# ELSA Norway for Children

## How does legislation protect child victims from sexual violence in the national legal framework in Europe?


National Coordinator: Olav Vogt Engeland

National Researchers: Idun Alisia Bjørvik, Dina Camilla Schei Brask, Maren Folkestad, Sara Ege Grindaker, Dilan Karakuyu, Sun Sand, Maria Mogstad Slinde, Einar Lunds Sørensen, Maëlle Thorheim, Anette Ødelien

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The European Law Students' Association

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# CHAPTER I: INTRODUCTION

## 1. GENERAL

### *Equal Rights*

**i. Are there discrimination problems regarding 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 of men and women? Please quote official reports from National or International Institutions, reports from the main NGOs that are active in the country and/or Journalistic inquiries.**

To give a complete description of discrimination in Norway would, of course, be impossible. The following is an attempt to present a brief overview.

In 2006 the Equality and Anti-discrimination Ombud (LDO) was established to supervise and ensure laws and administrative practice on discrimination. Between 2007 and 2011, LDO handled approximately 6,800 cases regarding discrimination. Most cases concerned gender discrimination and disability discrimination.[1] According to LDO, the large number of cases concerning discrimination on the grounds of disability was related to the Act on Discrimination and Accessibility (DTL)[2] that entered into force in 2009. LDO reviews questions of discrimination on the grounds of individual complaints. Therefore, their statistics may not be representative of the actual situation. Other factors may be determinative for determining the type of case brought before LDO.

According to a survey from 2009 by Statistics of Norway (SSB), about half of the inhabitants with foreign background say that they have experienced discrimination in one or more areas, including employment, housing, healthcare or nightlife. Young people (age 16-24) claimed to experience discrimination more often than older people (age 55-71). Furthermore, 60 to 70 per cent of people with Somalian, Iranian and Iraqi backgrounds reported they had experienced employment discrimination in the last five years. Examining the tenancy situation, SSB found

[1] The Equality and Anti-discrimination Ombud, 'Veiledningssaker etter diskrimineringsgrunnlag'. 12 June 2012, viewed on 15 August 2012, <http://www.ldo.no/no/Tema/Statistikk-og-analyse/Veiledningssaker-etter-diskrimineringsgrunnlag/>.on 15 August 2012, <http://www.ldo.no/no/Tema/Statistikk-og-analyse/Veiledningssaker-etter-diskrimineringsgrunnlag/>.
[2] Act of 20 June 2008 No. 42 relating to a prohibition against discrimination on the basis of disability (the Anti-discrimination and Accessibility Act).

that people with Asian and African background have higher rental costs than people with Norwegian background. With regard to healthcare, 80 per cent of the inhabitants with a foreign background reported that they felt that they were treated with the same quality of care as the inhabitants with a Norwegian background.[3]

The Labour Research Foundation (FaFo) conducted an overview of the social science knowledge on the living conditions of gays, lesbians, bi-sexuals and the HIV -positive in Norway in 2008. The purpose for this report was to evaluate the possible need to expand the legal protection from discrimination for these groups. FAFO found that people with non-heterosexual orientation report little discrimination in their daily lives, and enjoy the same standards of living as the rest of the population. However, they found that non-heterosexual foster parents are opted out in favour of heterosexual foster parents in accordance with regulations on foster homes.[4] The stated reason for this provision is the interest of the child, but with the Marriage Act equating heterosexual couples and homosexual couples, giving equal status and right to apply for child adoption,[5] it is difficult to see how this is not to be regarded as discrimination. FaFo also found the state regulated practice of the Child Welfare Service ("Barnevernet") in evaluating the suitability of stepparents before adoption to be problematic for homosexual couples.[6]

The indigenous Sami population accounts for approximately 40,000 people in Norway. According to a survey by SAMINOR (University of Tromsø) in 2003/04, Sami people report experiencing more ethnic discrimination and bullying than ethnic Norwegians. The study found that the most common types of discrimination were bullying, gossiping and disparaging remarks at work, in their local community, and at school. The study notes that "[t]hese results are consistent with experiences from other minority and marginalized groups that experienced colonization".[7]

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[3] K. R. Tronstad, 'Opplevd diskriminering blant innvandrere med bakgrunn fra ti ulike land', Statistics of Norway, December 2009, viewed on 1 September 2012, <http://www.ssb.no/vis/magasinet/slik_lever_vi/art-2009-12-14-01.html>.

[4] Regulations of 18 December 2003 on Foster Homes Section 4, delegated by Act of 17 July 1992 no. 100 relating to child welfare services (the Child Welfare Act) Section 4-22 (3).

[5] Act of 28 February 1986 no. 8 relating to adoption, cf. Act 4 July 1991 No. 47 relating to marriage (the Marriage Act) Section 1.

[6] A. B. Grønningsæter & B R Nuland, 'Diskriminering av lesbiske, homofile og bifile og av hivpositive, en litteraturgjennomgang', *Fafo*, viewed on 1 September 2012, <http://www.fafo.no/pub/rapp/10068/10068.pdf, p.23>.

[7] K. L. Hansen, M. Melhus & A. Høgmo, E. Lund, 'Ethnic discrimination and bullying in the Sami and non-Sami populations in Norway - the SAMINOR study", *National Centre for Biotechnology Information,* viewed on 1 September 2012, <http://www.ncbi.nlm.nih.gov/pubmed/18468262>.

***Family Protection***

**ii. What is the definition given to the term "family" in your national legislation or Constitution? What is the status of marriage? What is the average marital age of the population? Please quote official reports/statistics from National or International Institutions or official statistics from Private Institutions or NGOs.**

The term "family" is derived from legal theory[8] and the government's report to the Norwegian Parliament (the Storting) St. Meld. Nr. 29 (2002 - 2003). The latter document states that:

> "The family includes married couples with or without children, cohabiting couples with or without children, gay partners with or without children, single parents living with their children, non-resident parents, families with foster children and single, living alone."[9]

In 2008, Section 1 of the Marriage Act was amended to include persons of the same sex to marry each other. In 2001 there were 204 357 people living in cohabitation, a rise from 102 000 in 1990.[10] In 2011 there was a total of 23 135 marriages. 9 067 of these took place in the State Church, while the District Court had 7 481.[11] These numbers show that the total amount of marriages has slightly decreased from 25 356 in 2000. Numbers from 2011 showcases a total of 21 and 12 per cent married women and men, respectively, in the age group 25-29. [12]

The age requirement for independently entering a marriage is 18 years, cf. the Marriage Act Section 1a. The average marital age of the population in Norway for first time marriages was 29.3 years for women in 2001, an increase from 26.2 in 1991. The average was 32.0 years in 2001 for men, an increase from 28.8 in 1991.[13]

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[8] P. Lødrup & T. Sverdrup, *Familieretten* 7th edition, P. Lødrup, Oslo, 2011, p. 22.
[9] St.meld. nr. 29 (2002-2003),
[10] Statistics Norway, 'Singel eller samboer', , 2008, viewed on 15 October 2012 <http://www.ssb.no/vis/emner/00/norge/fam/main.html>.
[11] Statistics Norway, 'Statistikkbanken', StatBank, 2011, viewed on 15 October 2012 <http://statbank.ssb.no/statistikkbanken/Default_FR.asp?PXSid=0&nvl=true&PLanguage=0&tilside=selectvarval/define.asp&Tabellid=05713>.
[12] Statistics Norway, 'Statistikkbanken', StatBank, 2011, viewed on 15 October 2012, <http://statbank.ssb.no/statistikkbanken/Default_FR.asp?Productid=02.01&PXSid=0&nvl=true&PLanguage=0&tilside=selecttable/MenuSelP.asp&SubjectCode=02>.
[13] St.meld. nr. 29 (2002-2003).

***Child Protection***

**iii. What is the general status of children within the respective States' cultural and historical background? What is the general approach to children rights issues in the respective state? Is there a general concern regarding children/children rights? Were there/are there any violations that has been caught the eye of the media or the legislators?**

In 1991, the Norwegian Government ratified the UN Convention on the Rights of the Child (CRC).[14] With this the State is responsible for protecting children against abuse, exploitation or pain. In addition, Norway was the first country to establish an Ombudsman who has "statutory right to protect children and their rights"[15]. The Ombudsman for Children acts as an independent institution, meaning that neither the Parliament nor the Government can give instructions.[16]

The government of Norway has to report on the general status of children's rights every five year. The report is submitted to the UN Child Committee and the fourth and latest report is from 2008. In addition, the Norwegian government sends a report consisting of children and young people's own experiences and opinions on how it is to grow up in Norway (Children and young people report to the UN on their rights).[17] Also other non-governmental parties who are concerned about children's rights can report to the Child Committee. During the last round, the Ombudsman for Children and some other organizations and research centres made their own reports.

