1. Whoever, taking advantage of an educational relationship, a relationship of trust or an employment relationship, or a relationship of dependence of any other kind, commits a sexual act on a minor over the age of 16, or, taking advantage of a relationship of dependence, causes such a person to commit a sexual act, shall be punished with a custodial sentence of up to three years or a pecuniary penalty.

2. If the victim has contracted marriage or entered into a civil partnership with the perpetrator, the competent authority may refrain from prosecution, trial and punishment.

While the first type of abuse concerns children who have not reached the legal age for sexual relations, and such relations are thus, a fortiori, described as illegal, the second type concerns children who have reached that age but are still minors (under the age of 18), and thus the issue of the child's consent to having sexual relations may arise. It is clear that when coercion, force or threats are used, the child's consent is presumed to be lacking. In cases of abuse of children who are in a situation of particular vulnerability owing to physical/sensory impairments and intellectual/mental disabilities, any consent to sexual activity loses its validity because of their "situation of dependence". This term denotes situations of physical, psychological, emotional, family-related, social or economic dependence, including dependence on drugs or alcohol or being under their influence at the time the offences are committed. The third case concerns abuse when there is a relationship of trust with children, or a position of natural, social or religious authority which enables the perpetrator to control, punish or reward children with a view to having sexual relations with them. Such relations based on trust exist within natural and adoptive families, with persons who are responsible for or

provide children's education, persons who provide therapeutic or medical care, and persons who work on a voluntary basis with children.

The convention does not define the notion of "sexual activities" and does not prescribe a legal minimum age for having sexual relations. It leaves the definition to each of the parties, in view of the diversity of domestic legislation. It does not seek to criminalise sexual activities between consenting adolescents who are discovering their sexuality, even if one or both of them are under the legal age for sexual activities. Its aim is not to regulate consenting sexual relations between minors in the context of their sexual development.

#### *Offences concerning child prostitution*

Under the convention, child prostitution is understood as meaning the use of children for sexual activities in exchange for money or any other form of remuneration or consideration for the minor or for a third person. The following intentional conduct is criminalised:

- ▶ recruiting a child into prostitution or causing a child to participate in prostitution;
- ▶ coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
- ▶ having recourse to child prostitution.

The legal requirements of the offence are met even if the use of the child in prostitution is occasional and even if remuneration is merely promised. Criminal penalties are applicable both for those who recruit children and those who profit from them.

#### **Malta**

Malta incriminates the engagement of a person under age to practise prostitution under a specific article of its criminal code (whilst in some other countries this offence is covered by articles referring to the sexual abuse of minors).

*Article 204B of the Criminal Code:*

(1) Whosoever in order to gratify the lust of any other person engages a person under age to practise prostitution, or to participate in pornographic performances, shall, on conviction, be liable to imprisonment for a term from eighteen months to four years, with or without solitary confinement.

(2) The offence shall be punishable with imprisonment for a term from two to six years, with or without solitary confinement, in each of the following cases:

- (a) when the offender wilfully or recklessly endangered the life of the person under age;
- (b) when the offence involves violence or grievous bodily harm on such person;
- (c) when the offence is committed with the involvement of a criminal organisation

within the meaning of Article 83A(1).

**Serbia**

The Criminal Code of the Republic of Serbia criminalises specific offences concerning child prostitution.

*Article 183 Pimping and procuring*

(1) Whoever pimps a minor for sexual intercourse or a similar act or other sexual act, shall be punished with imprisonment for three months to five years.

(2) Whoever procures a minor for sexual intercourse or an act of equal magnitude or other sexual act, shall be punished with imprisonment up to three years.

*Article 184 Mediation in Prostitution:*

(1) Whoever induces another person into prostitution or participates in handing over a person to another for the purpose of prostitution, or who by means of media or otherwise promotes or advertises prostitution, shall be punished with a fine or imprisonment of up to three years.

(2) If the offence specified in paragraph 1 of this article is committed against a minor, the offender shall be punished with imprisonment from one to ten years.

*Offences concerning child pornography*

Inspired by the Council of Europe's Convention on Cybercrime, the convention seeks to strengthen protection for all children (and thus all underage persons) with regard to the use of computer systems or any other communication or information technology that may facilitate the sexual abuse and exploitation of children.

Inspired by the Optional Protocol to the United Nations Convention on the Rights of the Child, the convention defines the term "child pornography" as any visual depiction of a child engaged in real or simulated sexually explicit conduct, or any representation of a child's sexual organs for primarily sexual purposes. Therefore, material having an artistic, medical, scientific or similar merit, i.e. where there is absence of sexual purposes, does not fall within the ambit of this definition.

**Denmark**

The Danish Penal Code provides elaborate rules regarding the dissemination as well as the possession of "obscene photographs or films".

*§ 235 of the Danish Penal Code*

(1) Any person, who disseminates obscene photographs or films, other obscene visual reproductions or similar of persons under the

age of 18, shall be liable to a fine or to imprisonment for any term not exceeding two years or, in particularly aggravating circumstances, to imprisonment for any term not exceeding six years.

Considered as particularly aggravating circumstances are especially instances where the life of the child is endangered, where gross violence is used, where the child is caused serious harm, or instances of dissemination of a more systematic or organised nature.

(2) Any person, who possesses, or for a payment becomes acquainted with, obscene photographs or films, other obscene visual reproductions or similar of persons under the age of 18, shall be liable to a fine or to imprisonment for any term not exceeding one year.

(3) The provision in Subsection (2) does not include possession of obscene pictures of a person who has reached the age of 15, if the person has consented to the possession.

The convention criminalises the following intentional conduct:

- ▶ producing, offering, making available, distributing, transmitting or possessing child pornography;
- ▶ procuring child pornography for oneself or for another person;
- ▶ knowingly obtaining access, through information and communication technologies, to child pornography.

Such behaviour includes, for example, putting images or films on line, distributing, possessing, downloading or purchasing them, in whatever form (magazines, videocassettes, DVDs, mobile telephones, USB flash drives, CDs). A novel feature of the convention is the obligation for states to prosecute those who intentionally look at images of children on child pornography websites without downloading or saving them. The intentional nature of the offence may be inferred from the fact that viewing of material is recurrent or payment was made for this purpose.

## **Monaco**

Monegasque law contains detailed and comprehensive provisions on child pornography and images of sexual abuse of a child.

*Article 17 of Law No. 1.344 of 26 December 2007 on increasing the severity of the punishment of crimes and offences against children provides for the inclusion in the Criminal Code, Book III, Title II, Chapter I, Section VII, of Article 294-3 worded as follows*

The act of capturing, recording, producing, procuring or transmitting an image or depiction of a child, with a view to its dissemination, where that image or representation is of a pornographic nature, shall be punished by a prison sentence of three to five years and the fine provided for under Article 26.3. The attempt shall be punished by the same penalties.

The act of knowingly providing or disseminating such an image or depiction, by whatever means, importing or exporting it, or causing it to be imported or exported, shall be punished by the same penalties.

The act of knowingly accessing such an image or depiction shall be punished by the same penalties.

The penalties shall be increased to five to ten years' imprisonment and the fine provided for under Article 26.4 where an electronic communications network was used for the dissemination of an image or depiction of a minor to an undetermined audience.

The provisions of this article shall also apply to pornographic images of a person whose physical appearance is that of a minor, unless it is proved that this person was 18 years of age on the day on which his or her image was captured or recorded.

For the purposes of this article, the following shall be regarded as pornographic images:

1°) an image or depiction of a minor being subjected to or engaging in explicit sexual conduct;



2°) an image or depiction of a person who appears to be a minor being subjected to or engaging in explicit sexual conduct;

3°) a realistic image depicting a minor engaging in explicit sexual behaviour.

The expression "realistic image" denotes, in particular, altered images of a physical person wholly or partially created by digital methods.

