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**Urbroj: 5030109-11-1**

Zagreb, 7. srpnja 2011.

**PREDSJEDNIKU HRVATSKOGA SABORA**

Predmet: Prijedlog zakona o potvrđivanju Konvencije Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja, s Konačnim prijedlogom zakona

Na temelju članka 84. Ustava Republike Hrvatske (Narodne novine, br. 56/90, 135/97, 8/98 – pročišćeni tekst, 113/2000, 124/2000 – pročišćeni tekst, 28/2001, 41/2001 – pročišćeni tekst, 55/2001 – ispravak, 76/2010 i 85/2010 – pročišćeni tekst) i članaka 129. i 159. Poslovnika Hrvatskoga sabora (Narodne novine, br. 71/2000, 129/2000, 117/2001, 6/2002 – pročišćeni tekst, 41/2002, 91/2003, 58/2004, 69/2007, 39/2008 i 86/2008), Vlada Republike Hrvatske podnosi Prijedlog zakona o potvrđivanju Konvencije Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja, s Konačnim prijedlogom zakona za hitni postupak.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila Dražena Bošnjakovića, ministra pravosuđa, te Tatijanu Vučetić, mr. sc. Zorana Pičuljana i Baricu Novosel, državne tajnike u Ministarstvu pravosuđa.

PREDSJEDNICA

Jadranka Kosor, dipl. iur.

**VLADA REPUBLIKE HRVATSKE**

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**PRIJEDLOG ZAKONA O POTVRĐIVANJU KONVENCIJE  
VIJEĆA EUROPE O ZAŠTITI DJECE OD SEKSUALNOG  
ISKORIŠTAVANJA I SEKSUALNOG ZLOSTAVLJANJA,  
S KONAČNIM PRIJEDLOGOM ZAKONA**

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**Zagreb, srpanj 2011.**

**PRIJEDLOG ZAKONA O POTVRĐIVANJU  
KONVENCIJE VIJEĆA EUROPE O ZAŠTITI DJECE OD SEKSUALNOG  
ISKORIŠTAVANJA I SEKSUALNOG ZLOSTAVLJANJA**

**I. USTAVNA OSNOVA ZA DONOŠENJE ZAKONA**

Ustavna osnova za donošenje Zakona o potvrđivanju Konvencije Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja, sadržana je u odredbi članka 139. stavka 1. Ustava Republike Hrvatske (Narodne novine, br. 56/90, 135/97, 8/98 -pročišćeni tekst, 113/2000, 124/2000 – pročišćeni tekst, 28/2001, 41/2001 - pročišćeni tekst, 55/2001 - ispravak, 76/2010 i 85/2010 - pročišćeni tekst).

**II. OCJENA STANJA I CILJ KOJI SE DONOŠENJEM ZAKONA ŽELI  
POSTIĆI**

Republika Hrvatska je punopravnom članicom Vijeća Europe postala 6. studenoga 1996. godine. U okolnostima uznapredovale suradnje s Vijećem Europe, odvijalo se usporedno i prilagođavanje nacionalnog zakonodavstva europskim standardima u skladu s konvencijama Vijeća Europe.

Republika Hrvatska stranka je niza relevantnih međunarodnih ugovora na području zaštite djece i dječjih prava koji zajedno s nacionalnim zakonodavstvom: Kaznenim zakonom (Narodne novine, br. 110/97, 27/98, 50/2000, 129/2000, 51/2001, 11/2003, 190/2003, 105/2004, 84/2005, 71/2006, 110/2007, 152/2008 i 57/2011), Zakonom o odgovornosti pravnih osoba za kaznena djela (Narodne novine, br. 151/2003, 110/2007 i 45/2011), Zakonom o kaznenom postupku (Narodne novine, br. 110/97, 27/98, 58/99, 112/99, 58/2002, 143/2002, 62/2003, 115/2006, 152/2008 i 76/2009), Zakonom o sudovima za mladež (Narodne novine, br. 111/97, 27/98 i 12/2002) i Obiteljskim zakonom (Narodne novine, br. 162/98 i 116/2003), te Nacionalnim planom aktivnosti za dobrobit, prava i interese djece 2006. do 2012. godine čine solidan zakonodavno pravni okvir za učinkovitu pravnu zaštitu djece. Posebno se nadalje izdvajaju konvencije Ujedinjenih naroda, Vijeća Europe, konvencija Haške konferencije o međunarodnom privatnom pravu i konvencija Međunarodne organizacije rada:

- Konvencija o pravima djeteta iz 1989. godine, Republika Hrvatska stranka je od 8. listopada 1991. godine prema Odluci o objavljivanju mnogostranih međunarodnih ugovora kojih je Republika Hrvatska stranka na temelju notifikacija o sukcesiji (Narodne novine -Međunarodni ugovori, broj 12/93),
- Fakultativni protokol uz Konvenciju o pravima djeteta o prodaji djece, dječjoj prostituciji i dječjoj pornografiji iz 2000. godine (Narodne novine – Međunarodni ugovori, broj 5/2002),
- Protokol za sprječavanje, suzbijanje i kažnjavanje krijumčarenja ljudi, posebice žena i djece, kojim se dopunjuje Konvencija Ujedinjenih naroda protiv transnacionalnog organiziranog kriminaliteta iz 2000. godine (Narodne novine - Međunarodni ugovori, broj 14/2002),

- Konvencija o kibernetičkom kriminalu iz 2001. godine (Narodne novine - Međunarodni ugovori, br. 9/2002),
- Konvencija Vijeća Europe o suzbijanju trgovanja ljudima iz 2005. godine (Narodne novine - Međunarodni ugovori, broj 7/2007),
- Europska konvencija o ostvarivanju dječjih prava, iz 1996. godine (Narodne novine – Međunarodni ugovori, broj 1/2010),
- Konvencija o građanskopravnim aspektima međunarodne otmice djece iz 1980. godine Republika Hrvatska stranka je od 8. listopada 1991. godine prema Odluci o objavljivanju mnogostranih međunarodnih ugovora kojih je Republika Hrvatska stranka na temelju notifikacija o sukcesiji (Narodne novine -Međunarodni ugovori, broj 4/94),
- Konvencija o zabrani i trenutnim djelovanjima za ukidanje najgorih oblika dječjeg rada (br. 182.) iz 1999. godine (Narodne novine – Međunarodni ugovori, broj 5/2001).

Konvencija Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja, sastavljena je na Lanzaroteu, 25. listopada 2007. godine (u daljnjem tekstu: Konvencija) na konferenciji europskih ministara pravosuđa. U ime Republike Hrvatske Konvenciju je 25. listopada 2007. godine potpisala Ana Lovrin, tadašnja ministrica pravosuđa.

Konvencija je stupila na snagu 1. srpnja 2010. godine, nakon što je pet država izrazilo pristanak da budu vezane Konvencijom. Na dan 15. lipnja 2011. godine Konvenciju je potpisalo dvadeset devet država, a u odnosu na trinaest država (Albaniju, Austriju, Dansku, Finsku, Francusku, Grčku, Maltu, Crnu Goru, Nizozemsku, Rumunjsku, San Marino, Srbiju i Španjolsku) Konvencija je na snazi.

Potvrđivanjem Konvencije, Republika Hrvatska iskazuje interes i pridružuje se naporima međunarodne zajednice, poglavito državama članicama Vijeća Europe, kako bi se na ovom području učinili daljnji naponi i još odlučnije formulirala odlučnost država u borbi protiv neprihvatljivih oblika kršenja temeljnih prava djeteta. Konvencija predstavlja pravni okvir za daljnju dogradnju zakonodavnopravnog okvira potrebnog za učinkovitu prevenciju, progon i kažnjavanje počinitelja ovih kaznenih djela. Ona također predstavlja pravni okvir za jačanje međunarodne suradnje s ciljem sprječavanja i suzbijanja seksualnog iskorištavanja i seksualnog zlostavljanja djece, zaštite i pružanja pomoći žrtvama, provođenja istraga ili postupaka vezanih uz kaznena djela utvrđena u skladu s Konvencijom.

### **III. OSNOVNA PITANJA KOJA SE PREDLAŽU UREDITI ZAKONOM**

Ovim Zakonom potvrđuje se Konvencija, kako bi njezine odredbe u smislu članka 140. Ustava Republike Hrvatske postale dio unutarnjeg pravnog poretka Republike Hrvatske.

Konvencijom su uz već propisana kaznena djela u ovom području (seksualno zlostavljanje djece, iskorištavanje djece za pornografiju, prostituciju) uvedena neka nova kaznena djela: sudjelovanje djeteta u pornografskoj predstavi, namjerno dovođenje djeteta u situaciju da radi seksualnih razloga gleda seksualno zlostavljanje ili seksualne aktivnosti, navođenje djeteta na seksualne aktivnosti putem interneta

(„grooming“). Nadalje, Konvencijom se definiraju kvalifikatorne okolnosti kod seksualne zlopotrebe djece (između ostalog i seksualno zlostavljanje i iskorištavanje djece unutar obitelji). Zastara u skladu s odredbama Konvencije počinje teći tek od punoljetnosti djeteta. Definirana je sudska nadležnost na način da se omogućuje lakša borba protiv seksualnog iskorištavanja djece kroz turizam (kod primjene načela aktivnog personaliteta ne traži se više identitet norme). Nadalje, uveden je čitav niz mjera za zaštitu i podršku žrtvama seksualnog iskorištavanja i zlostavljanja. Definirano je da države trebaju omogućiti korištenje prikrivenih istražitelja kod ovih kaznenih djela. Prijavljivanje ovih kaznenih djela ne smije predstavljati povredu profesionalne tajne. Traži se stvaranje baze podataka počinitelja ovih kaznenih djela, uvođenje intervencijskih programa za počinitelje ovih kaznenih djela, kao i osoba koje se boje da bi mogle počiniti ovo kazneno djelo. Države u skladu s Konvencijom trebaju osigurati da djeca u osnovnim i srednjim školama dobiju informaciju o rizicima od seksualne zlopotrebe i iskorištavanja, te načinima zaštite. Države su također dužne podizati svijest građana glede potrebe zaštite djece i njihovih prava.