The United Nations Child Committee has commented that the Norwegian legislation needs amendments. The UN Child Committee is dissatisfied with Norway's practise of imprisoning minors together with adult prisoners. The committee also comments that there are large and regional differences in the Child Welfare Service throughout the country. Norway should ensure children the same rights, regardless of what part of the country they belong to. The Committee also comments that the Norwegian government does not allow The Ombudsman for Children to

[14] Regjeringen, 'FNs barnekonvesjon', viewed on 3 August 2012, <http://www.regjeringen.no/nb/dep/bld/tema/barn_og_ungdom/fns-barnekonvensjon.html?id=670174>.
[15] Barneombudet, "About the position", viewed 5 August 2012, <http://www.barneombudet.no/english/about_the_/about_the_/>.
[16] Barneombudet, 'About the position', viewed 5 August 2012, <http://www.barneombudet.no/english/about_the_/about_the_/>.
[17] Simonsen & Hagen, 'FN sier fra til Norge', Save the Children Norway, 2 February 2010, viewed 8 August 2012, <http://www.reddbarna.no/nyheter/fn-sier-fra-til-norge>.

receive and follow up complaints from children. Such a complaint procedure could offer children immediate help, and it would provide the government with more knowledge about the issues occupying children. Moreover, the Committee was dissatisfied with the level of knowledge that persons working with children had about Children's Rights.[18] In 2011, the United Nations created a third additional protocol to the CRC which gives children the right to complain about their respective country directly to the United Nations Child Committee. The Norwegian Government has not signed this protocol.[19]

Being one of the most known sexual assault cases in Norway, the Alvdal Case exemplifies horrific abuse of children taking place in this country. It involved parents and their children and it was intensively covered by the media.[20] In this case, five adults were involved in sexual assault and rape against four children under 14 years of age through a period of several years. The accused persons were two pairs of neighbours, both having two children. Another fifth neighbour was involved and five other adults were suspected, but never charged. In this case the prosecutors had photos and videos as evidence against the accused adults. One of the videos showed the stepfather having sex with his stepdaughter and this man was charged with rape and sexual assault against all four children involved in the case. Save the Children Norway states that the Alvdal Case is not unique.[21]

**iv. <u>International obligations:</u> What is the relevant legislation regarding the implementation of international treaties? What is the relationship between State law and international treaties (dualistic or monalistic approach)? What is the date of ratification of United Nations Convention on Rights of the Child? Did the State make any reservations to the Convention? What is the general status of implementation?**

Norwegian legislation has a dualistic approach to the relationship between state law and international treaties. This approach includes the requirement that all international agreements,

[18] Save the Cildren Norway, 'Rapport barnehøringen med FNs Barnekomité i Norge 2009', 12 October 2009, viewed 29 July 2012, <http://www.reddbarna.no/>.
[19] M. Sydgård and I. K. Lund, 'Krever klagerett for barn', Save the Children, 17 September 2012, viewed on 20 October 2012, <http://www.reddbarna.no/nyheter/krever-klagerett-for-barn>.
[20] Ridar, Solem and Tommelstad, "Tiltalen som ryster Alvdal", VG, published 9th January 2011, changed 19th January 2011, viewed on 21 October 2012, http://www.vg.no/nyheter/innenriks/artikkel.php?artid=10037347
[21] E. Toft, Save the Children Norway, 'Alvdal-saken ikke enestående', Save the Children Norway, 18 February 2011, viewed 21 October 2012, <http://www.reddbarna.no/nyheter/-alvdal-saken-ikke-enestaaende>.

customary international law and general principles of international law must be implemented into domestic law in order to be applicable and applied by the courts. The dualistic principle in Norwegian legislation is not laid down in the Constitution, but can be deduced from the Constitutions' framework that distinguishes between a legislative, executive and a judicial power. This has been repeatedly confirmed by case law,[22] and is generally accepted as an unwritten legal norm, with the rank of formal law.

The legislator uses three different methods when implementing international treaties; transformation, incorporation and passive transformation (determination by the legislator that the legislation is in conformity with the international law). Other than incorporating human rights treaties in the Act of 21 May 1999 relating to the strengthening of the status of human rights in Norwegian law (the Human Rights Act), the most common method of implementing human rights treaties in Norwegian legislation has been through passive transformation.[23] There is no particular legislation that dictates when the various methods for implementation must be used. This decision will usually depend upon the recommendations of a specialized Committee from the Ministry of Justice.

A limited type of incorporation used in Norwegian legislation is "sector monism," including the premise that international law has precedence over domestic legislation in certain jurisdictions.

Norway ratified the United Nations Convention on rights of the Child on 8 January 1991. The Norwegian Government initially decided to make a reservation regarding Art. 40(2)(b)(v), but withdrew this reservation on 19 September 1995. Norway does not currently have any reservations to the Convention.[24]

[22] Rt. 2000 p. 1811 *Finnanger,* Rt. = Norsk Rettstidende (English translation = Surpreme Court Law Review).
[23] NOU: 1993: 18
[24] United Nations, viewed on 22 October 2012,
<http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#43>.

## 2. THE LANZAROTE CONVENTION

### i. When did the State ratify the European Convention on Human Rights?

Norway ratified the European Convention on Human Rights (ECHR) in 1952 and it took effect in 1953.[25]

### ii. Is the state a party to the Lanzarote Convention? Date of signature and ratification? Did the country make any reservations to the Convention/opt out of any parts?

The Lanzarote Convention was signed by Norway on 25 October 2007.[26] However, Norway has not yet ratified the convention. At this point, according to the Ministry of Justice, Norway does not have any plans to make reservations to the Convention.

***If not ratified:***

### iii. Does the State plan to ratify the convention? If so, what is the plan for the ratification and when can this ratification is being expected? If not, what are the obstacles hindering a ratification?

According to the Ministry of Justice, Norway will ratify the Convention as soon as domestic legislation fulfils the requirements of the Convention.[27] According to the preparatory works for the implementation of the Lanzarote Convention, the General Civil Penal Code of 20 May 2005 no. 28 (the Penal Code of 2005)[28] fulfils the Lanzarote Convention's requirements concerning criminal law. [29] However, the main obstacle is that the Penal Code of 2005 has not yet entered into force due to technical improvements this requires in the police's computer system. Finally, other departments that are affected by the Convention have not yet given their opinion on the matter.

[25] NOU 2008:9.
[26] 'Ot. Prp. Nr. 22 (2008-2009).
[27] Folkestad, M., 'Re: Questions about the Lanzarote Convention' [email and phonecall to the Ministry of Justice] 27 August 2012.
[28] When indicating this Penal Code, the year of 2005 will always be mentioned in the following.
[29] Ot. Prp. Nr. 22 (2008-2009).

**iv. What would be the rank of the Lanzarote Convention under the State's national legal order when ratified?**

The Norwegian legal system is a hierarchy of legal norms, the Constitution being the superior legal norm. According to the *Lex Superior* principle, statutory law is subordinate to the Constitution, and regulations are subordinate to statutory law.

What rank the Lanzarote Convention will have in the Norwegian legal system when ratified will depend on the legal area affected by the Convention. We distinguish between those articles which affect the General Civil Penal Code of 22 May 1902 no. 10 (the Penal Code)[30] and the Act of 22 May 1982 no. 25 relating to legal procedure in criminal cases (the Criminal Procedure Act), where sector monism is applied, and articles that affects other parts of the legislation, where the general principle of presumption applies.

The general principle of presumption is developed by case law and deals with the presumption that Norwegian domestic law is in accordance with international law. The principle applies in all legal areas in which Norway has international obligations. Accordingly, Norwegian law will, as much as possible, be interpreted in accordance with international law, cf. Rt. 2000 p. 1811 *Finnanger I*.

The articles in the Lanzarote Convention primarily regulate the Penal Code and the Criminal Procedure Act, where sector monism is applied, and thus the principle of presumption is not necessary. Since sector monism applies in both the Penal Code and the Criminal Procedure Act, the Norwegian courts are obligated to apply the law in such a way as to ensure compliance with binding international agreements and customary international law. Norwegian law may therefore be set aside if it is incompatible with the articles in the Lanzarote Convention. The Criminal Procedure Act Section 4 states: "The provisions of this Act shall apply subject to such limitations as are recognized in international law or which derive from any agreement made with a foreign State"[31]. Likewise, the Penal Code Act Section 1 states: "The criminal legislation shall apply

[30] When the year of the penal code is not stated, this penal code is the one referred to in the following.
[31] Unofficial translation by R. Walford, E. Høgtvedt, P. Chaffeey & S. Hamilton, The Ministry of Justice, viewed 3 on August 2012, <http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf>.

subject to such limitations as derived from any agreement with a foreign State or from international law generally".[32]

The term "limitations" in the Criminal Procedure Act Section 4 shall not be interpreted in the literal sense. International law can also inform the Criminal Procedure Act. For instance, the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights (ECHR)) requires certain rules of procedure in criminal proceedings. This does not only restrict the Criminal Procedure Act, but also supplements it where national legislation falls short. This is of importance regarding the Lanzarote Convention, for example in Chapter VIII about recording and storing of data.

When it comes to the articles that affect the Penal Code, the Norwegian principle of legality in criminal law requires a domestic and sufficiently precise statutory law in order to convict someone for a crime. This principle is expressed in the Norwegian Constitution Art. 96: "No one may be convicted except according to law".[33]

"Law" has been interpreted to mean formally enacted legislation, passed in conformity with the requirements of the Constitution Sections 76 - 79. Therefore, a Norwegian court will not convict an individual solely based on international law, since it does not fulfil the requirements of the Constitution. This applies although the precedence rule in the Penal Code Act Section 1, construed literally, may suggest otherwise.