The provisions of this article shall not apply if the images or depictions were collected for the purpose of establishing, investigating or prosecuting criminal offences.

### **Russian Federation**

The Criminal Code of the Russian Federation makes specific reference to public showing of child pornography.

*Article 242.1 of the Russian Criminal Code: Making and Circulating Materials or Articles with Pornographic Images of Minors*

1. Making, keeping or moving across the state border of the Russian Federation for the purpose of dissemination, public showing or advertising, or dissemination of materials or articles with pornographic images of known minors, as well as drawing known minors as performers to entertainment events of a pornographic nature by a person who has reached the age of 18 years,

shall be punishable by deprivation of liberty for a term of up to six years.

2. The same deeds committed:

a) by a parent or other person who is obliged by the law to bring up a minor, as well as by a pedagogue or other employee working for an educational, pedagogical, medical or other institution who is obliged to exercise supervision over a minor;

b) in respect of a person who is known to be under 14 years of age;  
c) by a group of persons in a preliminary conspiracy or by an organised group,  
shall be punishable by deprivation of liberty for a term of three to eight years.

The convention provides for the possibility of a derogation in two instances:

- ▶ the production or possession of simulated or realistic images of a child who does not exist in reality;
- ▶ the production or possession of images of children who have reached the legal age for sexual activities, where the images are produced and possessed by them with their consent and solely for their own private use.

Each party may further reserve the right not to apply, in whole or in part, the paragraph criminalising the access, through information and communication technologies, to child pornography.

#### **Poland**

In Poland, regulations concerning sexual abuse are part of the country's Penal Code (Dziennik Ustaw) and offer an elaborate example of involving children in pornographic performances through data communications systems or networks.

##### *Article 200a*

§1. Whoever, in order to commit a crime specified in [...] Article 200 (see below) and to produce or record pornographic material through a data communications system or communications network, gets in touch with a minor under 15 years of age, with the aim of meeting him/her through misleading him/her, taking advantage of the minor's inability to understand the situation, or using threats shall,

be subject to the penalty of deprivation of liberty for up to three years.

§2. Whoever, through a data communications system or communications network, proposes to a minor under 15 years of age to have sexual intercourse, submit to or perform another sexual act or take part in the production or recording of pornographic material, and who aims at the fulfilment of his/her proposition shall be subject to a fine or the penalty of deprivation of liberty for up to two years.

*Article 200*

§1. Whoever has sexual intercourse with a minor under 15 years of age or commits another sexual act with such person or forces him/her to succumb to or to commit such acts shall be subject to the penalty of the deprivation of liberty for a term of between two and twelve years.

§2. Whoever, in order to obtain sexual satisfaction, demonstrates a sex act to a minor under 15 years of age, shall be subject to the same penalty.

**Portugal**

To cover all Internet-related criminal acts against children, Portuguese legislation simply stipulates an extension of its article on sexual abuse of children (in general).

*Article 172 – Sexual abuse of children*

1. Whoever performs a sexual act with or on a minor under the age of 14 or causes him or her to perform such an act with him or her or another person shall be punished by a prison sentence of one to eight years.

2. Whoever performs sexual intercourse or anal sex with a minor under the age of 14 shall be punished with a prison sentence of three to ten years.

3. Whoever:

a) performs an act of exhibitionism in front of a minor under the age of 14; or

b) influences a minor under the age of 14 by means of obscene conversation or by means of a pornographic document, performance or object; or

c) uses a minor under the age of 14 in a pornographic photo, film or recording; or

d) displays or sells in any way or in any capacity the materials referred to in the preceding sub-paragraph,

shall be punished with a prison sentence of up to three years.

e) whoever possesses the materials referred to in sub-paragraph c) with a view to displaying or selling them shall be punished with a prison sentence of up to three years.

4. Whoever performs the acts described in sub-paragraphs a), b), c) and d) of the preceding paragraph with a view to profit shall be punished by a prison sentence.

*Part VI of the Portuguese Criminal Code on the Internet*

Crimes committed against young children via the Internet shall also be punished by the application of Article 172 of the Criminal Code.

### **Romania**

Romania is also amongst the countries where offences related to child pornography processed through computer systems are extensively covered and where even the possession of such child pornography material is already incriminated.

*Article 238 of the Romanian Criminal Code*

The act of producing in order to disseminate, offer or make available, obtain for oneself or for another, child pornography material

through computer systems, or the illegal possession of child pornography material in a computer system data storage medium shall be punished by strict imprisonment from three to twelve years and the prohibition of certain rights.

#### *Offences concerning the participation of a child in pornographic performances*

The convention criminalises certain conducts relating to the organisation of live pornographic performances, involving the participation of children engaged in sexually explicit conduct, and in particular:

- ▶ recruiting a child to participate in pornographic performances or causing a child to participate in such performances;
- ▶ coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes;
- ▶ knowingly attending pornographic performances involving the participation of children.

#### *Corruption of children*

The corruption of children is defined as intentionally causing a child below the legal age for sexual activities to witness sexual acts with other children or adults. It is not necessary for the child to participate in any way in the sexual activities. Just performing such acts in the presence of children is enough for a person to be deemed to be corrupting children.

#### **Andorra**

The legislation of the Principality of Andorra lays down penalties for sexual acts performed in front of minors or vulnerable persons.

*Article 156 of the Criminal Code of the Principality of Andorra*

*Exhibitionism*

Whoever performs, or causes to be performed, sexual acts in front of minors or persons lacking capacity, taking advantage of their disability, shall be punished by a prison sentence of three months to three years and a fine of up to €6 000.

The attempt is also punishable.

**Austria**

The Austrian Penal Code contains clear provisions regarding the corruption of children.

*§ 208 – Endangering the moral development of persons under 16 years of age*

1. Anyone who performs an act likely to endanger the moral or psychological development or health of persons under 16 years of age in front of a minor or a person under 16 years of age with whose upbringing, education or supervision he is charged, in order to sexually arouse or satisfy him or herself or a third party, will be sentenced to up to one year's imprisonment, unless, according to the circumstances of the case, an endangering of the development of the minor or person under 16 years of age can be ruled out.

2. If the perpetrator in the first case in paragraph 1 is not more than four years older than the minor, then the perpetrator shall not be punished, unless the minor is under 12 years of age.

Corruption of children can harm their psychological health and distort their view of sex and personal relationships. The term "causing ... to witness" could include any way in which the child is made to witness the acts, such as by force, coercion, inducement, or promises.

### **United Kingdom**

The UK Sexual Offences Act 2003 provides a good example of legislation covering the corruption of children for sexual purposes.

#### *11 Engaging in sexual activity in the presence of a child*

(1) A person aged 18 or over (A) commits an offence if:

- (a) he intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, he engages in it:
  - (i) when another person (B) is present or is in a place from which A can be observed, and
  - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it, and
- (d) either:
  - (i) B is under 16 and A does not reasonably believe that B is 16 or over, or
  - (ii) B is under 13.

(2) A person guilty of an offence under this section is liable:

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

#### *12 Causing a child to watch a sexual act*

(1) A person aged 18 or over (A) commits an offence if:

- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging

in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual, and

(c) either:

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this section is liable:

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

#### *Solicitation of children for sexual purposes*

The reference to the solicitation of children through information and communication technologies in order to propose meeting them for the purpose of gratifying a sexual urge (“grooming”) is a major innovation of the Lanzarote Convention, because at present no other international instrument mentions this phenomenon. It is nevertheless becoming increasingly common on the Internet, through which adults establish a relationship of trust with children in order to then meet them and sexually abuse them or produce child pornography.

#### **Sweden**

On 1 July 2009 the new Swedish legislation, which criminalises “grooming” children for sexual purposes, entered into force. It is intended to further strengthen the penal law protection of children against being exposed to sexual abuse. The crime concerns contacts with children which are aimed at making sexual abuse possible in



physical meetings with the child. An example of the measure promoting the realisation of the meeting can be a reservation for a hotel room or to putting pressure on the child to stand by the agreement to show up at the meeting. The provision applies to contacts made on the Internet or elsewhere.