U Kaznenom zakonu Republike Hrvatske, Zakonu o odgovornosti pravnih osoba za kaznena djela, Zakonu o kaznenom postupku i Zakonu o sudovima za mladež sadržane su definicije kaznenih djela seksualnog iskorištavanja djece, kaznene odredbe koje se odnose na poticanje, pomaganje i pokušaj počinjenja kaznenog djela, kaznene sankcije, produljenje roka zastare za kazneni progon počinitelja kaznenih djela u vezi seksualnog iskorištavanja djece. Ovi propisi u najvećem dijelu usklađeni su i s Okvirnom odlukom Vijeća Europske unije (2004/68/PUP) od 22. prosinca 2003. o sprječavanju seksualnog iskorištavanja djece i dječje pornografije, SL L 13 od 20. siječnja 2004. godine. Usporedbom nacionalnog zakonodavstva s predmetnom Konvencijom i navedenom Okvirnom odlukom ocjenjuje se da hrvatski propisi koji uređuju ovo pitanje već sadrže odredbe Konvencije u velikoj mjeri, a neke i u cijelosti. Međutim, u odnosu na neke odredbe Konvencije biti će potrebno daljnje usklađivanje, primjerice odredbe o prikupljanju, evidentiranju i pohrani podataka vezanih za identitet i genetički profil (DNK) osoba osuđenih za kaznena djela utvrđena u skladu s Konvencijom.

Pravni okvir zakonodavstva u Kaznenom zakonu Republike Hrvatske kojim se kriminaliziraju seksualno iskorištavanje i seksualno zlostavljanje djece, propisano odredbama Konvencije o materijalnom kaznenom pravu, a koji se nalazi u Kaznenom zakonu pretrpjet će neke izmjene u novom Kaznenom zakonu koji je u zakonodavnom postupku. Izmjene koje se očekuju bile bi kvalitativna poboljšanja postojećih inkriminacija.

Naime, u Kaznenom zakonu Republike Hrvatske (Narodne novine, br. 110/97, 27/98, 50/2000, 129/2000, 51/2001, 111/2003, 190/2003, 105/2004, 84/2005, 71/2006, 110/2007, 152/2008 i 57/2011) propisana su slijedeća kaznena djela: međunarodna prostitucija, silovanje, spolni odnošaj zlouporabom položaja, spolni odnošaj s djetetom, bludne radnje, zadovoljenje pohote pred djetetom ili maloljetnom osobom, podvođenje, iskorištavanje djece ili maloljetnih osoba za pornografiju, upoznavanje djece s pornografijom, dječja pornografija na računalnom sustavu ili mreži, rodoskvrnuće.

Odredbom članka 89. stavka 9. sada važećeg Kaznenog zakona, dijete je definirano kao osoba koja nije navršila četrnaest godina života. Iako je ova odredba od značaja u kaznenom zakonodavstvu prije svega kada su počinitelji kaznenih djela djeca i maloljetne osobe, u prijedlogu novog Kaznenog zakona, dijete je definirano kao osoba koja nije navršila osamnaest godina života – što u potpunosti odgovara zahtjevima Konvencije.

Predloženim odredbama novog Kaznenog zakona propisana su sljedeća kaznena djela: spolna zlorporaba djeteta mlađeg od petnaest godina, spolna zlorporaba djeteta starijeg od petnaest godina, zadovoljenje pohote pred djetetom mlađim od petnaest godina, mamljenje djece za zadovoljenje spolnih potreba, podvođenje djeteta, iskorištavanje djece za pornografiju, iskorištavanje djece za pornografske predstave, upoznavanje djece s pornografijom, teška kaznena djela spolnog zlostavljanja i iskorištavanja djeteta. Propisani su i osnovni i kvalificirani oblici, uvažavajući standard Konvencije u pogledu otegotnih okolnosti, odnosno teških oblika ovih delikata. Predloženim odredbama novog Kaznenog zakona propisana je i definicija dječje pornografije, a pomaganje, poticanje i pokušaj gore navedenih kaznenih djela također su kažnjivi. Predviđeno je i detaljnije propisivanje sigurnosnih mjera, koje se osim do sada propisanih mogu primijeniti prema osuđeniku – počinitelju seksualnog delikta na štetu djeteta. Naime, predlažu se sljedeće sigurnosne mjere: Zabrana obavljanja određene dužnosti ili djelatnosti, kojom se uvodi mogućnost izricanja te mjere zauvijek i kad ovi delikti nisu bili počinjeni u obavljanju dužnosti i djelatnosti; Zabrana posjećivanja određenih mjesta, druženja s određenom osobom i približavanja žrtvi; Udaljenje iz zajedničkog kućanstva; Zaštitni nadzor po punom izvršenju kazne zatvora.

Kao druge mjere, koje je usvojila Republika Hrvatska u odnosu na gore navedene inkriminacije su oduzimanje roditeljskog prava – sukladno odredbama Obiteljskog zakona – te praćenje ili nadzor osuđenih osoba – sukladno odredbama Zakona o izvršavanju kazne zatvora, kao i predloženim odredbama novog Kaznenog zakona.

Odredbe Konvencije o istrazi, kaznenom progonu i postupovnom pravu u potpunosti su sustavno implementirane i propisane odredbama Zakona o kaznenom postupku, Zakona o sudovima za mladež, Zakona o zaštiti od nasilja u obitelji i Zakona o probaciji. Naime, cijeli niz odredbi gore navedenih zakona kao i podzakonskih akata i smjernica o postupanju, u potpunosti komplementarno reguliraju položaj djeteta u postupku i u duhu Konvencije pružaju široku zaštitu djetetu – žrtvi seksualnog delikta.

Budući je najvećim dijelom zakonodavstvo Republike Hrvatske usklađeno sa zahtjevima Konvencije, za naglasiti je da manji dio, ali ne i manje važan - nije usklađen s odredbama Konvencije.

Evidentiranje i pohrana nacionalnih podataka o osuđenim počiniteljima seksualnih kaznenih djela, propisana odredbama članka 37. Konvencije - bit će implementirani posebnim zakonom. Vlada Republike Hrvatske je svojim Akcijskim planom za 2011. godinu, planirala utemeljenje baze podataka počinitelja kaznenih djela seksualnog iskorištavanja i seksualnog zlostavljanja djece.

S tim u vezi, Republika Hrvatska će prilikom polaganja isprave o ratifikaciji dati izjavu kojom će priopćiti glavnom tajniku Vijeća Europe naziv i adresu svog jedinstvenog nacionalnog tijela nadležnog za prikupljanje, evidentiranje i pohranu podataka vezanih za identitet i genetički profil (DNK) osoba osuđenih u Republici Hrvatskoj za kaznena djela utvrđena u skladu s Konvencijom. Jedinstveno nacionalno tijelo nadležno za vođenje predmetne baze podataka o osuđivanim osobama za seksualne delikte na štetu djece kao i njihov genetički profil (DNK), vodit će Ministarstvo pravosuđa Republike Hrvatske, s obzirom da je i sada ovo tijelo nadležno za ustroj i vođenje Kaznene evidencije osuđivanih osoba.

#### **IV. OCJENA SREDSTAVA POTREBNIH ZA PROVEDBU OVOGA ZAKONA**

Provedba ovoga Zakona neće zahtijevati dodatna financijska sredstava iz državnog proračuna Republike Hrvatske.

#### **V. PRIJEDLOG ZA DONOŠENJE ZAKONA PO HITNOM POSTUPKU**

Temelj za donošenje ovoga Zakona po hitnom postupku nalazi se u članku 159. Poslovnika Hrvatskoga sabora (Narodne novine, br. 71/2000, 129/2000, 117/2001, 6/2002 – pročišćeni tekst, 41/2002, 91/2003, 58/2004, 69/2007, 39/2008 i 86/2008) i to u drugim osobito opravdanim državnim razlozima. Naime, cijeni se da postoji interes Republike Hrvatske da postane što skorije strankom Konvencije.

S obzirom na prirodu postupka potvrđivanja međunarodnih ugovora, kojim država i formalno izražava spremnost da bude vezana već potpisanim međunarodnim ugovorom, kao i na činjenicu da se u ovoj fazi postupka ne mogu vršiti izmjene ili dopune teksta međunarodnog ugovora, predlaže se ovaj prijedlog Zakona raspraviti i prihvatiti po hitnom postupku objedinjavajući prvo i drugo čitanje.

**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU  
KONVENCIJE VIJEĆA EUROPE O ZAŠTITI DJECE OD SEKSUALNOG  
ISKORIŠTAVANJA I SEKSUALNOG ZLOSTAVLJANJA**

**Članak 1.**

Potvrđuje se Konvencija Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja, sastavljena na Lanzaroteu, 25. listopada 2007. godine, u izvorniku na engleskom i francuskom jeziku, koju je Republika Hrvatska potpisala na Lanzaroteu, dana 25. listopada 2007. godine.