In the case of conflict between either the Penal Code or the Criminal Procedure Act and the Lanzarote Convention, the Convention rule will prevail. Nevertheless, the Supreme Court has elaborated on this rule in Rt. 2000 p. 996 *Bøhlerdommen*. In situations where there is a conflict between a convention rule and other Norwegian statutory provisions, the result "cannot be resolved by a general rule, but must depend on a more detailed interpretation of the legal rules in question". Accordingly, the effect of the precedence rule in both the Penal Code, and in the Criminal Procedure Act will, pursuant to case law, depend on an individual interpretation of both domestic statutory provision and international law.

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[32] Unofficial translation by H. Schjoldager., F. Backer, E. Walford & S. Hamilton., The Ministry of Justice, viewed on 3 August, <2012 http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf>.
[33] Constitution of the Kingdom of Norway of 17 May 1814. Official translation by the Parliament, viewed on 4 August 2012, < http://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution/>.

It is worth mentioning that the precedence rule in the Penal Code Section 1 and in the Criminal Procedure Act Section 4 is not of constitutional rank, and can be repealed by the Parliament as any other law of statutory rank.

The question can be asked whether the Lanzarote Convention would have greater protection in the Norwegian legal system if it was incorporated in the Human Rights Act.[34] The Human Rights Act has a "semi constitutional" rank,[35] and has been considered to be a reinforced version of the principle of presumption. However, the question has not been asked by the government, and will not be an issue when implementing the Lanzarote Convention. .

## CHAPTER II: NATIONAL LEGISLATION

### 1. GENERAL PRINCIPLES OF THE JURISDICTION

#### i. Please give us a brief history of the respective State and the governmental regime (Federal State/Central government?)

Norway is a Constitutional Monarchy with a representative parliamentary democracy and a central government. The legal system is based on civil law.

From 1380 through 1814, Norway was in union with Denmark, and then in union with Sweden from 1814 until 1905. As of 1905, Norway has been an independent State. Norway is not a member of the EU but participates in the European Economic Area and the Schengen and Dublin agreements. The Constitution was drafted in 1814, but has been amended several times. The most comprehensive changes were made in 2007. Among other revisions, the parliamentary system of government was formalized after having been recognized as constitutional customary law for over a hundred years.

The Parliament (the Storting) is the legislator and the highest elected organ for the State. The people legitimize the power of the Parliament by electing its members.[36] The Parliament's essential functions are described in Section 75 of the Constitution. Also, The King is given far reaching powers, but because of the constitutional customary law, these are all exercised by the

[34] See subsection II. 1. Ii.
[35] See subsection II. 1. ii.
[36] L. H. Barstad, 'The Constitution - Complete text', Official web page for the Norwegian Parliament, 23.February 2012, viewed on 14. August 2012. http://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution/, art 49.

executive power of the Government. Further, the courts of justice decide how laws and administrative regulations shall be interpreted, and the Supreme Court has the power to determine whether laws are in accordance with the Constitution.[37]

Political elections are held every second year, alternately, for the Parliament and the Sámi council, and, with regard to the local elections, for municipal councils (local) and the county councils (regional). Representatives are elected for a four year term. Since 1945, the Social Democratic Labour Party has been the most influential party in Norwegian politics, with the Conservative party acting as its biggest challenger. The current government is a coalition of the Labour Party, the Socialist Party and the Centre Party.

**ii. About the general approach of the National legislation to Human Rights, how does the State legislate Human Rights? Is there a "Bill of Rights" within the respective country or are human rights mentioned in the Constitution as fundamental principles? When was this Constitution/Bill of Rights created? Are there any specific provisions regarding Children Rights?**

Some human rights are legislated through the Constitution, which grants positive rights to the individual. The fundamental human rights in the Constitution are the right to free speech, the right to property, the right to a fair trial, and the prohibition of unlawful arrest. The Constitution also contains rights to a healthy environment and imposes responsibility on state authorities to: 1) create conditions enabling every person capable of work to earn a living, 2) to create conditions enabling the Sami people to preserve and develop its language, culture and way of life, and 3) to ensure human rights.[38] However, these rights are not considered to be positive rights that can be claimed by the individual directly through the Constitution.

[37] Edited by L. H. Barstad, 'Om grunnloven', Official web page for the Norwegian Parliament, 3 Ocrtober 2012, viewed on 3 October 2012, <http://www.stortinget.no/no/Stortinget-og-demokratiet/Grunnloven/om_grunnloven/>.
[38] The Constitution Art. 110, 110a, 110b, 110c.

Legislative proposals to revise and systemize the human rights in the Constitution have been brought before the Parliament this autumn (2012). The proposals include both civil and political, and social and economic rights. If voted for in Parliament, it may be adopted in 2014.[39]

To make amendments to the Constitution, a two thirds majority of the Parliament must vote in favour of the proposal, and at least two thirds of the representatives must be present. The process of amending the Constitution also requires a delay, such that the proposal to amend the Constitutional must be made before one Parliament within one term, and then voted for within the next four year term, when the composition of the Parliament may be different.[40] This requirement helps to avoid rash decisions and ensures real support from the citizens.

In addition to the human rights mentioned in the Constitution, a "Bill of Rights" was adapted to the Norwegian legal framework in 1999, consisting of 1) the European Convention of Human Rights, 2) the UN Declaration on Economic, Social and Cultural Rights, 3) the UN Declaration on Political and Civil Rights, 4) the UN Convention on the Rights of the Child, 5) the UN Convention on Women's Rights. All these conventions are ratified by Norway, and implemented as positive law in a Bill of Rights (the Human Rights Act). This law is beneath the Constitution in the juridical hierarchy, but above normal legislation, giving it a "semi-constitutional" rank.

**iii. Are there specific judicial bodies which monitor the implementation of international and national human rights instruments (for example Constitutional Courts etc.)? Can individuals claim their constitutional rights directly (e.g. direct effect)? Is there a Constitutional Court? Is it possible to apply individually? If not, how can the individuals claim their constitutional rights in case of violation? Is there a system of hierarchy or other jurisdictions to ask before being able to go before Constitutional/Supreme Court? Please, briefly describe the application process.**

There are no Constitutional Courts in Norway. Instead, Ombudsman offices such as the Parliamentary Ombudsman, the Equality and Anti-Discrimination Ombud, and the Ombudsman for Children play important roles in monitoring the implementation of international and national human rights instruments.

[39] 'Document 12:31 and Document 12:30
[40] The Norwegian Constitution Art. 112

Since 2001, The Norwegian Centre for Human Rights, NCHR (Norsk senter for menneskerettigheter) has been Norway's National Institution for human rights to the UN. In November 2012, the UN Office of the High Commissioner for Human Rights decided that the Norwegian National Institution will be degraded from A-status to B-status. This is after finding that the National Institution does not fulfill the Paris-Principles required for A-status. The Paris Principles states that the National Institution must be established in a constitutional or legal text to ensure its independence, mandates and authority. It is the task for the national authorities to make sure that the National Institution fulfills the Paris Principles.[41]

As mentioned there are no Constitutional Courts in Norway. There is no Constitutional Court in Norway. Constitutional, criminal and most civil cases are treated in the same court system. Positive constitutional rights can be claimed directly by individuals and legal persons before the courts that deal with civil disputes and criminal cases.[42] As mentioned above, the Human Rights Act implements five international conventions on human rights as positive law, and the rights granted in these Conventions can be claimed directly before the Norwegian courts.

Before an appeal can be made to the Supreme Court, legal questions concerning violations of human rights or violations of constitutional rights must have been brought before the lower court agency. The Norwegian court-system is divided into three agencies. The first agency is the District Court ("Tingretten") and functions on a local level.[43]

The procedure and application process for civil disputes are described in The Civil Dispute Act. Civil and constitutional action cases are held on the basis of a summons directed to the court, either in written or oral form. The summons must form a basis for the trial, and must therefore contain the legal claims and the desired result, the factual and legal grounds for the claim and the evidence that will be brought before the court. The defendant is usually given three weeks to respond to the summons.[44] If the summons concerns the validity of an administrative decision, the summons is directed to the state organ that made the decision in question.[45]

[41] Nils Butenchøn, Director at NCHR, quoted in *Morgenbladet,* 30.November-6.December 2012, page 2-3.
[42] Act of 17 June 2005 no. 90 relating to mediation and procedure in civil disputes, (the Civil Dispute Act), Section 2-1.
[43] Ibid, Section 4-1.
[44] Ibid, Sections 9-2 and 9-3.
[45] Ibid, Section 1-5.