*Penal Code Chapter 6 Section 10 a (informative translation):*

A person who, for the purpose of committing certain acts (rape of a child, grave rape of a child, sexual exploitation of a child, sexual abuse of a child, grave sexual abuse of a child, exploitation of a child for sexual posing, grave exploitation of a child for sexual posing or sexual molestation) against a child under 15 years of age, comes to an agreement with the child to meet and thereafter takes any measure to ensure that such a meeting comes about, shall be sentenced for contact with a child for sexual purposes and shall pay a fine or be sentenced to imprisonment for at most one year.

It is important to note that exchanging sexual messages with a child is insufficient in itself to incur criminal responsibility. In order to engage the penal responsibility of the author of such specific behaviour under the notion of grooming (solicitation of children for sexual purposes), contacts must be followed up by a proposal to meet with the child, with a view to abusing him or her or producing pornography, and the child must be under the legal age for sexual relations. The offence is only fully recognised if the proposal to meet “has been followed by material acts leading to such a meeting”, even if no real abuse has taken place. This implies concrete acts, such as the perpetrator going to the meeting place, for example. All aspects of the offence must furthermore be intentional. All this does not mean of course that the Lanzarote Convention considers the “mere” fact of exchanging sexual messages with children as being an acceptable behaviour. This type of behaviour is covered by other provisions of the convention (such as those on sexual abuse, on child pornography or on the corruption of children), and therefore those

who commit it are pursued, if necessary, and punished by penal or other sanctions according to the seriousness of the facts.

### **Estonia**

Like many other countries, Estonia incriminates the sexual enticement or solicitation of children in a general manner without explicitly referring to the media used to this purpose (the Internet for example). The act of “grooming” (solicitation of children through the Internet for sexual purposes) is therefore covered by these general provisions.

*Subsection 179 (1) of the Estonian Penal Code* stipulates that “a person who hands over, displays or makes otherwise knowingly available pornographic works or reproductions thereof to a person under 14 years of age, engages in sexual intercourse in the presence of such person or knowingly sexually entices such person in any other manner”, shall be punished by a pecuniary punishment or up to three years’ imprisonment.

### *Aiding or abetting and attempts to commit an offence*

According to the convention, criminal liability also applies in instances of:

- ▶ intentional aiding and abetting: when the person who commits one of the offences established in accordance with the convention is aided by another person who also intends to commit the offence;
- ▶ intentional attempts to commit one of the offences established in accordance with the convention.

In the second scenario it is possible to enter a reservation and not criminalise the attempt to commit the following offences: offering or making available child pornography, procuring child pornography for oneself or for another person, knowingly obtaining access, through information and communication technologies, to child pornography, knowingly attending pornographic performances involving the participation of children, and corruption and solicitation of children for sexual purposes.

This derogation has been provided for in the convention in order to take account of the diversity of judicial systems, some of which limit the offences for which attempted commission is punished.

### **Jurisdictional requirements for initiating proceedings and punishing offences**

The convention lists a number of requirements whereby parties must establish jurisdiction over and punish criminal offences of a sexual nature:

- ▶ the territoriality principle: each party is required to punish offences committed on its territory, as well as on ships flying its flag or aircraft registered under its laws;
- ▶ the nationality principle: each party is required to punish offences committed by its nationals abroad. This type of jurisdiction is particularly important in the context of the fight against “sex tourism”;
- ▶ the principle of attachment of the perpetrator or victim to the state where the person concerned has their habitual residence: each party must establish jurisdiction in order to determine the acts committed or suffered on their territory. However, this rule is optional and may be subject to reservations;
- ▶ waiver of the rule of dual criminality: in the case of offences committed abroad, the convention provides for this rule to be waived even if the acts are not offences in the place where they are performed. Even though this represents an important element of added value in the convention, the waiver is strictly limited to “sex tourism” offences and cases of persons working abroad for limited periods of time (humanitarian or military postings or other temporary missions);
- ▶ waiver of the requirement for a complaint from the victim or a denunciation from the authorities of the state in which the following

serious offences took place: sexual abuse, child prostitution, production of child pornography and participation of a child in pornographic performances.

In certain cases, it may be that several parties have jurisdiction in respect of some or all of the persons who have participated in the commission of a given offence. In order to avoid duplication of procedures, the parties concerned should consult each other “where appropriate”, in order to determine the proper venue for prosecution.

### **Corporate liability**

The convention obliges the parties to introduce into their domestic law corporate liability for sexual offences against children committed on their behalf by anyone in a leading position in the entity or where management fails to supervise or check on an employee, thus facilitating the commission of the offence. The person in a leading position must have acted on the basis of one of his or her powers (power to represent the entity, take decisions or perform supervision). In order to take account of states’ diverse legal traditions in this area, it is stipulated that this liability does not have to be criminal, but may be civil or administrative. Moreover, corporate liability does not exclude individual liability. There may be liability at several levels simultaneously. A key text regarding this matter is once again the recent Recommendation 1934 (2010) of the Parliamentary Assembly of the Council of Europe on child abuse in institutions: ensuring full protection of the victims, which contains several proposals for legislative, administrative and political action which might be taken by the member states.

#### **Norway**

The Norwegian legislation contains very strong and clear provisions regarding sexual offences against persons under the offender’s authority or supervision, and sexual acts with children under 14 years of age.

*Norwegian Penal Code – Section 19 relating to sexual offences, paragraphs 194-201, 205 and 206*

194. Any person who commits a sexual act with any person who is an inmate of or placed in any home or institution under the prison and probation service or the police, or in an institution under the child welfare service, and who is there subject to his or her authority or supervision, shall be liable to imprisonment for a term not exceeding five years. The same penalty shall apply to any person who is an accessory to another person's committing a sexual act with any person with whom he himself has such a relationship.

195. Any person who commits a sexual act with a child who is under 14 years of age shall be liable to imprisonment for a term not exceeding ten years. If the said act was sexual intercourse the penalty shall be imprisonment for not less than two years. Imprisonment for a term not exceeding twenty-one years may be imposed if:

- a) the act is committed by two or more persons acting together;
- b) the act is committed in a particularly painful or offensive manner;
- c) the act is committed against a child under 10 years of age and there have been repeated assaults;
- d) the offender has previously been convicted and sentenced pursuant to this provision or section 192; or
- e) as a result of the act the aggrieved person dies or sustains serious injury to body or health. Sexually transmitted diseases and generally infectious diseases, cf. section 1-3, subsection 3, of the act relating to the transmission of infectious diseases, cf. subsection 1, shall always be deemed to be serious injury to body or health pursuant to this section. Criminal liability shall not be excluded by any mistake made as regards age. A penalty pursuant to this provision may be remitted or imposed below the minimum prescribed in the second sentence of the first subsection if those who have committed the sexual act are more or less equal as regards age and development.

196. Any person who commits a sexual act with a child who is under 16 years of age shall be liable to imprisonment for a term not exceeding five years. Imprisonment for a term not exceeding fifteen years may be imposed if:

- a) the act is committed by two or more persons acting together;
- b) the act is committed in a particularly painful or offensive manner;
- c) the offender has previously been convicted and sentenced pursuant to this provision or section 192 or 195; or
- d) as a result of the act the aggrieved person dies or sustains serious injury to body or health. Sexually transmitted diseases and generally infectious diseases, cf. section 1-3, subsection 3, of the Act relating to the transmission of infectious diseases, cf. subsection 1, shall always be deemed to be serious injury to body or health pursuant to this section. Criminal liability shall not be excluded by any mistake made as regards age, unless there is no element of negligence in this respect. A penalty pursuant to this provision may be remitted if those who have committed the sexual act are more or less equal as regards age and development.