**Članak 2.**

Tekst Konvencije iz članka 1. ovoga Zakona, u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik, glasi:



## KONVENCIJA VIJEĆA EUROPE O ZAŠTITI DJECE OD SEKSUALNOG ISKORIŠTAVANJA I SEKSUALNOG ZLOSTAVLJANJA

### Preambula

Države članice Vijeća Europe i druge države potpisnice ove Konvencije;

smatrajući da je cilj Vijeća Europe postići veće jedinstvo među njegovim članicama;

smatrajući da svako dijete ima pravo na takve mjere zaštite kakve traži njegov status maloljetnika, od strane svoje obitelji, društva i države;

primjećujući da su seksualno iskorištavanje djece, osobito dječja pornografija i prostitucija, te sve vrste seksualnog zlostavljanja djece, uključujući djela počinjena u inozemstvu, štetni za zdravlje i psiho-socijalni razvoj djeteta;

primjećujući da su seksualno iskorištavanje i seksualno zlostavljanje djece narasli do zabrinjavajućih razmjera kako na državnoj, tako i na međunarodnoj razini, posebice s obzirom na povećano korištenje informacijskih i komunikacijskih tehnologija, kako kod djece, tako i kod počinitelja, te da suzbijanje i borba protiv takvog seksualnog iskorištavanja i seksualnog zlostavljanja djece zahtijeva međunarodnu suradnju;

smatrajući da su dobrobit i najbolji interesi djece temeljne vrijednosti koje dijele sve države članice te ih je potrebno promicati bez ikakve diskriminacije;

podsjecajući na plan djelovanja usvojen na Trećem sastanku na vrhu šefova država i vlada Vijeća Europe (Varšava, 16.-17. svibnja 2005.) koji poziva na izradu mjera za zaustavljanje seksualnog iskorištavanja djece;

podsjecajući posebice na preporuku Odbora ministara br. R(91)11 o seksualnom iskorištavanju, pornografiji i prostituiranju te trgovanju djecom i mlađim odraslim osobama, preporuku Rec(2001)16 o zaštiti djece od seksualnog iskorištavanja, i Konvenciju o kibernetičkom-kriminalu (ETS br. 185), osobito članak 9. iste, kao i na Konvenciju Vijeća Europe o suzbijanju trgovanja ljudima (ETS br. 197);

imajući na umu Konvenciju za zaštitu ljudskih prava i temeljnih sloboda (1950., ETS br. 5), izmjenjenu Europsku socijalnu povelju (1996., ETS br. 163), i Europsku konvenciju o ostvarivanju dječjih prava (1996., ETS br. 160);

također imajući na umu Konvenciju Ujedinjenih naroda o pravima djeteta, posebice članak 34 iste, Fakultativni protokol o prodaji djece, dječjoj prostituciji i dječjoj pornografiji, Protokol za sprječavanje, suzbijanje i kažnjavanje krijumčarenja ljudi, posebice žena i djece, kojim se dopunjuje Konvencija Ujedinjenih naroda protiv transnacionalnoga organiziranog kriminaliteta, kao i Konvenciju Međunarodne organizacije rada o zabrani i trenutnim djelovanjima za ukidanje najgorih oblika dječjeg rada;

imajući na umu Okvirnu odluku Vijeća Europske unije o sprječavanju seksualnog iskorištavanja djece i dječje pornografije (2004/68/JHA), Okvirnu odluku Vijeća

Europske unije o položaju žrtava u kaznenom postupku (2001/220/JHA), i Okvirnu odluku Vijeća Europske unije o suzbijanju trgovanja ljudima (2002/629/JHA);

uzimajući u obzir druge relevantne međunarodne instrumente i programe na ovom području, posebice Stockholmsku deklaraciju i Program djelovanja, usvojene na Prvom svjetskom kongresu protiv komercijalnog seksualnog iskorištavanja djece (27.-31. kolovoza 1996.), Globalnu obvezu iz Yokohame, usvojenu na Drugom svjetskom kongresu protiv komercijalnog seksualnog iskorištavanja djece (17.-20. prosinca 2001.), Obvezu iz Budimpešte i Plan djelovanja, usvojene na pripremnoj Konferenciji za Drugi svjetski kongres protiv komercijalnog seksualnog iskorištavanja djece (20.-21. studeni 2001.), Rezoluciju Opće skupštine Ujedinjenih naroda S-27/2 „Svijet po mjeri djece“ i trogodišnji program „Graditi Europu za i s djecom“, usvojen nakon Trećeg sastanka na vrhu, pokrenut na Konferenciji u Monacu (4.-5. travnja 2006.);

odlučne da učinkovito doprinesu zajedničkom cilju zaštite djece od seksualnog iskorištavanja i seksualnog zlostavljanja, bez obzira na to tko je počinitelj te cilju pružanja pomoći žrtvama;

uzimajući u obzir potrebu pripreme sveobuhvatnog međunarodnog instrumenta koji bi bio usmjeren na preventivne, zaštitne i kaznenopravne aspekte u borbi protiv svih oblika seksualnog iskorištavanja i seksualnog zlostavljanja djece te na uspostavu posebnog mehanizma praćenja,

sporazumjele su se kako slijedi:

## **Poglavlje I. – Ciljevi, načelo nediskriminacije i definicije**

### **Članak 1. – Ciljevi**

- 1 Ciljevi ove Konvencije su:
  - a sprječavanje i suzbijanje seksualnog iskorištavanja i seksualnog zlostavljanja djece;
  - b zaštita prava djece žrtava seksualnog iskorištavanja i seksualnog zlostavljanja;
  - c promicanje nacionalne i međunarodne suradnje u suzbijanju seksualnog iskorištavanja i seksualnog zlostavljanja djece.
- 2 Kako bi se osiguralo da stranke Konvencije učinkovito provode njezine odredbe, ova Konvencija uspostavlja poseban mehanizam praćenja provedbe.

### **Članak 2. – Načelo nediskriminacije**

Provedba odredaba ove Konvencije od strane stranaka, a osobito uporaba mjera zaštite prava žrtava osigurava se bez diskriminacije po bilo kojem osnovu kao što je spol, rasa, boja kože, jezik, vjeroispovijest, političko ili neko drugo uvjerenje, nacionalno ili društveno podrijetlo ili pripadnost nekoj nacionalnoj manjini, imovina, rođenje, spolna orijentacija, zdravstveno stanje, invalidnost ili neki drugi status.

### **Članak 3. – Definicije**

Za potrebe ove Konvencije:

- a “dijete” znači svaka osoba mlađa od 18 godina;
- b “seksualno iskorištavanje i seksualno zlostavljanje djece” obuhvaća ponašanje opisano u člancima 18.-23. ove Konvencije;
- c “žrtva“ znači svako dijete podvrgnuto seksualnom iskorištavanju ili seksualnom zlostavljanju.

## **Poglavlje II. – Mjere suzbijanja**

### **Članak 4. – Načela**

Svaka će stranka usvojiti potrebne zakonodavne ili druge mjere za suzbijanje svih oblika seksualnog iskorištavanja i seksualnog zlostavljanja djece te za zaštitu djece.

### **Članak 5 – Zapošljavanje, izobrazba i podizanje svijesti osoba koje rade u kontaktu s djecom**

- 1 Svaka će stranka usvojiti potrebne zakonodavne ili druge mjere za poticanje svijesti o zaštiti i pravima djece među osobama koje su u redovitom kontaktu s djecom u sektorima obrazovanja, zdravstva, socijalne zaštite, pravosuđa i policije te na područjima vezanim uz šport, kulturu i slobodne aktivnosti.
- 2 Svaka će stranka usvojiti potrebne zakonodavne ili druge mjere kako bi osigurala da osobe navedene u stavku 1. raspolažu odgovarajućim znanjem o seksualnom iskorištavanju i seksualnom zlostavljanju djece, o načinima njihova prepoznavanja te o mogućnosti navedenoj u članku 12. stavku 1.
- 3 Svaka će stranka usvojiti potrebne zakonodavne ili druge mjere, u skladu sa svojim unutarnjim pravom, kako bi osigurala da uvjeti za pristup zanimanjima čije obavljanje podrazumijeva redovite kontakte s djecom osiguravaju da kandidati za te struke nisu prethodno osuđivani za djela seksualnog iskorištavanja ili seksualnog zlostavljanja djece.

### **Članak 6. – Obrazovanje djece**

Svaka će stranka usvojiti potrebne zakonodavne ili druge mjere kako bi osigurala da djeca, tijekom osnovnog i srednjeg obrazovanja, dobiju informacije o rizicima seksualnog iskorištavanja i seksualnog zlostavljanja, kao i o načinima da se zaštite, prilagođeno njihovim razvojnim sposobnostima. Te će informacije, koje se pružaju u suradnji s roditeljima, gdje je to prikladno, biti predstavljene u okviru općenitijeg konteksta informacija o spolnosti te će se posebna pozornost posvetiti riziku, osobito rizicima koje nosi uporaba novih informacijskih i komunikacijskih tehnologija.

### **Članak 7. – Preventivni programi i mjere intervencije**

Svaka će stranka osigurati da osobe koje strahuju da bi mogle počinuti bilo koje od kaznenih djela utvrđenih u skladu s ovom Konvencijom mogu ostvariti pristup, gdje je to prikladno, učinkovitim programima intervencije ili mjerama osmišljenim za ocjenu i suzbijanje rizika počinjenja tih kaznenih djela.

### **Članak 8. – Mjere za javnost**

- 1 Svaka će stranka promicati ili provoditi kampanje za podizanje svijesti usmjerene na javnost, pružajući informacije o pojavi seksualnog iskorištavanja i seksualnog zlostavljanja djece te o preventivnim mjerama koje je moguće poduzeti.
- 2 Svaka će stranka usvojiti potrebne zakonodavne ili druge mjere za suzbijanje ili zabranu širenja materijala kojima se promiču kaznena djela utvrđena u skladu s ovom Konvencijom.

### **Članak 9. – Sudjelovanje djece, privatnog sektora, medija i civilnog društva**

- 1 Svaka će stranka poticati sudjelovanje djece, u skladu s njihovim razvojnim sposobnostima, u izradi i provedbi državnih politika, programa ili drugih inicijativa vezanih uz borbu protiv seksualnog iskorištavanja i seksualnog zlostavljanja djece.
- 2 Svaka će stranka poticati privatni sektor, posebice sektor informacijske i komunikacijske tehnologije, turizma i putovanja te bankovni i financijski sektor, kao i civilno društvo, na sudjelovanje u izradi i provedbi politika za sprječavanje seksualnog iskorištavanja i seksualnog zlostavljanja djece te na provedbu unutarnjih pravila donesenih putem samoregulatornih ili drugih regulatornih mjera.
- 3 Svaka stranka će poticati medije na osiguravanje odgovarajućih informacija vezanih uz sve vidove seksualnog iskorištavanja i seksualnog zlostavljanja djece, poštujući pritom neovisnost medija i slobodu tiska.
- 4 Svaka će stranka poticati, uključujući, gdje je to prikladno, kroz osnivanje fondova, financiranje projekata i programa koje provodi civilno društvo usmjerenih na sprječavanje i zaštitu djece od seksualnog iskorištavanja i seksualnog zlostavljanja.