The court only answers the claims set forth by the parties,[46] and decides on the grounds of the court session (including assertion, documents and other evidence, testimonies, witnesses etc. brought before the court).[47] As a general rule, it is the parties own responsibility to enlighten the court on the case. Exceptions can be made in cases where the parties control over their own affairs is limited. This is the case for children's rights according to the Children Act and administrative decisions of child welfare. [48] This exception must be seen in relation to the court's duty to ensure that the presentation of evidence and argumentation provides an accurate image of the actual situation.[49]

A ruling of the District Court can be appealed to the Appeal Court ("Lagmannsretten"). Most appeals on rulings from the District Court must be brought before this court agency before the case can be brought before the Supreme Court. Exceptions can be made for questions of exceptional importance.[50] Not all cases will be accepted by the Appeal Court. To avoid exhausting this agency, disputes over smaller amounts of money may be declined. The Appeal Court also has a limited ability to decline cases where it is not clear that the appeal will lead to a different conclusion. The court proceedings are in most cases equivalent to those of the District Court.[51]

According to the Constitution, the Supreme Court ("Høyesterett") decides on legal questions at last instance. Before a legal question of any nature will be heard by the Supreme Court, it must go through the Supreme Court's appeal Committee.[52] Cases are only accepted by the Supreme Court if they are of general interest, or if there are other important reasons why the Supreme Court should treat the questions that the case raises.[53] A case brought before the Supreme Court is usually limited to the still uncertain parts of the claims, and factual grounds and evidence brought before the lower court agencies.[54] Moreover, if the case raises questions about a statute's validity

[46] Ibid, Section 11-1.
[47] Ibid, Section 9-15.
[48] Act of 8 April 1981 no.7 relating to Children and Parents (the Children Act).
[49] The Civil Dispute Act, Section 11-4.
[50] Ibid, Sections 29-2 and 29-3.
[51] Edited by E. Moe, 'Når jeg skal i retten / Sivil sak', Domstoladministrasjonen, viewed on 23 August 2012, <http://www.domstol.no/Nar-jeg-skal-i-retten/Sivil-sak/>.
[52]The Civil Dispute Act, Section 30-1 (2).
[53] Ibid, Sections 30-4, 30-5.
[54] Ibid, 30-7.

regarding the Constitution or international obligations, the State has the right to be represented if it is necessary in relation to public interest.[55]

### iv. Is there a Criminal Supreme Court? Please, briefly describe the criminal procedure.

As described above, there is only a general Supreme Court in Norway. The Criminal Procedure Act regulates the procedures before the courts, from investigation and indictment to appeals before the Supreme Court. As a main rule, criminal cases involve the State, represented by the Prosecutor, and the accused.[56] In cases of serious criminal offence, the State will prosecute with or without the consent of the victim.

The accused has the right to a defence, to know his or her position and to read the State's evidentiary documents in the case.[57] Further, the court may only consider the offences contained in the indictment from the Prosecutor. The indictment must contain actual penal provisions and a factual description for the court to build upon.[58] Only the Prosecutor and the accused, if sentenced, can appeal the ruling.[59] As with civil/constitutional cases, criminal cases are brought before The District Court as the first court agency. Unless there are questions of interest beyond the particular case, or other reasons that necessitate a swiftly decision by the Supreme Court, the Appeal Court is the appeal agency for criminal cases.[60]

### v. What is the age of criminal liability? Are there any statistics available regarding children prisoners?

The age of Criminal liability is fifteen years.[61] The Penal Code states that those who were under eighteen years of age when they committed a crime can only be sentenced to prison if absolutely

[55] Ibid, 30-13.
[56] The Penal Code.
[57] Ibid, Sections 94, 232 and 90.
[58] Ibid, Sections 63 and 252.
[59] Ibid, Section 306.
[60] The Criminal Procedure Act Sections 5-8.
[61] The Penal Code Section 46

necessary, and not for more than fifteen years.[62] To reduce the number of child prisoners, the Penal Code allows a broad use of community service instead of prison sentence for offenders under the age of eighteen years.[63]

A report from Statistics of Norway from 2003 provides numbers on prisoners in Norway between the age of fifteen and twenty, what crimes they serve prison sentences for, and some demographic information.[64] The statistics show that people between fifteen and twenty years of age serve prison sentences less frequently after being charged for criminal offences than other age groups. From 1993 to 2000, the number of new imprisonments[65] for fifteen to seventeen year olds was between 90 and 160. This corresponds to 60 to 100 imprisonments per 100 000 people in this age group.[66]

The statistics also provide information on what kind of criminal offences people between fifteen and twenty years of age are imprisoned for.[67] The most common is theft, which constitutes the grounds for one third of the imprisonments. Traffic offences and violence constitutes about twenty per cent each.[68] Only eleven per cent of the new imprisoned youth in 1999 and 2000 were female and urban areas were relatively overrepresented to rural areas.[69]

The Ombudsman for Children has expressed concern several times regarding the use of detention and police custody towards youth.[70] The Lawyers Association addressed the question of use of detention and police custody towards children in 2010. The statistical material gathered shows that there were 2,056 cases of police custody with regard to children under 18 in 2009, and that 49 of these involved children were under the age of fifteen. The Lawyers Association also

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[62] The Criminal Procedure Act (Straffeprosessloven), Section 18.
[63] Ibid, Section 28a, second sentence.
[64] J. Bergh, 'Ungdommer i norske fengsler: Kriminalitet blant barn og ung, del 3, Notat nr. 2003-15. Statistisk sentralbyrå', 26 March 2003, viewed on 1 August 2012, <http://www.ssb.no/emner/03/05/notat_200315/notat_200315.pdf>.
[65] New imprisonments: imprisonments for serving a prison sentence, police custody or preventive detention during one year. These numbers must be separated from persons, as one person can be represented in this statistic material more than one time.
[66] The exact numbers every year from 1993 until 2000 are 113 (in 1993), 101, 89, 93, 104, 104, 157 and 141 (in 2000).
[67] The crime committed that gives the highest sentence.
[68] J. Bergh, p. 14.
[69] Ibid, p. 16-17.
[70] See subsection I, Introduction, iii.

gathered numbers on the use of detention of children under eighteen, and found that there were 44 cases in 2007, 52 cases in 2008, and 74 cases in 2009.[71]

## 2. SUBSTANTIVE CRIMINAL LAW

### a. Sexual Abuse

#### i. How does the national legislation define the term "sexual activities"? Is it to be applied broadly or narrowly?

The Penal Code's chapter on sexual offenses uses different expressions, each with their own definition, denoting actions of different severities. The following will briefly explain the terms "intercourse", "sexual activity" and "sexual acts", as they are all important when deciding what penal provision is applicable, and when calculating the penalty.

*Intercourse* ("samleie") is deemed as the most qualified of the sexual activities. Under otherwise equal circumstances, intercourse will lead to the strictest penalty. The understanding of the term has undergone a development from a strict to a more broad interpretation. Today, Section 206 of the Penal Code defines intercourse as following:

> "When the term sexual intercourse is used in the provisions of this chapter, both vaginal and anal intercourse are meant. Insertion of the penis into the mouth and insertion of an object into the vagina or rectum shall be equated with sexual intercourse. In the case of acts referred to in Section 195 insertion of the penis in and between the labia majora and the labia minora shall also be equated with sexual intercourse."

As we can see, the wording of Section 206 gives the impression that the introduction of any object of any size into the vagina or rectum is covered by the provision. However, in the interest of balance and coherence in the law, it is assumed that the provision requires a certain degree of severity. This is substantiated by the fact that introduction of fingers into the vaginal or anal opening is not deemed as intercourse, but as "sexual activity".[72] It would not make sense if even

[71] Advokatforeningen, 'Advokatforeningens årstale 2010, Varetekt – rettsstatens akilleshæl', 11 November 2010, viewed on 15 September 2012 <http://www.advokatforeningen.no/PageFiles/17117/Adokatforeningens_Arstale2010.pdf,>, p. 8-9.
[72] See under, *sexual activity*.

the smallest object would trigger liability as "intercourse", whereas the introduction of several fingers would be subject to more lenient provisions.[73]

The definition of intercourse was amended in 2000, in order to ensure a better protection for children under the age of 14.[74] In these cases, "intercourse" also includes the introduction of the penis into and between the major and minor labia. The rationale behind the rule is that the traditional definition of intercourse is not suitable when young children are victims of sexual abuse. When the children are particularly young, the introduction of a penis or an object into the vagina or anus might be physically impossible or very difficult. Although the offender would not be successful, the action was deemed as equally offensive and worthy of punishment as an intercourse with complete penetration.[75]

Strangely, the expansion of the definition regarding intercourse with children under the age of 14 only refers to consensual intercourse (Section 195) and not forced intercourse (rape, Section 192). This irregularity, however, does not have any practical significance. Due to the ideal concurrence of the offences[76], the sentencing will be the same under Sections 195 and 192.[77]

When the Penal Code from 2005 enters into force, there will be a minor extension of the scope of "intercourse."[78] Penetration or introduction of the penis or an object into the vaginal opening will be sufficient; the penis or the object does not need to enter the vagina. This will apply regardless of age.