*Additional explanations:* Through amendments made by the new Penal Code of 2005, child protection against sexual abuse was clearly strengthened:

- According to section 299, all sexual activity with a child below 14 years of age is considered rape;
- The minimum sentence for sexual intercourse is raised from two to three years, cf. section 300 (which later was adopted also in the current General Civil Penal Code, cf. above, awaiting the entry into force of the new Penal Code);
- The maximum term of imprisonment is extended from ten to fifteen years;

- If the child victim is below 16 years of age, the maximum term of imprisonment is six years, compared to the previous term of five years;
- Furthermore, sentencing guidelines are given to ensure stricter punishment in cases of sexual abuse against children. The sentences shall, within the maximum term of imprisonment, be approximately 1/3 stricter than the current sentences.

### **Netherlands**

The Dutch Penal Code also presents detailed provisions on indecent acts committed with a person under the authority or supervision of certain categories of public servants or employees.

#### *Article 249 of the Penal Code*

1. A person who commits indecencies with his minor child, stepchild or foster-child, his ward, or with a minor, a minor servant or subordinate entrusted to his care, instruction or supervision, is liable to a term of imprisonment of not more than six years or a fine of the fourth category.

1. The punishment in section 1 is also applicable to:

2. a public servant who commits indecencies with a person submitted to his authority or entrusted or commended to his supervision;

3. a director, physician, teacher, public servant, supervisor or employee, in a prison, state workhouse, state institution for the care and protection of children, an orphanage, hospital, or a charitable institution, who commits indecencies with a person admitted to such an institution;

4. a person employed in the health care or social care sector, who commits indecencies with a person who, as a patient of a client, has entrusted himself to his care or assistance.

## **Sanctions and aggravating circumstances**

The convention obliges the parties to introduce “effective, proportionate and dissuasive sanctions”. In the case of individuals committing an offence, these sanctions may entail deprivation of liberty and even extradition. For legal persons, the sanctions may be monetary. Those responsible may be subject to the seizure of documents, goods and other instrumentalities used to commit the offence, as well as sanctions such as the closure of any establishment used to carry out the offence, a prohibition on exercising activities involving contact with children, or judicial supervision.

The convention provides for tougher sentencing in certain circumstances, for example where the offence seriously damaged the physical or mental health of the victim, where there were acts of torture or serious violence, where the victim was put in danger, where the victim and perpetrator are from the same family or close circle, where the offence was committed by several people acting together or within the framework of a criminal organisation, and where the perpetrator has a previous conviction for offences of the same nature.

## **Previous convictions**

Sexual exploitation or sexual abuse against children is sometimes organised at a transnational level by criminal organisations or individuals who have been tried and convicted in several countries. At domestic level, many legal systems provide for a different, harsher penalty when the person has previous convictions. The convention confirms this possibility but does not place any obligation on courts to ascertain whether persons being prosecuted have received final sentences from another party’s courts. It should nevertheless be noted that, under Article 13 of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), a party’s judicial authorities may request from another party extracts from and information relating to judicial records, if needed in a criminal matter.



## **Procedures**

### *Investigation, prosecution and procedural law*

Existing international legal instruments only touch on the need for a special judicial procedure adapted to child victims. Recent analysis of national legislation reveals a number of disparities in this field. The convention's contribution is therefore to ensure that the parties take account of the best interests, rights and vulnerability of children during investigations and judicial proceedings concerning acts of sexual exploitation and sexual abuse against them, in order to avoid exacerbating the trauma which they have already suffered. Measures taken must, of course, not be prejudicial to the rights of the perpetrator (right to a defence and right to a fair trial), as set out in Article 6 of the European Convention on Human Rights.

The relevant procedures should be handled as a priority and without unjustified delays, particularly where measures involving the removal of the alleged perpetrator or the victim from his or her family have been taken. Investigations should as far as possible be discreet if the nature and seriousness of the offences under investigation so permit.

### *General measures of protection*

The convention establishes procedural obligations for the parties aimed at ensuring the protection of children at all stages of the proceedings, from the investigation to the verdict, including:

- ▶ to inform children, their families or their legal representatives of the progress of the proceedings, and the services at their disposal, and about the possible release of the person prosecuted or convicted;
- ▶ to ensure that children, as well as their families and witnesses on their behalf, are safe from intimidation, retaliation, repeat victimisation or any direct confrontation with the alleged perpetrator of the offence, unless this is necessary and useful for the proceedings;

- ▶ to afford them an opportunity to be heard, supply evidence and have their privacy, particularly their identity and image, protected;
- ▶ to initiate criminal proceedings without the victim having to file a complaint and to continue proceedings if the victim withdraws his or her complaint for whatever reason.

Child victims of sexual exploitation and sexual abuse are also guaranteed a number of other rights:

- ▶ the right to information on the judicial and administrative proceedings (in some states, compensation procedures are an administrative matter);
- ▶ the right of victims to free legal aid when warranted. Access to free legal aid is not automatic, although the parties must bear in mind the case law of the European Court of Human Rights, according to which effective access to a court may necessitate the free assistance of a lawyer. It is necessary to ascertain whether it would be effective for the person in question to appear in court without the assistance of counsel, that is, whether he or she could argue his or her case adequately and satisfactorily (*Airey v. Ireland* judgment, 9 October 1979). It is thus up to the court to assess whether, in the interests of justice, a destitute party unable to afford a lawyer's fees must be provided with legal assistance;
- ▶ the right to be represented in judicial proceedings by a special representative when the holders of parental responsibility or those responsible for defending the child are in any way involved in the proceedings or lack impartiality when it comes to defending the interests of the child.

#### *Statute of limitations*

It is often the case that much time is needed for victims of sexual exploitation or sexual abuse to recount their experiences, with frightened

children preferring to remain silent. For this reason, it is necessary to allow victims sufficient time to reach a certain degree of maturity and independence before having to report the acts. It is precisely this possibility which the convention offers when it asks parties to allow victims a sufficient period of time after reaching the age of majority before starting proceedings. This possibility is restricted to particularly serious offences (sexual abuse, recruitment and forced use in the framework of child prostitution and participation of children in pornographic performances). By way of example, English law has no limitation period, French law has a limitation of twenty years from the age of majority, and in Italian and Portuguese law there are no rules with regard to the age of the victim.

#### *Investigations and interviews with the child*

The convention requires investigations to be conducted by specialists in the fight against sexual exploitation and sexual abuse of children. Children's statements must also be taken by people who are specially trained in child psychology so that they can adapt interviews to children's needs, establish their trust and encourage them to speak freely. Those involved in judicial proceedings (in particular judges, prosecutors and lawyers) should, if they so wish, and with due respect for their independence, be able to receive training in children's rights and in the area of sexual exploitation and sexual abuse of children.

Interviews must take place rapidly after the acts have been reported, in a suitable and safe environment, if possible always by the same persons and in the presence of a known third party who accompanies the child, unless a reasoned decision has been made to the contrary. Interviews may be videotaped, according to the rules of domestic law, for use as evidence during the criminal proceedings or for use by medical and therapeutic services. With a view to protecting children and encouraging them to speak, the judge may order the hearing to take place in camera and permit the child to be heard without coming into direct contact with the alleged perpetrator (videoconferencing).

In addition to the provisions of the convention, it should be noted that, in the context of the Council of Europe's intergovernmental work, Guidelines on Child-friendly Justice, which are intended to improve children's access to and treatment by the justice system, were adopted by the Committee of Ministers on 17 November 2010.

### **Recording and storing of national data on convicted sexual offenders**

For the purpose of preventing and prosecuting sexual exploitation and abuse of children, the convention provides that data relating to the identity and genetic profile of convicted persons may be recorded, stored and if necessary sent to the appropriate authorities in another state, in accordance with relevant provisions on the protection of personal data<sup>11</sup> and in accordance with the domestic laws of each state. States have significant flexibility in deciding how to implement this obligation. A useful reference text for national parliaments on this subject might be Parliamentary Assembly Resolution 1733 (2010) on reinforcing measures against sex offenders.