## **Poglavlje III. – Posebna stručna i koordinacijska tijela**

### **Članak 10. – Nacionalne mjere koordinacije i suradnje**

- 1 Svaka će stranka poduzeti mjere kako bi osigurala koordinaciju na državnoj ili lokalnoj razini među različitim tijelima zaduženim za zaštitu od, sprječavanje i

borbu protiv seksualnog iskorištavanja i seksualnog zlostavljanja djece, posebice u sektoru obrazovanja, zdravstvenom sektoru, socijalnim službama te policijskim i pravosudnim tijelima.

- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi uspostavila ili odredila:
  - a neovisne nadležne državne ili lokalne institucije za promicanje i zaštitu prava djeteta, osiguravajući pritom da im se dodijele konkretni resursi i odgovornosti;
  - b mehanizme za prikupljanje podataka ili koordinacijska tijela na državnoj ili lokalnim razinama te u suradnji s civilnim društvom, a s ciljem promatranja i ocjene pojave seksualnog iskorištavanja i seksualnog zlostavljanja djece, uz poštivanje zahtjeva vezanih uz zaštitu osobnih podataka.
- 3 Svaka će stranka poticati suradnju među nadležnim državnim tijelima, civilnim društvom i privatnim sektorom, radi boljeg sprječavanja i suzbijanja seksualnog iskorištavanja i seksualnog zlostavljanja djece.

#### **Poglavlje IV. – Mjere zaštite i pomoći žrtvama**

##### **Članak 11. – Načela**

- 1 Svaka će stranka uspostaviti učinkovite socijalne programe te multidisciplinarnu strukturu za pružanje potrebne potpore žrtvama, njihovim bliskim srodnicima i svim osobama odgovornima za skrb o njima.
- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da se žrtvi, u slučaju da je njezina dob neizvjesna, a postoje razlozi vjerovati da je žrtva djeteta, pruži zaštita i mjere pomoći kakvi se pružaju djeci, sve do trenutka kada se utvrdi njezina dob.

##### **Članak 12. – Prijavljivanje sumnje u seksualno iskorištavanje ili seksualno zlostavljanje**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da pravila o tajnosti koja unutarne pravo nameće određenim strukama pozvanima da rade u kontaktu s djecom ne predstavljaju prepreku mogućnosti da pripadnici tih struka prijave odgovornim službama za zaštitu djece bilo koju situaciju za koju imaju opravdanih razloga sumnjati da je djeteta žrtva seksualnog iskorištavanja ili seksualnog zlostavljanja.
- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi potaknula svaku osobu koja zna ili u dobroj vjeri sumnja u seksualno iskorištavanje ili seksualno zlostavljanje djece da prijavi te činjenice nadležnim službama.

### **Članak 13. – Linije za pomoć**

Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi potaknula i podržala uspostavu službi za pružanje informacija, kao što su telefonske i internetske linije za pomoć koje bi pružale savjete osobama koje nazovu, čak i ako je to povjerljivo ili uz poštivanje njihove anonimnosti.

### **Članak 14. – Pomoć žrtvama**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi pomogla žrtvama, kratkoročno i dugoročno, u njihovom fizičkom i psihosocijalnom oporavku. Mjere poduzete temeljem ovog stavka uzet će u obzir djetetove stavove, potrebe i brige.
- 2 Svaka će stranka poduzeti mjere, pod uvjetima predviđenim njezinim unutarnjim pravom, za suradnju s nevladinim organizacijama, drugim mjerodavnim organizacijama ili drugim elementima civilnoga društva uključenima u pomoć žrtvama.
- 3 Kada su roditelji ili osobe koje se skrbe o djetetu uključene u njegovo seksualno iskorištavanje ili seksualno zlostavljanje, postupci intervencije koji se poduzimaju u primjeni članka 11. stavka 1. uključuju:
  - mogućnost udaljavanja navodnog počinitelja;
  - mogućnost udaljavanja žrtve od njezinog obiteljskog okruženja. Uvjeti i trajanje takvog udaljavanja određuju se u skladu s najboljim interesima djeteta.
- 4 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da osobe koje su bliske žrtvi dobiju, gdje je to prikladno, pomoć terapeuta, a posebice hitnu psihološku skrb.

## **Poglavlje V. – Programi ili mjere intervencije**

### **Članak 15. – Opća načela**

- 1 Svaka će stranka osigurati ili promicati, u skladu sa svojim unutarnjim pravom, učinkovite programe ili mjere intervencije za osobe navedene u članku 16., stavcima 1. i 2., s ciljem sprječavanja i maksimalnog smanjenja rizika ponovljenih kaznenih djela seksualne naravi protiv djece. Takvi programi ili mjere trebaju biti dostupni u bilo kojem trenutku tijekom postupka, u zatvoru i izvan njega, u skladu s uvjetima utvrđenim unutarnjim pravom.
- 2 Svaka će stranka osigurati ili promicati, u skladu sa svojim unutarnjim pravom, razvoj partnerstava ili drugih oblika suradnje među nadležnim tijelima, posebice službama za zdravstvenu skrb i socijalnim službama te pravosudnim tijelima i drugim tijelima odgovornima za praćenje osoba navedenih u članku 16. stavcima 1. i 2.

- 3 Svaka stranka će osigurati, u skladu sa svojim unutarnjim pravom, ocjenu opasnosti i mogućih rizika ponavljanja kaznenih djela utvrđenih u skladu s ovom Konvencijom, od strane osoba navedenih u članku 16. stavcima 1. i 2., s ciljem utvrđivanja odgovarajućih programa ili mjera.
- 4 Svaka će stranka, u skladu sa svojim unutarnjim pravom, osigurati ocjenu učinkovitosti provedenih programa i mjera.

#### **Članak 16. – Korisnici programa i mjera intervencije**

- 1 Svaka će stranka osigurati, u skladu sa svojim unutarnjim pravom, da osobe protiv kojih se vode kazneni postupci za bilo koja od kaznenih djela utvrđenih ovom Konvencijom mogu ostvariti pristup programima ili mjerama navedenim u članku 15. stavku 1., pod uvjetima koji nisu niti štetni niti protivni pravima obrane te u skladu sa zahtjevima za poštenim i nepristranim suđenjem, a posebice uz poštivanje pravila koja se odnose na načelo pretpostavke nevinosti.
- 2 Svaka će stranka osigurati, u skladu sa svojim unutarnjim pravom, da osobe osuđene za bilo koje od kaznenih djela utvrđenih u skladu s ovom Konvencijom mogu ostvariti pristup programima ili mjerama navedenim u članku 15. stavku 1.
- 3 Svaka će stranka osigurati, u skladu sa svojim unutarnjim pravom, da programi ili mjere intervencije budu izrađeni ili prilagođeni na način da ispunjavaju razvojne potrebe djece koja su počinitelji seksualnih kaznenih djela, uključujući one koji su ispod dobne granice kaznene odgovornosti, s ciljem rješavanja njihovih problema seksualnog ponašanja.

#### **Članak 17. – Informacije i pristanak**

- 1 Svaka će stranka osigurati, u skladu sa svojim unutarnjim pravom, da osobe navedene u članku 16., kojima su predloženi programi ili mjere intervencije, budu u potpunosti informirane o razlozima za taj prijedlog te da svoj pristanak na program ili mjeru daju na temelju potpunog poznavanja činjenica.
- 2 Svaka će stranka osigurati, u skladu sa svojim unutarnjim pravom, da osobe kojima su predloženi programi ili mjere intervencije, mogu odbiti iste te da, kada se radi o osuđenim osobama, one budu svjesne mogućih posljedica koje takvo odbijanje može imati.

### **Poglavlje VI. – Materijalno kazeno pravo**

#### **Članak 18. – Seksualno zlostavljanje**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se kaznenopravno sankcionirao namjerni čin:

- a sudjelovanja u seksualnim aktivnostima s djetetom koje je, sukladno mjerodavnim odredbama nacionalnog prava, mlađe od zakonske dobi za seksualne aktivnosti;
  - b sudjelovanja u seksualnim aktivnostima s djetetom, u kojima se:
    - koristi prisila, sila ili prijetnje; ili
    - zloropotrebljava priznati položaj povjerenja, autoriteta ili utjecaja nad djetetom, uključujući unutar obitelji; ili
    - zloropotrebljava posebno ranjiva situacija djeteta, posebice uslijed mentalne ili fizičke invalidnosti ili situacije ovisnosti.
- 2 U smislu gornjeg stavka 1., svaka stranka određuje dobnu granicu ispod koje je zabranjeno sudjelovati u seksualnim aktivnostima s djetetom.
- 3 Namjera odredaba članka 18., stavka 1.a nije uređivati sporazumne seksualne aktivnosti među maloljetnicima.

### **Članak 19. – Kaznena djela vezana uz dječju prostituciju**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se kaznenopravno sankcionirao namjerni čin:
- a vrbovanja djeteta na prostituciju ili uzrokovanja njegovog sudjelovanja u prostituciji;
  - b prisiljavanja djeteta na prostituciju ili ostvarivanje dobiti iz iste ili na drugi način iskorištavanje djeteta u takve svrhe;
  - c korištenja dječje prostitucije.
- 2 U smislu ovog članka, pojam „dječja prostitucija“ znači činjenica korištenja djeteta za seksualne aktivnosti u kojima se daje ili obećava novac ili bilo koji drugi oblik naknade ili protučinidbe kao plaćanje, bez obzira na to vrši li se to plaćanje djetetu ili trećoj osobi.