*Sexual activity* ("seksuell omgang") has also undergone a development towards a rather broad interpretation. The term includes, but is not limited to, intercourse. Intercourse is deemed as qualified sexual activity. Typically, the punishment will be higher if the sexual activity was intercourse. Sexual activity includes actions with a certain intensity. Examples are oral sex which

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[73] M. Matningsdal, *Norsk spesiell strafferett*, Fagbokforlaget, Oslo, 2010, p. 187-188. The author comments on the new Penal Code of 2005. However, the same considerations apply to the interpretation of "objects" in Section 206 of the Penal Code of 1902.
[74] The Penal Code Section 195 second sentence.
[75] See the reasoning of the Justice Committee of the Parliament in the preparatory works, Innst. O nr. 92 (1999-2000) p. 10-11.
[76] Concurrence implies the simultaneous occurrence of two or several criminal offenses. Heterogeneous ideal concurrence takes place when several different penal provisions are violated as a result of one single act, and is regulated in Section 62 of the Penal Code. About ideal concurrence, see under in II. 2. a. ii.
[77] J. Andenæs, *Spesiell strafferett og formuesforbrytelsene*, samlet utgave ved Kjell V. Andorsen, Univeristetsforlaget, 2008, p. 139.
[78] Preparatory works: Ot.prp.nr.22 (2008-2009) p. 439.

does not include the penetration of the penis into the offender's mouth,[79] sexual movements directed against another person's stomach or buttocks, and the introduction of fingers into the vagina[80] or anus[81]. Many of the penal provisions (e.g. Sections 192 and 199) require, in order to be applicable, that the action in question can be classified as intercourse or sexual activity.

The term *sexual acts* ("seksuell handling") is less severe than sexual activity and is deemed to be less grave than the latter. The boundary must be defined after a thorough assessment in the particular case. Typically, it will be relevant whether touching or groping has taken place on bare skin (leaning towards sexual activity), or on the clothes. The typical case of sexual act is groping of breasts or genitalia.[82]

The lower boundary for punishable actions might be problematic, in particular in cases where the actions have no sexual motivation. In a Supreme Court judgment from 2007[83], a four-year-old girl washed her stepfather's genital area with a sponge and subsequently removed the soap with the hand shower while they were both having a bath. This had happened on several occasions. The man did not encourage the action, and there was no sexual intention. Still, the Supreme Court found that sexual "action" can also include cases where the offender is passive. Particularly in relation to younger children who might not understand the implications of their actions, the lack of setting boundaries or the lack of interruption in the cause of events "might be juxtaposed with an active action."[84]. In this case, the limit was exceeded, as the stepfather should have actively sought to end the action of the child. The court stated that that the omission was in the lower range of what the term "sexual activity" comprised. If the child spontaneously or unintentionally would touch the caregiver's genitalia during a bath, it would not be deemed sufficient to violate the provision. On the other side, if the caregiver would continue to bath with the child despite the continued touching without stopping the situation, the law might be violated.

Finally, the term *sexually offensive behaviour* ("seksuelt krenkende adferd") is used in Section 201. While sexual activity or action entails activity between two or more persons, sexual offensive

[79] Rt. 1982 p. 983, Rt. 1987 p. 364 and Rt. 1987 p. 88.
[80] Rt. 1989 p. 517 and Rt. 1989 p. 979.
[81] Rt. 1990 p. 319.
[82] J. Andenæs, *Spesiell strafferett og formuesforbrytelsene*, p. 140. See for example Rt. 1947 p. 394, Rt. 1976 p. 907 and Rt. 1988 p. 138.
[83] Rt. 2007 p. 1203.
[84] Ibid, paragraph 10. Translation by the author.

behaviour occurs in the presence of another person or in a public place. Some typical examples are exhibitionism and masturbation.

### ii. Does the law define and interpret the word "intentionally"? What is the criminal liability of an intentionally committed crime of sexual abuse?

*"Intentionally"*

One out of several conditions that need to be fulfilled in order to be punished by Norwegian law, is subjective guilt, cf. Section 40. In special circumstances prescribed by law, gross negligence is sufficient. As the main rule, however, intent is necessary.

"Intent" is a judicial, rather than a moral term.[85] There is a close relationship between the two, as they both rest on the presumption that the offender is to be blamed. Moral reproach is, however, not necessary for the legal requirement to be fulfilled.[86]

The term "intent" or "intentionally" is not defined in the current Penal Code, but has been defined through case law and legal theory. The new Penal Code of 2005 includes a definition of the term in Section 22, which according to the preparatory works is deemed to codify the current state of the law.[87]

According to the new definition, intent exists when someone acts a) deliberately, b) with the awareness that the action surely or most likely (50 % probability or more) will occur, or if c) the offender foresaw that it was possible that the action would fall within the scope of the objective description in a penal provision, but nevertheless chose to act even though the worst would happen and the consequence would occur. With respect to c), there is a difference between accepting a risk and accepting a consequence – the first can constitute conscious recklessness, which is not covered by the definition of intent. However, a positive acceptance of the consequence will be covered *(dolus eventualis by positive acquiescence).*

[85] J. Andenæs, *Alminnelig strafferett*, 5. utgave ved Magnus Matningsdal og Georg Fredrik Rieber-Mohn, Universitetsforlaget, 2004, p. 208.
[86] Ibid. p. 208.
[87] Ot.prp.nr.90 (2003-2004) p. 424

The intent must be present at the moment of the criminal action. However, in cases of on-going activities, the offender can be held responsible if he or she continues after becoming aware of the factual situation.[88]

With regard to what the intent must comprise, the general rule is that the intent must encompass all the elements that make the action a criminal offense (the objective, factual content of the action).[89] If a person has committed an act in a state of ignorance concerning such circumstances that determine criminal liability or increase the penalty for the said act, such circumstances will not be attributable to him, cf. the Penal Code Section 42 (1). Ignorance resulting from self-induced intoxication is not an excuse, cf. third paragraph. The offender will, in these situations, be judged as if he or she were sober. There are certain exceptions to this, for example in cases of pathological intoxication.

The requirement of intent may be fulfilled even though the offender wasn't aware that the act was illegal. Ignorance of *the illegal nature* of an act at the time of its commission, as regulated in Section 57[90] of the Penal Code, rarely leads to impunity.

However, Section 42 (1)[91] states that if a person has committed an act in a state of ignorance concerning *circumstances* that determine criminal liability, such circumstances shall not be attributable to him. Regarding children, the Penal Code gives an exception to this general rule. This exception is related to delusion about the child's age. Criminal liability shall not be escaped due to any mistake made regarding the child's age. At this point, the responsibility is objective. However, the law includes one reservation: if the offender has acted with no negligence whatsoever regarding the age, and the age of the child is between 14 and 16 years, the offender cannot be punished (Section 196 (3)).

As stated in the Supreme Court's plenary decision in Rt. 2005 p. 833 para. 88, the term "no negligence whatsoever" is a "very strict criterion", and the accused must prove his innocence by accounting for specific circumstances that supports the claim that he has been "diligent in relation to the victim's age". The Recommendation of the Penal Code Committee for revision of

[88] J. Andenæs; *Alminnelig strafferett*, p. 210.
[89] Ibid p. 221.
[90] See the Penal Code of 2005 Section 26.
[91] See the Penal Code of 2005 Section 25.

the Penal Code on sexual offences[92] also states that the rule must be guarded as an exemption clause, where only "very weighty reasons" may exempt the offender from punishment. If the offender "in any way" has acted negligently, he cannot be exempted from responsibility.

According the wording, this exception is not applicable if the child is under 14 years of age, cf. Section 195 (3). However, in 2005,[93] the Supreme Court stated in an unanimous ruling that the objective rule in case of delusion was contrary to the presumption of innocence, as stated in the European Convention on Human Rights Art. 6 (2). Accordingly, the reservation needs to be applied also in cases where the child is under 14 years of age. The wording of Section 195 is still not amended.

*The criminal liability for intentionally committed acts of sexual abuse*

The criminal liability of an intentionally committed crime of sexual abuse depends on the action in question. In Norway, the minimum prison sentence is 14 days, cf. the Penal Code Section 17. The maximum time of imprisonment is usually specified in the specific provisions, but in absence of such a specification, the maximum sentence is 15 years. In any case, imprisonment cannot exceed 21 years, which is the maximum penalty in the country.[94]

The new Penal Code of 2005 will keep the minimum imprisonment sentence of 14 days, as well as the maximum penalty of 21 years.[95] However, there will be some technical changes. For example, the maximum penalty for each offence will be included in every provision. Consequently, there will be no rule prescribing a maximum of 15 years for situations where no maximum prison sentence has been prescribed.

The punishment for rape[96], as described in Section 192 (1), is imprisonment for a term not exceeding ten years. A penalty of imprisonment for no less than three years shall be imposed if the sexual abuse consisted of intercourse, or if the victim was unconscious or incapable of resisting the act, and the offender rendered the person in such a state in order to engage in the sexual activity (Section 192 (1) *in fine*). Under particularly serious circumstances as described in

[92] Innstilling Fra Straffelovrådet. (Det Sakkyndige Råd for Strafferettslige Spørsmål) Om Revisjon Av Straffelovens Bestemmelser Om Forbrytelser Mot Sedeligheten', 17 March 1960, p. 25
[93] Plenary ruling by the Supreme Court, Rt. 2005 p. 833
[94] However, a maximum of 30 years can be imposed in cases of genocide, crimes against humanity and war crimes, see Chapter 16 of the Penal Code of 2005. This specific chapter entered into force on 7 March 7 2008.
[95] See also the Penal Code 2005 Section 31.
[96] See also the Penal Code of 2005 Sections 291, 292 and 293. The penalties under the new Penal Code are roughly the same.

the third paragraph, an imprisonment for a term not exceeding 21 years may be imposed. These grave circumstances include cases where a) the rape has been committed by two or more persons jointly, b) the rape has been committed in a particularly painful or offensive manner, c) the offender has previously been convicted and sentenced pursuant to Sections 192 or 195 concerning sexual activity with children under 14 years of age, and finally, cases where d) the aggrieved person dies or sustains considerable injury to body or health as a result of the act. The circumstances mentioned in litra a-d are not cumulative; it is sufficient that the circumstances described in either of the litras have taken place.