### **International co-operation**

The parties to the convention are invited to co-operate in criminal matters and in preventing sexual exploitation and abuse of children and protecting and assisting the victims.

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11. According to Article 5 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), "personal data undergoing automatic processing shall be: a) obtained and processed fairly and lawfully; b) stored for specified and legitimate purposes and not used in a way incompatible with those purposes; c) adequate, relevant and not excessive in relation to the purposes for which they are stored; d) accurate and, where necessary, kept up to date; e) preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored". There should furthermore be specific security measures for every file, taking into account its degree of vulnerability, the need to restrict access to the information within the organisation and requirements concerning long-term storage.

The Council of Europe already has a wide set of standards in relation to judicial co-operation in criminal matters. For example, the European Convention on Extradition (ETS No. 24), the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and the Additional Protocols thereto (ETS Nos. 86, 98, 99, 182), and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, (ETS No. 141) constitute cross-cutting instruments that can be applied to many different offences.

The convention itself establishes a number of general principles that should govern international co-operation:

- ▶ as far as possible, the parties should remove obstacles to the rapid circulation of information and evidence and co-operate in order to prevent and combat sexual exploitation and sexual abuse of children, protect and provide assistance to victims, and for the purposes of proceedings concerning these offences;
- ▶ the parties should enable victims to file a complaint with the competent authorities of their state of residence in cases where the offence was committed on the territory of another party;
- ▶ for the purposes of their judicial co-operation, the parties may have recourse to the Lanzarote Convention, which constitutes a sufficient legal basis;
- ▶ the parties must endeavour to include preventing and combating the sexual exploitation and sexual abuse of children in development assistance programmes benefiting third states. Many Council of Europe member states have such programmes, which cover such varied areas as the restoration or consolidation of the rule of law, the development of judicial institutions, the fight against crime, and technical assistance with the implementation of international conventions.

## **Monitoring mechanism – Committee of the Parties**

### *Composition*

The convention provides for a monitoring mechanism to ensure its effective implementation by the parties. The mechanism is based on a body, the Committee of the Parties, composed of representatives of the parties to the convention. Initially therefore, it will be a fairly general monitoring mechanism and will not necessarily involve specific national authorities responsible for children's rights. The committee will be convened for the first time by the Secretary General of the Council of Europe within a period of one year following the entry into force of the convention by virtue of the 10th ratification (as of December 2010, 10 ratifications were reached). This condition has been laid down so that the committee can comprise a sufficient number of states for it to be effective and credible. It shall subsequently meet whenever at least one third of the parties or the Secretary General so requests.

Other Council of Europe bodies may participate in the monitoring mechanism, namely the Parliamentary Assembly, the Commissioner for Human Rights and the European Committee on Crime Problems (CDPC), and a number of committees which, by virtue of their responsibilities, would definitely make a worthwhile contribution by taking part in monitoring work.<sup>12</sup> Civil society organisations working to prevent and fight sexual exploitation and sexual abuse of children will also be invited to contribute to its work.

### *Functions*

The Committee of the Parties has three main functions, which are:

- ▶ to facilitate the effective use and implementation of the convention;

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12. These committees are the European Committee on Legal Co-operation (CDCJ), the European Committee of Social Rights (ECSR), the Advisory Council on Youth (CCJ), the European Committee for Social Cohesion (CDCS) and, in particular, the Steering Committee for Human Rights (CDDH).

- ▶ to express an opinion on any question concerning the application of the convention;
- ▶ to act as a clearing house for the collection, analysis and sharing of information, experiences and good practice between states to improve their policies for preventing and combating sexual exploitation and abuse of children.

### **Relationship with other international instruments**

- ▶ Relationship with the United Nations Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography: this convention shall not affect the rights and obligations arising from the provisions of the United Nations Convention on the Rights of the Child and its Optional Protocol. It is intended to enhance the protection afforded by them and further develop the standards contained therein.
- ▶ Relationship with other international instruments: this convention shall not affect the rights and obligations arising from the provisions of other multilateral or bilateral treaties, or instruments on matters governed by this convention. The parties may conclude bilateral or multilateral agreements and any other international instruments on the matters dealt with in the convention, provided they do not derogate from the convention.
- ▶ As far as the European Union is specifically concerned, it will use a “disconnection clause”, in other words the member states of the European Union will, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing matters related to the sexual exploitation and sexual abuse of children, without prejudice to the object and purpose of the Council of Europe convention.

## **Amendments to the convention**

The parties may propose amendments to the provisions of the convention. Proposed amendments must be communicated to all Council of Europe member states, all signatories, all parties, the European Community and any state invited to sign or accede to the convention. The European Committee on Crime Problems (CDPC) will draft an opinion on the proposed amendment, which will then be submitted to the Committee of Ministers. After considering the proposal and opinion, the Committee of Ministers must consult all parties and obtain unanimous acceptance before deciding whether to adopt the amendment.

## **Final clauses**

The convention is open for signature by the member states of the Council of Europe, the non-member states (Holy See, Japan, Mexico, the United States of America and Canada) which participated in the drafting process, and the European Community.

The Committee of Ministers may, after consulting the parties, invite any non-member state of the Council of Europe to accede to the convention. Its decision must be taken by a two-thirds majority of its members and by a unanimous vote of the parties sitting on the Committee of Ministers. Accession has been possible since the entry into force of the convention, on 1 July 2010, following its fifth ratification.

When appropriate, the parties to the convention may specify the territory or territories to which it will apply. However, it would be incompatible with the purpose and objective of the convention for states to exclude parts of their territory from the application of its provisions without valid reasons.

The parties may issue reservations in respect of the application of certain provisions of the convention solely when reservations are expressly authorised. The purpose of reservations is to enable as many states as possible to ratify the convention and, in so doing, to retain some of their fundamental legal principles.



## **5. Postface by the Deputy Secretary General of the Council of Europe**

Sexual violence is a complex, sensitive and alarmingly widespread problem. The estimates are shocking: about one in five children falls victim to sexual violence. As shocking as this figure is the fact that we know exactly how to combat sexual violence, but we are not doing it. This handbook describes in detail the measures that need to be taken to prevent sexual violence, to protect children and to end impunity.

With the launching of its "One in Five" Campaign to stop sexual violence against children in November 2010, the Council of Europe wishes to promote the signature, ratification and implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). It also aims to raise awareness of the full extent of the problem and to equip children, their families, carers and the society as a whole with the knowledge and the tools they need to prevent and report sexual violence against children.

The "One in Five" Campaign goes beyond awareness raising. It is an empowering campaign that wants to mobilise governments, parliaments, local authorities, professional networks, civil society, the business community, the media, parents and children. We shall do so sharing information and expertise, building networks, facilitating team work, developing tools and materials, creating opportunities for joint action, and monitoring progress.

The Parliamentary Assembly has played and is playing a crucial role in the fight against sexual violence. Its decision to support the "One in Five"

Campaign has been immediately followed by very concrete and extremely effective measures. This handbook is a perfect example.

I am very much encouraged by the positive experience of the Parliamentary Assembly's contribution to the rapid ratification of the Convention on Action against Trafficking in Human Beings. I am convinced that the Assembly's support for the Lanzarote Convention will start bearing its fruits very soon.

I wish to encourage all parliaments and parliamentarians in Europe to join the campaign. This is a cause that concerns you, deserves your urgent attention, needs your sincere commitment and can bring you huge satisfaction: the satisfaction of having contributed to the protection of millions of children in Europe.

I count on your support.