### **Članak 20. – Kaznena djela vezana uz dječju pornografiju**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se kaznenopravno sankcionirao namjerni neovlašteni čin:
- a proizvodnje dječje pornografije;
  - b nuđenja dječje pornografije ili činjenja iste dostupnim na drugi način;
  - c distribucije ili prijenosa dječje pornografije;
  - d nabavljanja dječje pornografije za sebe ili drugu osobu;
  - e posjedovanja dječje pornografije;
  - f svjesnog ostvarivanja pristupa dječjoj pornografiji, putem informacijskih i komunikacijskih tehnologija.



- 2 U smislu ovog članka, pojam „dječja pornografija“ znači bilo koji materijal koji vizualno prikazuje dijete koje sudjeluje u stvarnoj ili simuliranoj seksualno eksplicitnoj aktivnosti ili bilo koji prikaz spolnih organa djeteta u primarno seksualne svrhe.
- 3 Svaka stranka može pridržati pravo ne primijeniti, u cijelosti ili djelomično, stavak 1. podstavke a i e na proizvodnju i posjedovanje pornografskog materijala:
  - koji se sastoji isključivo iz simuliranih prikaza ili realističnih slika nepostojećeg djeteta;
  - koji uključuje djecu koja su prešla dobnu granicu zadanu primjenom članka 18. stavka 2., ako su te slike proizvedene i ako ih se posjeduje s njihovim pristankom i isključivo za njihovu privatnu uporabu.
- 4 Svaka stranka može pridržati pravo ne primijeniti, u cijelosti ili djelomično, stavak 1. podstavak f.

#### **Članak 21. – Kaznena djela vezana uz sudjelovanje djeteta u pornografskim nastupima**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se kaznenopravno sankcionirao namjerni čin:
  - a vrbovanja djeteta za sudjelovanje u pornografskim nastupima ili uzrokovanje njegovog sudjelovanja u takvim nastupima;
  - b prisiljavanja djeteta na sudjelovanje u pornografskim nastupima ili ostvarivanje dobiti iz istih ili na drugi način iskorištavanje djeteta u takve svrhe;
  - c svjesno posjećivanje pornografskih nastupa koji uključuju sudjelovanje djece.
- 2 Svaka stranka može pridržati pravo da ograniči primjenu stavka 1. podstavka c na predmete u kojima su djeca vrbovana ili prisiljena u skladu sa stavkom 1. podstavkom a ili b.

#### **Članak 22. – Moralno iskvarivanje djeteta**

Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se kaznenopravno sankcionirao namjerni čin upriličenja u seksualne svrhe, da dijete koje još nije prešlo dobnu granicu određenu u primjeni članka 18., stavka 2., bude nazočno seksualnom zlostavljanju ili seksualnim aktivnostima, čak i ako u istima ne sudjeluje.

#### **Članak 23. – Vrbovanje djece u seksualne svrhe**

Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se kaznenopravno sankcionirao namjerni čin predlaganja, putem informacijskih i

komunikacijskih tehnologija, odrasle osobe da se sastane s djetetom koje još nije doseglo dobnu granicu određenu u primjeni članka 18., stavka 2., u svrhu počinjenja bilo kojeg kaznenog djela utvrđenog u skladu s člankom 18., stavkom 1.a, ili člankom 20., stavkom 1.a, protiv djeteta, a takav prijedlog je popraćen poduzimanjem radnji koje vode takvom sastanku.

#### **Članak 24. – Pomaganje ili poticanje i pokušaj**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se kaznenopravno sankcionirao namjerni čin pomaganja ili poticanja na počinjenje bilo kojeg od kaznenih djela utvrđenih u skladu s ovom Konvencijom.
- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se kaznenopravno sankcionirao namjerni čin pokušaja počinjenja kaznenih djela utvrđenih u skladu s ovom Konvencijom.
- 3 Svaka stranka može pridržati pravo ne primijeniti, u cijelosti ili djelomično, stavak 2. na kaznena djela utvrđena u skladu s člankom 20., stavkom 1. podstavcima b, d, e i f, člankom 21., stavkom 1. podstavkom c, člankom 22. i člankom 23.

#### **Članak 25. – Sudska nadležnost**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi se uspostavila sudska nadležnost za bilo koje kazneno djelo utvrđeno u skladu s ovom Konvencijom, ukoliko je kazneno djelo počinjeno:
  - a na njezinom državnom području; ili
  - b na brodu koji plovi pod zastavom te stranke; ili
  - c u zrakoplovu registriranom prema pravu te stranke; ili
  - d od strane nekog od njezinih državljana; ili
  - e od strane osobe koja svoje uobičajeno boravište ima na njezinom državnom području.
- 2 Svaka će stranka nastojati poduzeti potrebne zakonodavne ili druge mjere kako bi uspostavila sudsku nadležnost za bilo koje kazneno djelo utvrđeno u skladu s ovom Konvencijom, ukoliko je kazneno djelo počinjeno protiv jednog od njezinih državljana ili osobe koja svoje uobičajeno boravište ima na njezinom državnom području.
- 3 Svaka stranka može, u trenutku potpisivanja ili prigodom polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju, ili pristupu, izjavom upućenom glavnom tajniku Vijeća Europe, izjaviti da pridržava pravo ne primijeniti ili primijeniti pravila o sudskoj nadležnosti samo u pojedinim slučajevima ili uvjetima utvrđenim u stavku 1. podstavku e ovog članka.

- 4 Za progon kaznenih djela utvrđenih u skladu s člankom 18., člankom 19., člankom 20., stavkom 1. podstavkom a i člankom 21., stavkom 1. podstavcima a i b ove Konvencije, svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da njezina sudska nadležnost u smislu stavka 1. podstavka d ne podliježe uvjetu da je čin kaznenopravno sankcioniran na mjestu počinjenja.
- 5 Svaka stranka može, u trenutku potpisivanja ili prilikom polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, izjavom upućenom glavnom tajniku Vijeća Europe izjaviti da pridržava pravo ograničiti primjenu stavka 4. ovog članka u odnosu na kaznena djela utvrđena u skladu s člankom 18., stavkom 1. podstavkom b, druga i treća alineja, na slučajeve u kojima njezin državljanin ima svoje uobičajeno boravište na njezinom državnom području.
- 6 Za progon kaznenih djela utvrđenih u skladu s člankom 18., člankom 19., člankom 20., stavkom 1. podstavkom a, i člankom 21. ove Konvencije, svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da njezina sudska nadležnost u smislu stavka 1. podstavka d i e ne podliježe uvjetu da se kazneni progon može pokrenuti samo temeljem prijave žrtve ili prijave od strane države mjesta u kojem je kazneno djelo počinjeno.
- 7 Svaka će stranka nastojati poduzeti potrebne zakonodavne ili druge mjere kako bi uspostavila sudsku nadležnost za kaznena djela utvrđena u skladu s ovom Konvencijom, u slučajevima u kojima je navodni počinitelj prisutan na njenom državnom području, a stranka ga ne izručuje drugoj stranci isključivo temeljem njegovog državljanstva.
- 8 Kada je više stranaka utvrdilo svoju sudsku nadležnost, a radi se navodno o kaznenom djelu koje je propisano u skladu s odredbama ove Konvencije, tada će se te stranke – kada je to moguće – posavjetovati s ciljem utvrđivanja najprikladnije sudske nadležnosti za kazneni progon.
- 9 Ne dovodeći u pitanje opća pravila međunarodnoga prava, ova Konvencija ne isključuje bilo kakvu kaznenopravnu nadležnost koju stranka ostvaruje u skladu sa svojim unutarnjim pravom.

#### **Članak 26. – Odgovornost pravnih osoba**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da pravna osoba može biti pozvana na odgovornost za kaznena djela utvrđena u skladu s ovom Konvencijom, koja je za njezinu korist počinila neka fizička osoba, postupajući bilo samostalno ili kao dio tijela pravne osobe koja ima rukovodeće mjesto unutar pravne osobe, na temelju:
  - a ovlaštenja za zastupanje pravne osobe;
  - b ovlaštenja za donošenje odluka u ime pravne osobe;
  - c ovlaštenja za provedbu nadzora unutar pravne osobe

- 2 Osim slučajeva već predviđenih stavkom 1. ovog članka, svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da pravna osoba može biti pozvana na odgovornost kada zbog nedostatka nadzora ili kontrole fizičke osobe iz stavka 1. ovog članka, fizičkoj osobi koja postupa po ovlaštenju i u korist pravne osobe bude omogućeno počinjenje kaznenog djela utvrđenog u skladu s ovom Konvencijom.
- 3 U skladu s pravnim načelima stranke, odgovornost pravne osobe može biti kaznena, građanska ili upravna.
- 4 Ta odgovornost ne utječe na kaznenu odgovornost fizičkih osoba koje su počinile djelo.

### **Članak 27. – Sankcije i mjere**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da kaznena djela utvrđena u skladu s ovom Konvencijom budu kažnjiva učinkovitim, srazmjernim i odvraćajućim sankcijama, uzimajući u obzir njihovu ozbiljnost. Te kazne uključuju i lišavanje slobode, što može dovesti do izručenja.
- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da pravne osobe čija je odgovornost utvrđena u skladu s člankom 26. budu podvrgnute učinkovitim, srazmjernim i odvraćajućim sankcijama, koje uključuju i kaznene ili nekaznene novčane kazne, a mogu uključivati i druge mjere, posebice:
  - a oduzimanje prava na socijalne povlastice ili pomoć;
  - b privremenu ili trajnu zabranu obavljanja trgovačkih djelatnosti;
  - c stavljanje pod sudski nadzor;
  - d sudski nalog za likvidaciju.
- 3 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi:
  - a osigurala zaplenu i oduzimanje:
    - roba, dokumenata i drugih instrumenata korištenih za počinjenje kaznenih djela utvrđenih u skladu s ovom Konvencijom ili kako bi se olakšalo počinjenje istih;
    - materijalnih koristi stečenih takvim kaznenim djelima ili imovine čija vrijednost odgovara materijalnoj koristi;
  - b osigurala privremeno ili trajno zatvaranje bilo kojeg poduzeća korištenog za počinjenje bilo kojeg od kaznenih djela utvrđenih u skladu s ovom Konvencijom, ne utječući na prava bona fide trećih stranaka, ili zabranila počinitelju privremeno ili trajno obavljanje profesionalne ili dobrovoljne aktivnosti koja je uključivala kontakt s djecom, a tijekom koje je kazneno djelo počinjeno.