Aiding and abetting another person in engaging in sexual activity by misuse of position or misuse of a relationship of dependence or trust may lead to imprisonment not exceeding six years (Section 193 (1)). If the aiding and abetting concerns exploiting someone's mental illness or mental retardation, the same penalty applies (Section 103 (2)).

Sexual activity with children under 14 years of age is subject to an imprisonment for a term not exceeding 10 years.[97] In these cases, the minimum penalty for sexual intercourse is three years. The maximum penalty of 21 years may be imposed in case of circumstances prescribed in Section 195 (2).[98] These include sexual activities committed jointly by two or more persons, cases where the act was committed in a particularly painful or offensive manner, cases where the child has not reached the age of 10 and there have been repeated assaults, cases of secondary crime (pursuant to this provision or Section 192 regulating rape), and cases where the aggrieved person dies or sustains serious physical or psychological injury as a result of the sexual activity. It is sufficient that only one of the described circumstances has taken place.

Furthermore, according to Section 196[99], any person engaging in sexual activity with a child younger than 16 years of age shall be liable to imprisonment for a term not exceeding six years. This limit may be raised to 15 years in some circumstances, *inter alia* if the act is committed by two or more persons jointly, if the act is committed in a particularly painful or offensive manner, in cases where the offender has previously been convicted and sentenced for violating Sections 196, 192 or 195, or if the aggrieved person dies or sustains considerable injury to body or health.

[97] Penal Code Section 195 (1). See also the Penal Code 2005 Section 299.
[98] See also the Penal Code 2005 Section 301.
[99] See also the Penal Code 2005 Sections 302 and 303.

Sexually transmitted diseases and infectious diseases generally (See Section 1-3, no. 3 cf. no. 1 of the Act relating to control of communicable diseases[100]) shall always be considered as a "considerable" or "serious" injury to body and health in relation to Sections 192, 195 and 196 of the Penal Code. This will, therefore, automatically raise the threshold for the maximum prison sentence that can be imposed on the offender.

Incest with someone in the descending line (children, grandchildren) is punished with imprisonment for a term not exceeding five years, cf. Section 197.[101] Incest with a brother or a sister is punished with imprisonment for a term not exceeding one year, cf. Section 198.[102]

Anyone who engages in a sexual activity with a foster-child, child in his[103] care, step-child or any other person under 18 years of age which is under his care, or subject to his authority or supervision, faces imprisonment for up to five years.[104] Any person who aids and abets another person to engage in sexual activity with any person with whom he himself has such a relationship shall be liable to the same penalty.

With regard to sexual acts, fines or imprisonment for up to one year may be imposed against any person who commits such an act with any person who has not consented thereto, cf. Section 200 (1). Committing a sexual act with a child under 16 years of age raises the threshold to three years.[105] Misleading a child under 16 years of age to behave in a sexually offensive or otherwise indecent manner is also punishable by up to three years of imprisonment.[106] In the last two mentioned situations, the limit can be raised to six years under especially aggravating circumstances. According to the fourth Section of the provision, which makes reference to the third and fourth paragraphs in Section 196, mistake made with regard to age does not exclude responsibility, except if there was no element of negligence in this respect.

Section 62 provides rules in cases of ideal concurrence. The first paragraph reads as follows:

> "If any person has by one or more acts committed more than one felony or misdemeanour punishable by imprisonment or detention, a joint custodial sentence shall be imposed which must be more severe than the

[100] Act of 5 August 1994 no. 55 relating to control of communicable diseases.
[101] The penalty in the Penal Code 2005 Section 312 is a term not exceeding six years.
[102] See also the Penal Code 2005 Section 313.
[103] In the following, when referring to "he" or "his", both sexes are meant to be included.
[104] The Penal Code Section 199. The penalty in the Penal Code 2005 Section 314 is a term not exceeding six years.
[105] See also the Penal Code 2005 Section 305.
[106] Section 200 (2) second sentence of the Penal Code.

> highest minimum penalty prescribed for any of the felonies or misdemeanours and must in no case be more than twice the highest penalty prescribed for any of them. The joint custodial penalty shall normally take the form of imprisonment when any of the criminal acts would have been punishable thereby."

This rule can be very relevant in cases of sexual abuse. For example, in cases where a father forces his 15-year-old daughter to engage in sexual activities with him, he will be criminally liable under Section 192 about rape, Section 19 about sexual activity with children under 16 years of age, and Section 197 about incest.[107]

When a sentence for a specific term is deemed to be insufficient to protect society, a sentence of preventive detention in an institution under the Correctional Services may be imposed instead of a sentence of imprisonment. The requirements are listed in Section 39c. Particularly relevant here is that the offender must be found guilty of having committed or having attempted to commit a sexual felony, and that there is an imminent risk that the offender will again commit such a felony.

The length of preventive detention is regulated in Section 39e. The fixed term might not exceed 21 years. However, upon application by the prosecuting authority the court can extend the fixed term by up to five years at a time.

### iii. What is the legal age for engaging in sexual activities? How are consensual sexual activities between minors regulated?

*The legal age for engaging in sexual activities*

The general legal age for engaging in sexual activities is 16 years. This emerges implicitly from Section 196 of the Penal Code[108], where the person who engages in sexual activity with minors under 16 years of age will be punished. The punishment is stricter if the child is under 14 years of age.

In certain cases, the legal age is increased to 18 years, cf. Section 199.[109] The first paragraph of this provision states:

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[107] J. Andenæs, *Alminnelig strafferett*, p. 369
[108] See also the Penal Code 2005 Section 302.
[109] See also the Penal Code 2005 Section 314.

> "Any person who engages in sexual activity with a foster-child, child in his care, step-child or any other person under 18 years of age who is under his care, or subject to his authority or supervision, shall be liable to imprisonment for a term not exceeding five years."

Accordingly, the legal age is 18 if the minor is subject to the sexual partner's care, authority or vigilance. Equivalently, according to the provision's second paragraph, anyone in the position of the caregiver who provides another person with the opportunity to commit such sexual activities with the minor, will be punished.

Section 199 also prohibits sexual activity with foster-children, children in care and stepchildren who are under the perpetrator's care. It was, up until recently, an undecided matter in Norwegian law whether the age limit at 18 only referred to "any other person … subject to his care", or whether it also referred to foster children, step children etc. under such care. In a recent judgment from the Supreme Court[110], a person was sentenced to imprisonment because of sexual activity with his stepdaughter, who at the time was 18 and a half years old. The Supreme Court decided, after a thorough review of the legal history and the preparatory works, that the limit of 18 years of age did not refer to foster children, stepchildren, etc. This legal understanding was not found to be contrary to the principle of legality in the Constitution's Art. 96 or ECHR Art. 7. In conclusion, there is no specified legal age for engaging in sexual activities with foster children etc. Such activities will always be illegal as long as the child is subject to the other person's care.[111]

*Regulation of consensual sexual activities between minors*

Consensual sexual activities between minors are regulated in the last paragraphs of Sections 195 and 196 of the Penal Code[112], which have the same wording:

> "A penalty pursuant to this provision may be remitted or imposed below the minimum prescribed in the second sentence of the first paragraph if those who have engaged in the sexual activity are about equal as regards age and development."[113]

The provision covers cases where the participants in the activity are both minors, and where only one participant is a minor.[114] The requirements of approximate equality in age and development

[110] Rt. 2012 p. 387.
[111] See above on page 24 (II. 2. a. ii.).
[112] See also the Penal Code of 2005 Section 308
[113] Sections 195 and 196, *in fine*. Translation by the author.
[114] As 15 is the minimum age for criminal liability, no person under 15 can be held criminally responsible for any sexual activity.

are cumulative; they both have to be fulfilled.[115] Thus, the requirement of a "similar development stage" is unfulfilled if the age difference between the two participants is considered to be too vast, and vice versa.

In a Supreme Court judgment from 2005,[116] the girl was 15 years and three months of age, while her male partner was 20 years old. Although the age difference of five years was approaching the acceptable end of the spectrum, it was deemed too vast by the court. An age gap of two years and ten months between a 13 and eight month year old girl and a 16 and six months year old boy was, under the circumstances, deemed legal in a judgment from 2003.[117] The result will thus depend on an overall assessment of several significant factors.

### iv. How is the use of force, taking advantage of disability or threat regulated in regards to sexual offences against children?

The Norwegian Penal Code has no particular provision that specifically regulates situations where the offender uses force, or takes advantage of threats or disabilities to offend *children* sexually. Use of force or threats is regulated by the general provision of rape. However, regard has to be given to Section 62 of the Penal Code about ideal concurrence.