Maud de Boer-Buquicchio  
*Deputy Secretary General of the Council of Europe*

## **Appendix I**

### **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**

**(CETS No.201)**

Lanzarote, 25 October 2007



## **Preamble**

The member States of the Council of Europe and the other signatories hereto;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that every child has the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the State;

Observing that the sexual exploitation of children, in particular child pornography and prostitution, and all forms of sexual abuse of children, including acts which are committed abroad, are destructive to children's health and psycho-social development;

Observing that the sexual exploitation and sexual abuse of children have grown to worrying proportions at both national and international level, in particular as regards the increased use by both children and perpetrators of information and communication technologies (ICTs), and that preventing and combating such sexual exploitation and sexual abuse of children require international co-operation;

Considering that the well-being and best interests of children are fundamental values shared by all member States and must be promoted without any discrimination;

Recalling the Action Plan adopted at the 3rd Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), calling for the elaboration of measures to stop sexual exploitation of children;

Recalling in particular the Committee of Ministers Recommendation No. R (91) 11 concerning sexual exploitation, pornography and

prostitution of, and trafficking in, children and young adults, Recommendation Rec(2001)16 on the protection of children against sexual exploitation, and the Convention on Cybercrime (ETS No. 185), especially Article 9 thereof, as well as the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5), the revised European Social Charter (1996, ETS No. 163), and the European Convention on the Exercise of Children's Rights (1996, ETS No. 160);

Also bearing in mind the United Nations Convention on the Rights of the Child, especially Article 34 thereof, the Optional Protocol on the sale of children, child prostitution and child pornography, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, as well as the International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

Bearing in mind the Council of the European Union Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA), the Council of the European Union Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA), and the Council of the European Union Framework Decision on combating trafficking in human beings (2002/629/JHA);

Taking due account of other relevant international instruments and programmes in this field, in particular the Stockholm Declaration and Agenda for Action, adopted at the 1st World Congress against Commercial Sexual Exploitation of Children (27-31 August 1996), the Yokohama Global Commitment adopted at the 2nd World Congress against Commercial Sexual Exploitation of Children (17-20 December 2001), the Budapest Commitment and Plan of Action, adopted at the preparatory Conference for the 2nd World Congress against Commercial Sexual Exploitation of Children (20-21 November 2001), the United Nations General Assembly Resolution S-27/2 "A world fit for children"

and the three-year programme “Building a Europe for and with children”, adopted following the 3rd Summit and launched by the Monaco Conference (4-5 April 2006);

Determined to contribute effectively to the common goal of protecting children against sexual exploitation and sexual abuse, whoever the perpetrator may be, and of providing assistance to victims;

Taking into account the need to prepare a comprehensive international instrument focusing on the preventive, protective and criminal law aspects of the fight against all forms of sexual exploitation and sexual abuse of children and setting up a specific monitoring mechanism,

Have agreed as follows:

## **Chapter I – Purposes, non-discrimination principle and definitions**

### *Article 1 – Purposes*

1. The purposes of this Convention are to:
  - a. prevent and combat sexual exploitation and sexual abuse of children;
  - b. protect the rights of child victims of sexual exploitation and sexual abuse;
  - c. promote national and international co-operation against sexual exploitation and sexual abuse of children.
2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

### *Article 2 – Non-discrimination principle*

The implementation of the provisions of this Convention by the Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social

origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.

#### *Article 3 – Definitions*

For the purposes of this Convention:

- a. “child” shall mean any person under the age of 18 years;
- b. “sexual exploitation and sexual abuse of children” shall include the behaviour as referred to in Articles 18 to 23 of this Convention;
- c. “victim” shall mean any child subject to sexual exploitation or sexual abuse.

## **Chapter II – Preventive measures**

#### *Article 4 – Principles*

Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.

#### *Article 5 – Recruitment, training and awareness raising of persons working in contact with children*

1. Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.
2. Each Party shall take the necessary legislative or other measures to ensure that the persons referred to in paragraph 1 have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility mentioned in Article 12, paragraph 1.
3. Each Party shall take the necessary legislative or other measures, in conformity with its internal law, to ensure that the conditions to



accede to those professions whose exercise implies regular contacts with children ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children.

*Article 6 – Education for children*

Each Party shall take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new information and communication technologies.

*Article 7 – Preventive intervention programmes or measures*

Each Party shall ensure that persons who fear that they might commit any of the offences established in accordance with this Convention may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed.

*Article 8 – Measures for the general public*

1. Each Party shall promote or conduct awareness raising campaigns addressed to the general public providing information on the phenomenon of sexual exploitation and sexual abuse of children and on the preventive measures which can be taken.
2. Each Party shall take the necessary legislative or other measures to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention.

*Article 9 – Participation of children, the private sector, the media and civil society*

1. Each Party shall encourage the participation of children, according to their evolving capacity, in the development and the implementation of State policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children.
2. Each Party shall encourage the private sector, in particular the information and communication technology sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation.
3. Each Party shall encourage the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children, with due respect for the independence of the media and freedom of the press.
4. Each Party shall encourage the financing, including, where appropriate, by the creation of funds, of the projects and programmes carried out by civil society aiming at preventing and protecting children from sexual exploitation and sexual abuse.

**Chapter III – Specialised authorities and co-ordinating bodies**

*Article 10 – National measures of co-ordination and collaboration*

1. Each Party shall take the necessary measures to ensure the co-ordination on a national or local level between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children, notably the education sector, the health sector, the social services and the law-enforcement and judicial authorities.

2. Each Party shall take the necessary legislative or other measures to set up or designate:
  - a. independent competent national or local institutions for the promotion and protection of the rights of the child, ensuring that they are provided with specific resources and responsibilities;
  - 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.
3. Each Party shall encourage co-operation between the competent State authorities, civil society and the private sector, in order to better prevent and combat sexual exploitation and sexual abuse of children.

## **Chapter IV – Protective measures and assistance to victims**

### *Article 11 – Principles*

1. Each Party shall establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care.
2. Each Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age.

### *Article 12 – Reporting suspicion of sexual exploitation or sexual abuse*

1. Each Party shall take the necessary legislative or other measures to ensure that the confidentiality rules imposed by internal law on

certain professionals called upon to work in contact with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse.

2. Each Party shall take the necessary legislative or other measures to encourage any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services.

#### *Article 13 – Helplines*

Each Party shall take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity.

#### *Article 14 – Assistance to victims*

1. Each Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery. Measures taken pursuant to this paragraph shall take due account of the child's views, needs and concerns.
2. Each Party shall take measures, under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in 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.
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.

## **Chapter V – Intervention programmes or measures**

### *Article 15 – General principles*

1. Each Party shall ensure or promote, in accordance with its internal law, effective intervention programmes or measures for the persons referred to in Article 16, paragraphs 1 and 2, with a view to preventing and minimising the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the proceedings, inside and outside prison, according to the conditions laid down in internal law.
2. Each Party shall ensure or promote, in accordance with its internal law, the development of partnerships or other forms of co-operation between the competent authorities, in particular health-care services and the social services, and the judicial authorities and other bodies responsible for following the persons referred to in Article 16, paragraphs 1 and 2.
3. Each Party shall provide, in accordance with its internal law, for an assessment of the dangerousness and possible risks of repetition of the offences established in accordance with this Convention, by the persons referred to in Article 16, paragraphs 1 and 2, with the aim of identifying appropriate programmes or measures.
4. Each Party shall provide, in accordance with its internal law, for an assessment of the effectiveness of the programmes and measures implemented.

*Article 16 – Recipients of intervention programmes and measures*

1. Each Party shall ensure, in accordance with its internal law, that persons subject to criminal proceedings for any of the offences established in accordance with this Convention may have access to the programmes or measures mentioned in Article 15, paragraph 1, under conditions which are neither detrimental nor contrary to the rights of the defence and to the requirements of a fair and impartial trial, and particularly with due respect for the rules governing the principle of the presumption of innocence.
2. Each Party shall ensure, in accordance with its internal law, that persons convicted of any of the offences established in accordance with this Convention may have access to the programmes or measures mentioned in Article 15, paragraph 1.
3. Each Party shall ensure, in accordance with its internal law, that intervention programmes or measures are developed or adapted to meet the developmental needs of children who sexually offend, including those who are below the age of criminal responsibility, with the aim of addressing their sexual behavioural problems.