- 4 Svaka stranka može usvojiti druge mjere u odnosu na počinitelje, kao što je oduzimanje roditeljskih prava ili praćenje ili nadzor osuđenih osoba.
- 5 Svaka stranka može utvrditi da prihodi od kaznenih djela ili imovina oduzeta u skladu s ovim člankom budu dodijeljeni posebnom fondu za financiranje programa prevencije i pomoći žrtvama bilo kojeg kaznenog djela utvrđenog u skladu s ovom Konvencijom.

#### **Članak 28. – Otežavajuće okolnosti**

Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da se sljedeće okolnosti, ukoliko već ne čine dio sastavnih elemenata kaznenog djela, mogu, u skladu s mjerodavnim odredbama unutarnjeg prava, uzeti u obzir kao otežavajuće okolnosti u određivanju sankcija za kaznena djela utvrđena u skladu s ovom Konvencijom:

- a kaznenim djelom ozbiljno je narušeno fizičko ili mentalno zdravlje žrtve;
- b kaznenom djelu su prethodili ili je isto bilo popraćeno mučenjem ili ozbiljnim nasiljem;
- c kazneno djelo je počinjeno protiv osobito ranjive žrtve;
- d kazneno djelo je počinio član obitelji, osoba koja živi s djetetom ili osoba koja je zloupotrijebila svoj autoritet;
- e kazneno djelo je počinilo nekoliko osoba koje su zajedno djelovale;
- f kazneno djelo je počinjeno u okviru zločinačke organizacije;
- g počinitelj je prethodno osuđivan za kaznena djela iste naravi.

#### **Članak 29. – Prethodne osude**

Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere koje će omogućiti da se prilikom izricanja kazne u obzir uzmu pravomoćne presude koje je izrekla neka druga stranka, a odnose se na kaznena djela utvrđena u skladu s ovom Konvencijom.

### **Poglavlje VII. – Istraga, kazneni progon i postupovno pravo**

#### **Članak 30. – Načela**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da istrage i kazneni postupci budu provedeni u najboljem interesu djeteta i poštujući njegova prava.
- 2 Svaka će stranka usvojiti pristup zaštite žrtava, osiguravajući da istrage i kazneni postupci ne pogoršavaju traumu koju je dijete iskusilo te da odgovor kaznenog pravosuđa bude popraćen pomoću, gdje je to prikladno.

- 3 Svaka će stranka osigurati da istrage i kazneni postupci budu smatrani prioritetnima te da se provode bez ikakvih neopravdanih odugovlačenja.
- 4 Svaka će stranka osigurati da mjere koje se primjenjuju na temelju ovog poglavlja ne utječu na prava obrane i zahtjeve poštenog i nepristranog suđenja, u skladu s člankom 6. Konvencije za zaštitu ljudskih prava i temeljnih sloboda.
- 5 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere, u skladu s temeljnim načelima svojeg unutarnjeg prava:
  - kako bi osigurala djelotvornu istragu i kazneni progon kaznenih djela utvrđenih u skladu s ovom Konvencijom, dopuštajući, gdje je to prikladno, mogućnost prikrivenih operacija;
  - kako bi omogućila jedinicama ili istražnim službama identificiranje žrtava kaznenih djela utvrđenih u skladu s člankom 20., posebice analizirajući materijale dječje pornografije, kao što su fotografije i audio-vizualne snimke koje se prenose ili su na raspolaganju kroz korištenje informacijskih i komunikacijskih tehnologija.

### **Članak 31. – Opće mjere zaštite**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi zaštitila prava i interese žrtava, uključujući njihove posebne potrebe kao svjedoka, u svim fazama istrage i kaznenih postupaka, posebice na način da:
  - a ih obavijesti o njihovim pravima i uslugama koje su im na raspolaganju te, osim u slučaju da ne žele primiti takve informacije, o radnjama poduzetim nakon njihove kaznene prijave, optužbama, općem napredovanju istrage ili postupka te o njihovoj ulozi kao i o rezultatu njihovog predmeta;
  - b osigura, barem u predmetima u kojima su žrtve i njihove obitelji u potencijalnoj opasnosti, da iste budu obaviještene, ukoliko je potrebno, kada je osoba protiv koje je pokrenut kazneni progon ili osuđena osoba privremeno ili konačno puštena na slobodu;
  - c im omogućiti, na način koji je u skladu s postupovnim pravilima unutarnjeg prava, da budu saslušane, da pruže dokaze te da izaberu način na koji će se njihova gledišta, potrebe i interesi izravno ili putem posrednika predstaviti te uzeti u obzir;
  - d im omogućiti odgovarajuće usluge potpore tako da njihova prava i interesi budu na odgovarajući način predstavljeni te uzeti u obzir;
  - e zaštititi njihovu privatnost, njihov identitet i ugled te da uz pomoć mjera koje su u skladu s unutarnjim pravom spriječi javno širenje bilo kojih informacija koje bi mogle voditi njihovoj identifikaciji;
  - f osigura njihovu sigurnost, kao i sigurnost njihovih obitelji i osoba koje svjedoče u njihovu korist od zastrašivanja, odmazde i ponovne viktimizacije;
  - g osigura da se izbjegne kontakt između žrtava i počinitelja u prostorijama suda ili policijskog tijela, osim u slučaju da nadležna tijela utvrde

drugačije u najboljem djetetovom interesu ili kada istraga ili postupak zahtijeva takav kontakt.

- 2 Svaka će stranka osigurati da žrtve imaju pristup informacijama o relevantnim sudskim i upravnim postupcima od svojeg prvog kontakta s nadležnim tijelima.
- 3 Svaka stranka će osigurati da žrtve imaju pristup besplatnoj pravnoj pomoći, gdje je ista zajamčena, u slučajevima kada je moguće da žrtva dobije status stranke u kaznenom postupku.
- 4 Svaka stranka će osigurati mogućnost da pravosudna tijela imenuju posebnog zastupnika za žrtvu kada ona, prema unutarnjem pravu, može imati status stranke u kaznenom postupku i kada nositeljima roditeljske odgovornosti nije dopušteno zastupati dijete u takvim postupcima zbog sukoba interesa između njih i žrtve.
- 5 Svaka će stranka osigurati, putem zakonodavnih ili drugih mjera, u skladu s uvjetima predviđenim njezinim unutarnjim pravom, da bilo koja skupina, zaklada, udruga ili vladina ili nevladina organizacija ima mogućnost pomagati i/ili pružati potporu žrtvama uz njihovu suglasnost tijekom kaznenog postupka koji se odnosi na kaznena djela utvrđena u skladu s ovom Konvencijom.
- 6 Svaka će stranka osigurati da informacije koje se daju žrtvama u skladu s odredbama ovog članka budu dane na način prilagođen njihovoj dobi i zrelosti te na jeziku koji razumiju.

### **Članak 32. – Pokretanje postupka**

Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da istrage ili kazneni progon kaznenih djela utvrđenih u skladu s ovom Konvencijom ne ovise o prijavi ili optužbi koju iznese žrtva te da se postupak može nastaviti čak i ako žrtva povuče svoje iskaze.

### **Članak 33. – Zastara**

Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da rok zastare za pokretanje postupka vezanog uz kaznena djela utvrđena u skladu s člankom 18., člankom 19. stavkom 1. podstavcima a i b te člankom 21. stavkom 1. podstavcima a i b bude dovoljan kako bi se omogućilo učinkovito pokretanje postupka nakon što je žrtva dosegla dobnu granicu punoljetnosti te razmjeran težini dotičnog zločina.

### **Članak 34. – Istrage**

- 1 Svaka će stranka usvojiti takve mjere koje mogu biti potrebne kako bi osigurala da osobe, jedinice ili službe zadužene za istrage budu specijalizirane za područje suzbijanja seksualnog nasilja i seksualnog zlostavljanja djece ili da osobe prođu izobrazbu u tu svrhu. Takve jedinice ili službe trebaju imati odgovarajuća financijska sredstva.

- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da neizvjesnost oko stvarne dobi žrtve ne spriječi pokretanje kaznene istrage.

### **Članak 35. – Razgovori s djetetom**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da:
  - a se razgovori s djetetom odvijaju bez neopravdanih odugovlačenja nakon prijavljivanja činjenica nadležnim tijelima;
  - b se razgovori s djetetom odvijaju, gdje je to potrebno, u prostorijama uređenim ili prilagođenim u tu svrhu;
  - c razgovore s djetetom provode stručnjaci koji su prošli izobrazbu u tu svrhu;
  - d sve razgovore s djetetom provode iste osobe, ukoliko je to moguće i gdje je to prikladno;
  - e broj razgovora bude što je više moguće ograničen, na onu mjeru koja je potrebna u svrhu kaznenog postupka;
  - f dijete može pratiti njegov zakonski zastupnik ili, gdje je to prikladno, odrasla osoba po njegovom izboru, osim ukoliko je donesena obrazložena odluka o suprotnom, u odnosu na tu osobu.
- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da svi razgovori sa žrtvom ili, gdje je to prikladno, sa svjedokom djetetom, mogu biti snimani na video vrpcu te da se takvi snimljeni razgovori mogu prihvatiti kao dokaz tijekom sudskog postupka, u skladu s pravilima predviđenim unutarnjim pravom.
- 3 Ukoliko se dob žrtve ne može sa sigurnošću odrediti, a postoje razlozi za sumnju da je žrtva dijete, mjere utvrđene u stavcima 1. i 2. primjenjuju se do trenutka potvrđivanja dobi žrtve.