Rape is covered by Section 192.[118] The first paragraph states that:

> "Any person who
> a) engages in sexual activity by means of violence or threats, or
> b) engages in sexual activity with any person who is unconscious or incapable for any other reason of resisting the act, or
> c) by means of violence or threats compels any person to engage in sexual activity with another person, or to carry out similar acts with himself or herself,
>
> shall be guilty of rape and liable to imprisonment for a term not exceeding 10 years. In deciding whether the offender made use of violence or threats or whether the aggrieved person was incapable of resisting the act, importance shall be attached to whether the aggrieved person was under 14 years of age."

[115] See Rt. 1994 p. 1000 with further references, and J. Andenæs, *Spesiell strafferett og formuesforbrytelsene*, p. 154.
[116] Rt. 2005 p. 101.
[117] Rt. 2003 p. 442.
[118] See also the Penal Code of 2005 Sections 291-294.

As the paragraph states clearly, the aggravated person's young age will at times play an important role when ascertaining whether violence or threats were used, or whether the aggrieved person was incapable of resisting the act. Typically, the younger the victim, the more easily the conditions will be found met.

In regards to threats, it is not necessary that the threats were linked to any illegal act. As an illustration, the threats can consist of telling someone a secret that the minor wants to keep hidden. The severity of the threats will be relevant when establishing causation.[119] Similarly, it is not necessary that the perpetrator perform the threatening acts himself. The key issue is that the sexual action is not consensual, and the perpetrator was aware of this fact.

Punishment for rape is attributable to the perpetrator if he or she acts with intent. Gross negligent rape is also subject to punishment, cf. Section 192 *in fine*.

In the new Chapter 26 from the new Penal Code of 2005 on sexual offenses, several changes have been made to strengthen children's protection against sexual abuse, and to elevate the penalty levels for the most severe sexual crimes.[120] Particularly relevant here is the new Section 299, which states that sexual activities and the most grave sexual acts with children under 14 years of age will be regarded as rape, regardless of how the sexual activity or action was induced.

### v. How is the crime of "incest" regulated?

Sections 197-198[121] regulate the crime of incest. Incest is sexual activity between people that are closely related. The rationale behind the rules differ from the rationale behind the provisions that protect minors under 16 years of age from sexual activities, and from the provision that protects victims against rape. While the latter provisions are based on the need to protect the aggrieved person, the provisions regulating incest are intended to serve the interest of the community as a whole. This is particularly true when it comes to incest among adults. In regards to children, it is obvious that the regulations exist additionally to protect them from abuse from close family members. Through the construction of ideal concurrence, the punishment will be greater if the

[119] Ot.prp.nr.28 (1999-2000) p. 111.
[120] Ministry of Children, Equality and Social Inclusion, '*Follow-up on concluding observations from the UN CRC of January 2012*', June 2011, p. 44.
[121] See also the Penal Code of 2005 Sections 312-313.

abuser was a close family member of the victim, than if the abuser was a person without such ties to the child. Section 197 states:

> "Any person who engages in sexual activity with a blood relation in the descending line shall be liable to imprisonment for a term not exceeding five years. Both biological and adopted descendants shall be regarded as blood relations in the descending line."

"[I]n the descending line" implies that only the older person is punished. If, for example, a father engages in sexual activity with his daughter, only the father will be held criminally responsible. Parents, grandparents and persons further up in the ascending line are equally covered by the provision.[122]

Sexual activity between foster-parents or stepparents and the child is not regarded as incest, cf. the wording "blood relation". These cases are governed by Section 199. The rationale behind Section 199 is that children need to be protected not only against family members by blood, but also against family members who are in a position of care or authority and that might abuse that position to initiate a sexual relationship.

Section 198 regulates incest between siblings:

> "Any person who has sexual intercourse with a brother or sister shall be liable to imprisonment for a term not exceeding one year.
> No penalty shall, however, be imposed on persons under 18 years of age."

The wording states two important limitations with regard to incest between siblings: (i) the offense is limited to intercourse, and (ii) there will be no punishment imposed on the sibling which is under 18 years of age. Most cases of sibling incest are assumed to take place during adolescence.[123] Finally, complicity in incest is a criminal offense, and is regulated in Section 205.

[122] J. Andenæs, *Spesiell strafferett og formuesforbrytelsene*, p. 171.
[123] Ibid., p. 172.

**vi. Are there any specific provisions regulating offenders who take advantage of school and educational settings, care and justice institutions, the work-place and the community?**

Misuse of a position or a relationship of dependence or trust is regulated in the Penal Code Section 193. The first paragraph states:

> "Any person who engages in or who aids and abets another person to engage in sexual activity by misuse of a position, or a relationship of dependence or trust shall be liable to imprisonment for a term not exceeding six years."[124]

The word "misuse" implies that the perpetrator must have taken advantage of the interpersonal relationship that the provision describes. "Position" is not limited to formal positions such as teachers or doctors; for example, a handball coach is sufficient, see Rt. 2003 p. 453. If the sexual activity happens outside of the context of the hierarchical structure between the parties, the provision does not apply. The preparatory works mention situations where the two persons fall in love.[125]

The alternative clauses, "relationship of dependence" and "relationship of … trust" are applicable in situations where the individual in the position of power, by means of manipulation or deception, develops a relationship with the weaker party, which they subsequently exploit to obtain sexual activity.[126]

Section 194 of the Penal Code[127] regulates sexual activity with inmates and persons under the Correctional Services or the Child Welfare, if that person is under the offender's authority or supervision:

> "Any person who engages in sexual activity with any person who is an inmate of or placed in any home or institution under the correctional services or the police or in an institution under the child welfare service and who is there subject to his authority or supervision, shall be liable to imprisonment for a term not exceeding six years.
>
> The same penalty shall apply to any person who aids and abets another person to engage in sexual activity with any person with whom he himself has such a relationship."

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[124] See also the Penal Code of 2005 Section 295
[125] Ot.prp.nr.28 (1999-2000) p. 113
[126] J. Andenæs, *Spesiell strafferett og formuesforbrytelsene*, p. 161
[127] See also the Penal Code of 2005 Section 296.

For the provision to be applicable, it is necessary that the offender's position actually involves "authority or supervision." Cleaning personnel working in Correctional Services, for example, would therefore not be subject to the provision. This is related to the rationale behind the rule, which is again closely linked to misuse of positions of power as regulated in Section 193 (1) of the Penal Code.

The term "aids and abets" in the second paragraph of Section 194 refers to activity rather than mere participation. For example, encouragement and incitement will often be deemed as aiding and abetting.[128]

Section 194 will cover some of the cases falling in under Section 193.[129] Both provisions may be used in ideal concurrence if necessary to cover all criminal aspects of the situation. The preparatory works mention a scenario where an employee in the Correctional Services engages in sexual activities with a person subject to his authority, while at the same time abuses a relationship of dependence.[130]

Exploiting any person's mental illness or mental retardation, or aiding or abetting another person in doing so, is also illegal and regulated in Section 193 (2) of the Penal Code.

**b. Child Prostitution**

**vii. Is the State a party to the Council of Europe Convention on Action against Human Trafficking? If yes, what is the date of ratification and signature? If not, is the State planning to ratify the Convention?**

Norway is a party to the Council of Europe Convention on Action against Human Trafficking. The Convention was signed by Norway on 16 May 2005, ratified on 17 January 2008 and entered into force on 1 February 2008.

[128] Ot.prp.nr.28 (1999-2000) p. 114
[129] Ibid.
[130] Ibid.

**viii. How does national legislation define "child prostitution"? Is it compatible with the definition in Article 19(2) of the Lanzarote Convention? Please comment.**

Prostitution is regulated in Sections 202, 202a and 203 of the Penal Code.[131] According to the third paragraph of Section 202, prostitution is defined as "[engaging] in sexual activity or [committing] a sexual act with another person for payment." Criminal liability shall not be avoided by any mistake regarding the victim's age, unless it is made in "good faith without negligence", cf. Section 202 *in fine*.

In cases of child prostitution, the definition in Section 202 must be read in conjunction with Section 203[132], which regulates prostitution where the victim is younger than 18 years of age. Child prostitution carries a higher penalty than prostitution where the victim is older than 18 years of age.

"Payment" includes any kind of remuneration or consideration, such as clothing, drugs or alcohol. An agreement or promise of future payment is equated with made payment. The payment can be made or promised to either the person performing the sexual service, or to any other person, as long as there is causation between the sexual act performed and the payment. It is not required that the payment is made by the person receiving the sexual service.

One isolated case of exchanging sexual acts for payment suffices to qualify the act as prostitution.[133] Finally, the definition is gender neutral.

Considering the above, the national definition of "child prostitution" is perfectly compatible with the definition in Art. 19(2) of the Lanzarote Convention.

**ix. Does national legislation criminalize both the recruiter (the person that coordinates the business of child prostitution) and the user (the person that pays to conduct sexual activities with children)?**

National legislation criminalizes both the recruiter and the user. Any person who engages in, or who aids and abets another person to engage in sexual activity with the child, is criminalized, cf.

[131] See also the Penal Code of 2005 Sections 309, 315 and 316.
[132] Section 203 was amended in 2008 and entered into force 1 January 2009.
[133] Rt. 2004 p. 331.