*Article 17 – Information and consent*

1. Each Party shall ensure, in accordance with its internal law, that the persons referred to in Article 16 to whom intervention programmes or measures have been proposed are fully informed of the reasons for the proposal and consent to the programme or measure in full knowledge of the facts.
2. Each Party shall ensure, in accordance with its internal law, that persons to whom intervention programmes or measures have been proposed may refuse them and, in the case of convicted persons, that they are made aware of the possible consequences a refusal might have.

## **Chapter VI – Substantive criminal law**

### *Article 18 – Sexual abuse*

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
  - a. engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
  - b. engaging in sexual activities with a child where:
    - use is made of coercion, force or threats; or
    - abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
    - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.
2. For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.
3. The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

### *Article 19 – Offences concerning child prostitution*

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
  - a. recruiting a child into prostitution or causing a child to participate in prostitution;
  - b. coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
  - c. having recourse to child prostitution.

2. For the purpose of the present article, the term “child prostitution” shall mean the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person.

*Article 20 – Offences concerning child pornography*

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:
  - a. producing child pornography;
  - b. offering or making available child pornography;
  - c. distributing or transmitting child pornography;
  - d. procuring child pornography for oneself or for another person;
  - e. possessing child pornography;
  - f. knowingly obtaining access, through information and communication technologies, to child pornography.
2. For the purpose of the present article, the term “child pornography” shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.
3. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:
  - consisting exclusively of simulated representations or realistic images of a non-existent child;
  - involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.



4. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f.

*Article 21 – Offences concerning the participation of a child in pornographic performances*

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
  - a. recruiting a child into participating in pornographic performances or causing a child to participate in such performances;
  - b. coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes;
  - c. knowingly attending pornographic performances involving the participation of children.
2. Each Party may reserve the right to limit the application of paragraph 1.c to cases where children have been recruited or coerced in conformity with paragraph 1.a or b.

*Article 22 – Corruption of children*

Each Party shall take the necessary legislative or other measures to criminalise the intentional causing, for sexual purposes, of a child who has not reached the age set in application of Article 18, paragraph 2, to witness sexual abuse or sexual activities, even without having to participate.

*Article 23 – Solicitation of children for sexual purposes*

Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.

*Article 24 – Aiding or abetting and attempt*

1. Each Party shall take the necessary legislative or other measures to establish as criminal offences, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with this Convention.
2. Each Party shall take the necessary legislative or other measures to establish as criminal offences, when committed intentionally, attempts to commit the offences established in accordance with this Convention.
3. Each Party may reserve the right not to apply, in whole or in part, paragraph 2 to offences established in accordance with Article 20, paragraph 1.b, d, e and f, Article 21, paragraph 1.c, Article 22 and Article 23.

*Article 25 – Jurisdiction*

1. Each Party shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
  - a. in its territory; or
  - b. on board a ship flying the flag of that Party; or
  - c. on board an aircraft registered under the laws of that Party; or
  - d. by one of its nationals; or
  - e. by a person who has his or her habitual residence in its territory.
2. Each Party shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed against one of its nationals or a person who has his or her habitual residence in its territory.
3. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a

declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraph 1.e of this article.

4. For the prosecution of the offences established in accordance with Articles 18, 19, 20, paragraph 1.a, and 21, paragraph 1.a and b, of this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraph 1.d is not subordinated to the condition that the acts are criminalised at the place where they were performed.
5. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to limit the application of paragraph 4 of this article, with regard to offences established in accordance with Article 18, paragraph 1.b, second and third indents, to cases where its national has his or her habitual residence in its territory.
6. For the prosecution of the offences established in accordance with Articles 18, 19, 20, paragraph 1.a, and 21 of this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraphs 1.d and e is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or a denunciation from the State of the place where the offence was committed.
7. Each Party shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged offender is present on its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality.
8. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties

involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

9. Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

#### *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.

#### *Article 27 – Sanctions and measures*

1. Each Party shall take the necessary legislative or other measures to ensure that the offences established in accordance with this

Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include penalties involving deprivation of liberty which can give rise to extradition.

2. Each Party shall take the necessary legislative or other measures to ensure that legal persons held liable in accordance with Article 26 shall be subject to effective, proportionate and dissuasive sanctions which shall include monetary criminal or non-criminal fines and may include other measures, in particular:
  - a. exclusion from entitlement to public benefits or aid;
  - b. temporary or permanent disqualification from the practice of commercial activities;
  - c. placing under judicial supervision;
  - d. judicial winding-up order.
3. Each Party shall take the necessary legislative or other measures to:
  - a. provide for the seizure and confiscation of:
    - goods, documents and other instrumentalities used to commit the offences established in accordance with this Convention or to facilitate their commission;
    - proceeds derived from such offences or property the value of which corresponds to such proceeds;
  - b. enable the temporary or permanent closure of any establishment used to carry out any of the offences established in accordance with this Convention, without prejudice to the rights of bona fide third parties, or to deny the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed.

4. Each Party may adopt other measures in relation to perpetrators, such as withdrawal of parental rights or monitoring or supervision of convicted persons.
5. Each Party may establish that the proceeds of crime or property confiscated in accordance with this article can be allocated to a special fund in order to finance prevention and assistance programmes for victims of any of the offences established in accordance with this Convention.

*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.

*Article 29 – Previous convictions*

Each Party shall take the necessary legislative or other measures to provide for the possibility to take into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sanctions.

**Chapter VII – Investigation, prosecution and procedural law**

*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.
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.
3. Each Party shall ensure that the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay.
4. Each Party shall ensure that the measures applicable under the current chapter are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
5. Each Party shall take the necessary legislative or other measures, in conformity with the fundamental principles of its internal law:
  - to ensure an effective investigation and prosecution of offences established in accordance with this Convention, allowing, where appropriate, for the possibility of covert operations;

- to enable units or investigative services to identify the victims of the offences established in accordance with Article 20, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available through the use of information and communication technologies.

*Article 31 – General measures of protection*

1. Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:
  - a. informing them of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases;
  - b. ensuring, at least in cases where the victims and their families might be in danger, that they may be informed, if necessary, when the person prosecuted or convicted is released temporarily or definitively;
  - c. enabling them, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered;
  - d. providing them with appropriate support services so that their rights and interests are duly presented and taken into account;
  - e. protecting their privacy, their identity and their image and by taking measures in accordance with internal law to prevent the public dissemination of any information that could lead to their identification;



- f. providing for their safety, as well as that of their families and witnesses on their behalf, from intimidation, retaliation and repeat victimisation;
  - g. ensuring that contact between victims and perpetrators within court and law-enforcement agency premises is avoided, unless the competent authorities establish otherwise in the best interests of the child or when the investigations or proceedings require such contact.
2. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.
  3. Each Party shall ensure that victims have access, provided free of charge where warranted, to legal aid when it is possible for them to have the status of parties to criminal proceedings.
  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.
  5. Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.
  6. Each Party shall ensure that the information given to victims in conformity with the provisions of this article is provided in a manner adapted to their age and maturity and in a language that they can understand.

*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.

*Article 33 – Statute of limitation*

Each Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.

*Article 34 – Investigations*

1. Each Party shall adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. Such units or services shall have adequate financial resources.
2. Each Party shall take the necessary legislative or other measures to ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations.

*Article 35 – Interviews with the child*

1. Each Party shall take the necessary legislative or other measures to ensure that:
  - a. interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;

- b. interviews with the child take place, where necessary, in premises designed or adapted for this purpose;
  - c. interviews with the child are carried out by professionals trained for this purpose;
  - d. the same persons, if possible and where appropriate, conduct all interviews with the child;
  - e. the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings;
  - f. the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.
2. Each Party shall take the necessary legislative or other measures to ensure that all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal law.
  3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, the measures established in paragraphs 1 and 2 shall be applied pending verification of his or her age.