### **Članak 36. – Postupci pred kaznenim sudom**

- 1 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere, uz odgovarajuće poštivanje pravila koja uređuju autonomiju pravne struke, kako bi osigurala da na korist osobama uključenim u postupak, posebice sucima, tužiteljima i odvjetnicima na raspolaganju bude obuka o pravima djeteta i seksualnom iskorištavanju i seksualnom zlostavljanju djece.
- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da, u skladu s pravilima predviđenim njezinim unutarnjim pravom:
  - a sudac može naložiti da se ročište održi uz isključenje javnosti;
  - b žrtva može biti saslušana u sudnici, a da nije fizički nazočna, posebice pomoću upotrebe odgovarajućih komunikacijskih tehnologija.



## **Poglavlje VIII.– Evidentiranje i pohrana podataka**

### **Članak 37. – Evidentiranje i pohrana nacionalnih podataka o osuđenim počiniteljima seksualnih kaznenih djela**

- 1 S ciljem sprječavanja i kaznenog progona kaznenih djela utvrđenih u skladu s ovom Konvencijom, svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi prikupila i pohranila, u skladu s mjerodavnim odredbama o zaštiti osobnih podataka i drugim mjerodavnim pravilima i jamstvima koje propisuje unutarnje pravo, podatke vezane uz identitet i genetički profil (DNK) osoba osuđenih za kaznena djela utvrđena u skladu s ovom Konvencijom.
- 2 Svaka će stranka, u trenutku potpisivanja ili prilikom polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, glavnom tajniku Vijeća Europe priopćiti naziv i adresu jedinstvenog nacionalnog tijela nadležnog za potrebe stavka 1.
- 3 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da se podaci navedeni u stavku 1. mogu prenijeti nadležnom tijelu druge stranke, u skladu s uvjetima utvrđenim njezinim unutarnjim pravom i mjerodavnim međunarodnim instrumentima.

## **Poglavlje IX. – Međunarodna suradnja**

### **Članak 38. – Opća načela i mjere za međunarodnu suradnju**

- 1 Stranke će u najvećoj mogućoj mjeri uzajamno surađivati, u skladu s odredbama ove Konvencije te kroz primjenu mjerodavnih primjenjivih međunarodnih i regionalnih instrumenata, mehanizama dogovorenih na temelju jednoobraznog ili uzajamnog zakonodavstva i unutarnjih zakona, s ciljem:
  - a sprječavanja i suzbijanja seksualnog iskorištavanja i seksualnog zlostavljanja djece;
  - b zaštite i pružanja pomoći žrtvama;
  - c istraga ili postupaka vezanih uz kaznena djela utvrđena u skladu s ovom Konvencijom.
- 2 Svaka će stranka poduzeti potrebne zakonodavne ili druge mjere kako bi osigurala da žrtve kaznenog djela utvrđenog u skladu s ovom Konvencijom na državnom području stranke koja nije ona u kojoj imaju prebivalište mogu podnijeti kaznenu prijavu nadležnim tijelima države svog prebivališta.
- 3 Ukoliko stranka koja uvjetuje međusobnu pravnu pomoć u kaznenim stvarima ili izručenje postojanjem međunarodnog ugovora primi zahtjev za pravnom pomoći ili izručenjem od stranke s kojom nije sklopila takav sporazum, ona može smatrati ovu Konvenciju pravnim temeljem za međusobnu pravnu pomoć u kaznenim stvarima ili izručenje u odnosu na kaznena djela utvrđena u skladu s ovom Konvencijom.

- 4 Svaka će stranka nastojati integrirati, gdje je to prikladno, sprječavanje i suzbijanje seksualnog iskorištavanja i seksualnog zlostavljanja djece u programe razvojne pomoći koji se pružaju u korist trećih država.

## **Poglavlje X. – Mehanizam nadzora**

### **Članak 39. – Odbor stranaka**

- 1 Odbor stranaka sastoji se od predstavnika stranka Konvencije.
- 2 Odbor stranaka saziva glavni tajnik Vijeća Europe. Njegov prvi sastanak održat će se unutar razdoblja od godine dana nakon stupanja na snagu ove Konvencije za desetu državu potpisnicu koja ju je ratificirala. Nakon toga, Odbor će se sastajati svaki puta kada to zatraži barem jedna trećina stranaka ili glavni tajnik.
- 3 Odbor stranaka usvaja vlastiti poslovnik.

### **Članak 40. – Drugi predstavnici**

- 1 Parlamentarna skupština Vijeća Europe, povjerenik za ljudska prava, Europski odbor za probleme kriminaliteta (CDPC), kao i drugi mjerodavni međuvladini odbori Vijeća Europe, u Odbor stranaka imenuju po jednog predstavnika.
- 2 Odbor ministara može pozvati druga tijela Vijeća Europe da imenuju predstavnika u Odbor stranaka nakon savjetovanja s njim.
- 3 Predstavnici civilnoga društva, a posebice nevladinih organizacija, mogu biti primljeni kao promatrači u Odbor stranaka, temeljem postupka utvrđenog mjerodavnim pravilima Vijeća Europe.
- 4 Predstavnici imenovani u skladu sa stavcima 1. i 3. sudjeluju na sastancima Odbora stranaka bez prava glasa.

### **Članak 41. – Dužnosti Odbora stranaka**

- 1 Odbor stranaka prati provedbu ove Konvencije. Poslovníkom Odbora stranaka određuje se postupak ocjene provedbe ove Konvencije.
- 2 Odbor stranaka olakšava prikupljanje, analizu i razmjenu informacija, iskustava i dobre prakse među državama kako bi se poboljšala njihova sposobnost sprječavanja i suzbijanja seksualnog iskorištavanja i seksualnog zlostavljanja djece.
- 3 Odbor stranaka također, gdje je to prikladno:
  - a olakšava i poboljšava djelotvornu primjenu i provedbu ove Konvencije, uključujući identifikaciju bilo kakvih problema i učinaka bilo koje izjave ili rezerve stavljene u skladu s ovom Konvencijom.

- b izražava mišljenje o bilo kojem pitanju vezanom uz primjenu ove Konvencije te olakšava razmjenu informacija o značajnim pravnim, političkim ili tehnološkim kretanjima.
- 4 Odboru stranaka u izvršavanju njegovih dužnosti u skladu s ovim člankom, pomaže tajništvo Vijeća Europe
  - 5 Europski odbor za probleme kriminaliteta (CDPC) periodično će biti obavještavan o aktivnostima navedenim u stavcima 1., 2. i 3. ovog članka.

## **Poglavlje XI. – Odnos prema drugim međunarodnim instrumentima**

### **Članak 42. – Odnos prema Konvenciji Ujedinjenih naroda o pravima djeteta i njezinom Fakultativnom protokolu o prodaji djece, dječjoj prostituciji i dječjoj pornografiji**

Ova Konvencija ne utječe na prava i obveze koje proizlaze iz odredaba Konvencije Ujedinjenih naroda o pravima djeteta i njezinog Fakultativnog protokola o prodaji djece, dječjoj prostituciji i dječjoj pornografiji već joj je namjera pojačati zaštitu koju oni pružaju te razviti i nadopuniti standarde koji su u njima sadržani.

### **Članak 43. – Odnos prema drugim međunarodnim instrumentima**

- 1 Ova Konvencija ne utječe na prava i obveze koji proizlaze iz odredaba drugih međunarodnih instrumenata kojih su stranke ove Konvencije stranke ili će to postati, a koji sadrže odredbe o pitanjima na koja se odnosi ova Konvencija i koji osiguravaju veću zaštitu i pomoć djeci žrtvama seksualnog iskorištavanja ili seksualnog zlostavljanja.
- 2 Stranke ove Konvencije mogu sklopiti dvostrane ili mnogostrane sporazume jedna s drugom o pitanjima na koja se odnosi ova Konvencija, s ciljem dopune ili ojačavanja njezinih odredaba ili olakšavanja primjene u njoj sadržanih načela.
- 3 Ne dovodeći u pitanje predmet i svrhu ove Konvencije i ne dovodeći u pitanje njezinu punu primjenu u drugim strankama, stranke koje su članice Europske unije u svojim međusobnim odnosima primjenjuju pravila Zajednice i Europske unije u onoj mjeri u kojoj postoje pravila Zajednice ili Europske unije koja uređuju pojedinu predmetnu temu i koja su primjenjiva na konkretan slučaj.

## **Poglavlje XII. – Izmjene i dopune Konvencije**

### **Članak 44. – Izmjene**

- 1 Svaki prijedlog izmjene i dopune ove Konvencije koji neka stranka iznese dostavlja se glavnom tajniku Vijeća Europe koji ga prosljeđuje državama članicama Vijeća Europe, svakoj potpisnici, svakoj državi stranci, Europskoj zajednici, svakoj državi pozvanoj da potpiše ovu Konvenciju u skladu s

odredbama članka 45. stavka 1. i svakoj državi pozvanoj da pristupi ovoj Konvenciji u skladu s odredbama članka 46. stavka 1.

- 2 Svaka izmjena i dopuna koju predloži neka stranka dostavlja se Europskom odboru za probleme kriminaliteta (CDPC) koji će Odboru ministara podnijeti svoje mišljenje o predloženoj izmjeni i dopuni.
- 3 Odbor ministara razmatra predloženu izmjenju i dopunu i mišljenje koje podnese CDPC, i, nakon provedenih konzultacija sa državama koje nisu članice, a stranke su ove Konvencije, može prihvatiti izmjenju i dopunu.
- 4 Tekst svih izmjena i dopuna koje usvoji Odbor ministara u skladu sa stavkom 3. ovog članka prosljeđuje se svim strankama radi prihvata.
- 5 Svaka izmjena i dopuna usvojena u skladu sa stavkom 3. ovog članka stupa na snagu prvog dana mjeseca koji slijedi nakon isteka razdoblja od mjesec dana nakon datuma na koji su sve stranke obavijestile glavnog tajnika da su ju prihvatile.

### **Poglavlje XIII. – Završne odredbe**

#### **Članak 45. – Potpisivanje i stupanje na snagu**

- 1 Ova Konvencija otvorena je za potpisivanje državama članicama Vijeća Europe, državama koje nisu članice koje su sudjelovale u njezinoj izradi, kao i Europskoj zajednici.
- 2 Ova Konvencija podliježe ratifikaciji, prihvatu ili odobrenju. Isprave o ratifikaciji, prihvatu ili odobrenju polažu se kod glavnoga tajnika Vijeća Europe.
- 3 Ova Konvencija stupa na snagu prvoga dana mjeseca koji slijedi nakon isteka razdoblja od tri mjeseca nakon datuma na koji je 5 potpisnica, uključujući najmanje 3 države članice Vijeća Europe, iskazalo svoj pristanak biti vezane Konvencijom u skladu s odredbama prethodnoga stavka.
- 4 U odnosu na svaku državu navedenu u stavku 1. ili Europsku zajednicu, koje naknadno iskažu svoj pristanak biti vezane Konvencijom, Konvencija stupa na snagu prvog dana mjeseca koji slijedi po isteku razdoblja od tri mjeseca nakon datuma polaganja njezine isprave o ratifikaciji, prihvatu ili odobrenju.

#### **Članak 46. – Pristupanje Konvenciji**

- 1 Nakon stupanja ove Konvencije na snagu, Odbor ministara Vijeća Europe može, nakon konzultacije sa strankama ove Konvencije i po dobivanju njihovog jednoglasnog pristanka, pozvati svaku državu koja nije članica Vijeća Europe, koja nije sudjelovala u izradi da pristupi Konvenciji odlukom donesenom većinom predviđenom člankom 20.d Statuta Vijeća Europe, te jednoglasnom odlukom predstavnika država ugovornica koje imaju pravo na sudjelovanje u radu Odbora ministara.

- 2 U odnosu na svaku državu koja pristupa, Konvencija stupa na snagu prvoga dana mjeseca po isteku razdoblja od tri mjeseca nakon datuma polaganja isprave o pristupu kod glavnog tajnika Vijeća Europe.

#### **Članak 47. – Teritorijalna primjena**

- 1 Svaka država ili Europska zajednica mogu, u trenutku potpisivanja ili prilikom polaganja svoje isprave o ratifikaciji, prihvatu, odobrenju ili pristupu, odrediti područje ili područja na koje se ova Konvencija primjenjuje.
- 2 Svaka stranka može naknadno, u svako doba nakon toga, izjavom upućenom glavnom tajniku Vijeća Europe, proširiti primjenu ove Konvencije na bilo koje drugo područje navedeno u izjavi, a za čije je međunarodne odnose ona odgovorna ili u čije je ime ovlaštena preuzimati obveze. U odnosu na to područje, Konvencija stupa na snagu prvoga dana mjeseca po isteku razdoblja od tri mjeseca nakon datuma kad glavni tajnik primi takvu izjavu.
- 3 Svaka izjava dana u skladu s dva prethodna stavka, u odnosu na bilo koje područje navedeno u toj izjavi, može se povući obaviješću upućenom glavnom tajniku Vijeća Europe. Povlačenje stupa na snagu prvoga dana mjeseca koji slijedi po isteku razdoblja od tri mjeseca nakon datuma kad glavni tajnik primi takvu obavijest.

#### **Članak 48. – Rezerve**

Ni na jednu odredbu ove Konvencije, ne mogu se staviti rezerve, osim rezervi koje su izrijekom utvrđene. Svaka rezerva može se povući u bilo kojem trenutku.

#### **Članak 49. – Otkaz**

- 1 Svaka stranka može u bilo kojem trenutku otkazati ovu Konvenciju obaviješću upućenom glavnom tajniku Vijeća Europe.
- 2 Otkaz stupa na snagu prvoga dana mjeseca po isteku razdoblja od tri mjeseca nakon datuma kad je glavni tajnik primio obavijest.

#### **Članak 50. – Obavijest**

Glavni tajnik Vijeća Europe obavještava države članice Vijeća Europe, svaku državu potpisnicu, svaku državu stranku, Europsku zajednicu, svaku državu koja je pozvana na potpisivanje Konvencije sukladno odredbama članka 45. i svaku državu koje je pozvana da pristupi ovoj Konvenciji sukladno odredbama članka 46. o:

- a svakom potpisivanju;
- b polaganju svake isprave o ratifikaciji, prihvatu, odobrenju, ili pristupu;

- c svakom datumu stupanja na snagu ove Konvencije u skladu s člancima 45. i 46.;
- d svakoj izmjeni i dopuni usvojenoj u skladu s člankom 44. i o datumu stupanja na snagu te izmjene i dopune;
- e svakoj rezervi stavljenoj sukladno članku 48.;
- f svakom otkazu izvršenom sukladno odredbama članka 49.;
- g svakom drugom činu, obavijesti, ili priopćenju koje se odnosi na ovu Konvenciju;

U potvrdu toga su niže potpisani, za to propisno ovlašteni, potpisali su ovu Konvenciju.

Sastavljeno na Lanzaroteu, dana 25. listopada 2007. godine, na engleskom i francuskom jeziku, pri čemu su oba teksta jednako vjerodostojna, u jednom primjerku koji se polaže u arhivu Vijeća Europe. Glavni tajnik Vijeća Europe dostavlja ovjerene preslike svakoj državi članici Vijeća Europe, državama koje nisu članice koje su sudjelovale u izradi ove Konvencije, Europskoj zajednici i svakoj državi koja je pozvana da pristupi ovoj Konvenciji.

**COUNCIL OF EUROPE CONVENTION  
ON THE PROTECTION OF CHILDREN  
AGAINST SEXUAL ABUSE**

**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 Governments 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 others 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 intergovernmental 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 authorized 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.

### **Članak 3.**

Provedba ovoga Zakona u djelokrugu je središnjih tijela državne uprave nadležnih za poslove pravosuđa, unutarnje poslove, poslove zdravstva i socijalne skrbi, obrazovanja, kulture i obitelji.

### **Članak 4.**

Prilikom polaganja svoje isprave o ratifikaciji Republika Hrvatska priopćit će na Konvenciju iz članka 1. ovoga Zakona, sljedeću izjavu:

IZJAVA  
vezana uz članak 37. stavak 2. Konvencije

U skladu s člankom 37. stavkom 2. Konvencije, Republika Hrvatska kao svoje nacionalno tijelo nadležno za potrebe članka 37. stavka 1. Konvencije određuje Ministarstvo pravosuđa, s adresom Dežmanova 10, 10000 Zagreb.

### **Članak 5.**

Na dan stupanja na snagu ovoga Zakona, Konvencija iz članka 1. ovoga Zakona nije na snazi za Republiku Hrvatsku, te će se podatak o stupanju na snagu objaviti sukladno odredbi članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora.

### **Članak 6.**

Ovaj Zakon stupa na snagu osmoga dana od dana objave u Narodnim novinama.

## O B R A Z L O Ž E N J E

**Člankom 1.** Konačnog prijedloga zakona propisano je da se potvrđuje Konvencija Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja, sukladno odredbi članka 139. stavka 1. Ustava Republike Hrvatske čime se iskazuje formalni pristanak Republike Hrvatske da bude vezana Konvencijom Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja, na temelju čega će ovaj pristanak biti iskazan i na međunarodnoj razini.

**Članak 2.** Konačnog prijedloga zakona sadrži tekst Konvencije Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik.

**Člankom 3.** Konačnog prijedloga zakona propisano je da je provedba ovoga Zakona u djelokrugu središnjih tijela državne uprave nadležnih za poslove pravosuđa, unutarnje poslove, poslove zdravstva i socijalne skrbi, obrazovanja, kulture i obitelji.

**Članak 4.** sadrži tekst izjave koju će Republika Hrvatska priopćiti depozitaru prilikom polaganja isprave o ratifikaciji Konvencije.

**Člankom 5.** Konačnog prijedloga zakona utvrđeno je da na dan stupanja Zakona na snagu, Konvencija Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja nije na snazi, te će se podatak o njenom stupanju na snagu za Republiku Hrvatsku objaviti sukladno odredbi članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora.

**Člankom 6.** određeno je stupanje na snagu Zakona o potvrđivanju Konvencije Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja.

COUNCIL OF EUROPE CONVENTION  
ON THE PROTECTION OF CHILDREN  
AGAINST SEXUAL EXPLOITATION  
AND SEXUAL ABUSE

CONVENTION DU CONSEIL DE L'EUROPE  
POUR LA PROTECTION DES ENFANTS  
CONTRE L'EXPLOITATION ET LES ABUS SEXUELS



## 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 Governments 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 others 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 cooperate 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 intergovernmental 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.

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé la présente Convention.

Fait à Lanzarote, le 25 octobre 2007, en français et en anglais, les deux textes faisant également foi, en un seul exemplaire qui sera déposé dans les archives du Conseil de l'Europe. Le Secrétaire Général du Conseil de l'Europe en communiquera copie certifiée conforme à chacun des Etats membres du Conseil de l'Europe, aux Etats non membres ayant participé à l'élaboration de la présente Convention, à la Communauté européenne et à tout autre Etat invité à adhérer à la présente Convention.

Certified a true copy of the sole original document, in English and in French, deposited in the archives of the Council of Europe.

Copie certifiée conforme à l'exemplaire original unique en langues française et anglaise, déposé dans les archives du Conseil de l'Europe.

Strasbourg, 28 January 2008

The Director of Legal Advice  
and Public International Law (Jurisconsult)  
of the Council of Europe,

Le Directeur du Conseil Juridique  
et du Droit International Public (Jurisconsulte)  
du Conseil de l'Europe,

Manuel LEZERTUA