*Article 36 – Criminal court proceedings*

1. Each Party shall take the necessary legislative or other measures, with due respect for the rules governing the autonomy of legal professions, to ensure that training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.
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.

## **Chapter VIII – Recording and storing of data**

### *Article 37 – Recording and storing of national data on convicted sexual offenders*

1. For the purposes of prevention and prosecution of the offences established in accordance with this Convention, each Party shall take the necessary legislative or other measures to collect and store, in accordance with the relevant provisions on the protection of personal data and other appropriate rules and guarantees as prescribed by domestic law, data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention.
2. Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of a single national authority in charge for the purposes of paragraph 1.
3. Each Party shall take the necessary legislative or other measures to ensure that the information referred to in paragraph 1 can be transmitted to the competent authority of another Party, in conformity with the conditions established in its internal law and the relevant international instruments.

## **Chapter IX – International co-operation**

### *Article 38 – General principles and measures for international co-operation*

1. The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant applicable international and regional instruments, arrangements

agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- a. preventing and combating sexual exploitation and sexual abuse of children;
  - b. protecting and providing assistance to victims;
  - c. investigations or proceedings concerning the offences established in accordance with this Convention.
2. Each Party shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.
  3. If a Party that makes mutual legal assistance in criminal matters or extradition conditional on the existence of a treaty receives a request for legal assistance or extradition from a Party with which it has not concluded such a treaty, it may consider this Convention the legal basis for mutual legal assistance in criminal matters or extradition in respect of the offences established in accordance with this Convention.
  4. Each Party shall endeavour to integrate, where appropriate, prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third States.

## **Chapter X – Monitoring mechanism**

### *Article 39 – Committee of the Parties*

1. The Committee of the Parties shall be composed of representatives of the Parties to the Convention.
2. The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held

within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it. It shall subsequently meet whenever at least one third of the Parties or the Secretary General so requests.

3. The Committee of the Parties shall adopt its own rules of procedure.

*Article 40 – Other representatives*

1. The Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights, the European Committee on Crime Problems (CDPC), as well as other relevant Council of Europe inter-governmental committees, shall each appoint a representative to the Committee of the Parties.
2. The Committee of Ministers may invite other Council of Europe bodies to appoint a representative to the Committee of the Parties after consulting the latter.
3. Representatives of civil society, and in particular non-governmental organisations, may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.
4. Representatives appointed under paragraphs 1 to 3 above shall participate in meetings of the Committee of the Parties without the right to vote.

*Article 41 – Functions of the Committee of the Parties*

1. The Committee of the Parties shall monitor the implementation of this Convention. The rules of procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention.
2. The Committee of the Parties shall facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children.

3. The Committee of the Parties shall also, where appropriate:
  - a. facilitate the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration or reservation made under this Convention;
  - b. express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments.
4. The Committee of the Parties shall be assisted by the Secretariat of the Council of Europe in carrying out its functions pursuant to this article.
5. The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the activities mentioned in paragraphs 1, 2 and 3 of this article.

## **Chapter XI – Relationship with other international instruments**

*Article 42 – Relationship with the United Nations Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography*

This Convention shall not affect the rights and obligations arising from the provisions of the United Nations Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography, and is intended to enhance the protection afforded by them and develop and complement the standards contained therein.

*Article 43 – Relationship with other international instruments*

1. This Convention shall not affect the rights and obligations arising from the provisions of other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this

Convention and which ensure greater protection and assistance for child victims of sexual exploitation or sexual abuse.

2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.

## **Chapter XII – Amendments to the Convention**

### *Article 44 – Amendments*

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, any State invited to sign this Convention in accordance with the provisions of Article 45, paragraph 1, and any State invited to accede to this Convention in accordance with the provisions of Article 46, paragraph 1.
2. Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.
3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation with the non-member States Parties to this Convention, may adopt the amendment.



4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
5. Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

### **Chapter XIII – Final clauses**

#### *Article 45 – Signature and entry into force*

1. This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration as well as the European Community.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 5 signatories, including at least 3 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
4. In respect of any State referred to in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

*Article 46 – Accession to the Convention*

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

*Article 47 – Territorial application*

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of

the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

*Article 48 – Reservations*

No reservation may be made in respect of any provision of this Convention, with the exception of the reservations expressly established. Any reservation may be withdrawn at any time.

*Article 49 – Denunciation*

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

*Article 50 – Notification*

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, any State invited to sign this Convention in accordance with the provisions of Article 45 and any State invited to accede to this Convention in accordance with the provisions of Article 46 of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Convention in accordance with Articles 45 and 46;
- d. any amendment adopted in accordance with Article 44 and the date on which such an amendment enters into force;
- e. any reservation made under Article 48;

- f. any denunciation made in pursuance of the provisions of Article 49;
- g. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Lanzarote, this 25th day of October 2007, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

## **Appendix II**

### **Table of signatures and ratifications**

For updated information see the website of the Council of Europe Treaty Office: [www.conventions.coe.int](http://www.conventions.coe.int)



## **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – CETS No. 201**

Treaty open for signature by the member States, the non-member States which have participated in its elaboration and by the European Union, and for accession by other non-member States

### **Opening for signature**

Place: Lanzarote  
Date: 25.10.2007

### **Entry into force**

Conditions: 5 Ratifications including at least 3 member States of the Council of Europe  
Date: 1.7.2010

Status as of: 18.1.11

### **Member States of the Council of Europe**

<b>States</b>	<b>Signature</b>	<b>Ratification</b>
Albania	17.12.2008	14.04.2009
Andorra		
Armenia	29.09.2010	
Austria	25.10.2007	
Azerbaijan	17.11.2008	
Belgium	25.10.2007	
Bosnia and Herzegovina		
Bulgaria	25.10.2007	
Croatia	25.10.2007	
Cyprus	25.10.2007	
Czech Republic		
Denmark	20.12.2007	18.11.2009
Estonia	17.09.2008	

<b>States</b>	<b>Signature</b>	<b>Ratification</b>
Finland	25.10.2007	
France	25.10.2007	27.09.2010
Georgia	12.03.2009	
Germany	25.10.2007	
Greece	25.10.2007	10.03.2009
Hungary	29.11.2010	
Iceland	04.02.2008	
Ireland	25.10.2007	
Italy	07.11.2007	
Latvia		
Liechtenstein	17.11.2008	
Lithuania	25.10.2007	
Luxembourg	07.07.2009	
Malta	06.09.2010	06.09.2010
Moldova	25.10.2007	
Monaco	22.10.2008	
Montenegro	18.06.2009	25.11.2010
Netherlands	25.10.2007	01.03.2010
Norway	25.10.2007	
Poland	25.10.2007	
Portugal	25.10.2007	
Romania	25.10.2007	
Russian Federation		
San Marino	25.10.2007	22.03.2010
Serbia	25.10.2007	29.07.2010
Slovak Republic	09.09.2009	
Slovenia	25.10.2007	
Spain	12.03.2009	05.08.2010
Sweden	25.10.2007	
Switzerland	16.06.2010	



<b>States</b>	<b>Signature</b>	<b>Ratification</b>
"The former Yugoslav Republic of Macedonia"	25.10.2007	
Turkey	25.10.2007	
Ukraine	14.11.2007	
United Kingdom	05.05.2008	

#### **Non-member States of the Council of Europe**

<b>States</b>	<b>Signature</b>	<b>Ratification</b>
Canada		
Holy See		
Japan		
Mexico		
United States of America		

#### **International Organisations**

<b>Organisations</b>	<b>Signature</b>	<b>Ratification</b>
European Union		

Total number of signatures not followed by ratifications:	32
Total number of ratifications/accessions:	10