Section 203.[134] Furthermore, the first paragraph of Section 202[135] criminalizes anyone who "promotes the engagement of other persons in prostitution", or that "lets premises on the understanding that such premises shall be used for prostitution or is grossly negligent in this respect". Finally, it is illegal to "unambiguously offer, arrange or ask for prostitution" by means of a public announcement, cf. Section 202 (2).

### c. Child Pornography

***Child Pornography in General:***

**x. Is the State party to the Council of Europe Convention on Cybercrime? If yes, what is the date of ratification and signature? If not, is the State planning to ratify?**

Norway is party to the Council of Europe Convention on Cybercrime. It was signed by Norway 23 November 2001, and ratified 30 June 2006.[136]

**xi. How does the national legislation define "child pornography"? Is it compatible with the definition in Article 20(2) of the Lanzarote Convention? Please comment.**

The 1902 Penal Code describes "child pornography" as "any presentation of sexual abuse of children or any presentation of a sexual nature that involves children". The description is used in the section that criminalizes child pornography (Section 204a), and should serve the definitional purpose in this context[137].

Art. 20 (2) of the Lanzarote Convention defines "child pornography" as: "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".

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[134] See also the Penal Code of 2005 Section 15.
[135] See also the Penal Code of 2005 Section 315.
[136] Council of Europe, viewed on 24 October 2012, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CL=ENG>.
[137] Ot.prp. nr. 22 (2008-2009). (Preparatory works for the Penal Code of 2005)

The main questions here are whether or not the Norwegian provision is compatible with the definition when it comes to 1) "any material", that is visually depicting a child engaged in 2)"real or simulated sexually explicit conduct", or depictions of a child's sexual organs 3)"for primarily sexual purposes". Secondly, another significant question will be whether the definition of a "child" in the convention is compatible with the definition in the Norwegian legislation.

*Art. 20 (2): "any presentation"*

According to preparatory work of the Norwegian Penal Code, the term "any presentation" in the Penal Code Section 204a refers to any medium, including text based presentations.[138] This seems to be compatible with the term, "any material", used in the convention's definition.

*Art. 20 (2): "real or simulated sexually explicit conduct"*

According to the Explanatory Report of the Convention, the term "sexually explicit conduct" must be defined by the parties to the Convention. It covers, however, at least sexual intercourse, bestiality, masturbation, sadistic or masochistic abuse in a sexual context and lascivious exhibition of the genitals or the pubic area of a child. As clarified above, the Norwegian Penal Code refers to "any presentation of a sexual nature that involves children" (Section 204a). According to the preparatory works of the Penal Code, this refers to presentations of actions that are sexual in the sense that they are linked to genitals or sexual activity.[139]

It is not a requirement that the acts are sexually motivated.[140] Any presentation that is presenting a child as a sexual object, will, according to the preparatory works, be affected by this provision – for instance where children are forced to pose in sexually provocative positions.

This should at least cover the required criteria clarified in the Explanatory Report. The Norwegian term probably comprises more than the requirements by including presentations that are not sexually motivated, but that appear to be of sexual nature in specific contexts. For example, pictures of young children without clothes on, that were taken for an innocent purpose by their parents, could be regarded as "of sexual nature" if they are spread to unauthorized persons for sexual purposes.

[138] Ot. prp. nr. 37 (2004-2005).
[139] Ot. prp. nr. 22 (2008-2009).
[140] Ibid.

The definition of the convention refers to material that depicts children in sexually explicit conduct that is "real or simulated". The Explanatory Report does not explain this term, but it seems correct to interpret this so that "child pornography" also includes material which simulates existing or non-existing children engaging in sexual conduct. This interpretation can be supported by the fact that Art. 20 of the Convention, according to the Explanatory Report, was inspired by the Council of Europe Convention on Cybercrime Art. 9, which includes "realistic images representing a minor engaged in sexually explicit conduct" in its definition of child pornography. This comprises images that are morphed of natural persons, and also images generated entirely by a computer.[141] The Norwegian Penal Code Section 204a, on the other hand, does not define whether or not simulated images could be classified as child pornography. The more general term "any presentation" is used here. However, animated or manipulated presentations are considered to be child pornography if they depict sexual abuse or sexualisation of children[142]. This should cover the same material as the term "simulated" in the Lanzarote Convention Art. 20 (2).

*The term "primarily sexual purposes"*

The Lanzarote Convention's definition of child pornography includes "any depiction of a child's sexual organs for primarily sexual purposes". This sentence modifies the definition, meaning that material having a pure artistic, medical, scientific or similar merit will not be within the ambit of the provision. As a result, presentations could be considered acceptable in some contexts whereas they could be considered to be of "sexual nature" in others.

The Norwegian Penal Code Section 204a (5) and 204 (4) state that "sexual depictions that must be regarded as justifiable for artistic, scientific, informational or similar purposes shall not be regarded as pornographic". Therefore, Norwegian legislation seems to be compatible with the Convention on this point.

Moreover, "child" is to be, according to the Lanzarote Convention Art. 3, any person under the age of 18 years. "Child" is defined in the Norwegian Penal Code Section 204a. as "any person who is or who appears to be under 18 years of age". This means that the Norwegian legislation complies with the requirements of the Convention, but also goes a bit further by including persons that "appears to be under 18 years of age".

[141] The Explanatory Report of the Convention of Cybercrime.
[142] Ot. prp. nr. 22 (2008-2009).

Finally, the Convention's definition of "child pornography" is, according to the Explanatory Report, based on the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. This convention is ratified by the Norwegian government and was implemented in the Norwegian legislation in 2000. During the preparation of the national ratification act, the current Norwegian national legislation was assumed to be compatible with the requirements of the protocol, and new national legislation was not needed for the implementation.[143] This suggests that Norwegian legislation is compatible with the Convention's Art. 20 (2).

### xii. To whom does the State attribute the criminal liability to? Is it compatible with the Article 20(1.a) to (1.f)?

To prepare for ratification of the Lanzarote Convention, amendments to the national legislation relating to child pornography have occurred (in the 2005 Penal Code), but they have not yet entered into force. It is not confirmed when this will happen. The following discussion will be based on the current legislation (the 1902 Penal Code), but the amendments will also be discussed to determine whether or not they satisfy the requirements of the Convention.

Criminal liability related to child pornography in the current Norwegian legislation is essentially regulated in the Penal Code Section 204a (1). Any person who engages in any of the following acts, is to be criminally liable:

> "a. produces, procures, imports, possesses, delivers to another person or for payment or systematically acquaints himself with any presentation of sexual abuse of children or any presentation of a sexual nature that involves children,
>
> b. concerns himself with presentations of sexual abuse of children or presentations of a sexual nature that involve children in any other way as referred to in Section 204, first paragraph, or
>
> c. induces any person under 18 years of age to allow pictures of himself or herself to be taken as part of any commercial presentation of moving or non-moving pictures of a sexual nature, or produces such presentations depicting any person under 18

[143] St. prp. nr. 58 (2000-2001).

years of age."

Section 204a litra b is referring to Section 204 (1) litra d, which attributes liability to any person, who: "gives a public lecture or arranges a public performance or exhibition of a pornographic nature". In addition to this, Section 204a attributes liability to any person who "willfully or negligently fails to prevent the commission in any activity of any act referred to in the first paragraph". Also, Section 205 states that the liability stated in the provisions in this chapter, "shall also apply to any person who aids and abets the act".

The Lanzarote Convention Article 20 (1) litra a to litra f attributes criminal liability to those who are producing, offering, making available, distributing, transmitting, procuring or possessing child pornography, and those who are knowingly obtaining access to child pornography. Further, Article 24 (1) and (2), also attributes liability to any person who is intentionally "aiding or abetting the commission" of the offences or "attempts to commit" the offences established in accordance with the Convention.

According to the preparatory works of the amendments to the 2005 Penal Code,[144] it was assumed that the national penal legislation essentially met the requirements of the Lanzarote Convention. When it comes to the criminal liability regulation, it was assumed that only small amendments were needed to meet the requirements.

*Art. 20 (1) litra a: "Producing"*

The Lanzarote Convention Article 20 (1) litra a attributes criminal liability to a person who is "producing child pornography". Likewise, the Penal Code Section 204a (1) litra a attributes criminal liability to "Any person who...produces…any presentation of sexual abuse of children or any presentation of a sexual nature that involves children". This provision is upheld in the amended 2005 Penal Code Section 311 (1) litra a.

*Art. 20 (1) litra b: "offering or making available"*

Article 20 (1) litra b of the Convention also attributes criminal liability to a person who is "offering or making available child pornography". According to the Explanatory Report (paragraph 136), this covers a wide range of cases, for example providing material to others, including creation of websites or web communities of child pornography or publishing material

[144] Ot. ptp. Nr. 22 (2008-2009).

there, which is available for others. On this point, the current Norwegian legislation has been regarded to not fully meet the requirements of the Convention.[145] The Penal Code uses the terms "delivers to another person" (Section 204a (1) litra a), "publishes" and "in any other way attempts to disseminate" (Section 204a (1) litra b) cf. 204 (1) litra a)). It seems clear that the terms "delivers to another person" or "publishes" do not cover the convention's "offering or making available". This would probably, in most cases, be covered by the term "in any other way attempts to disseminate" in the current Norwegian provision. However, the interpretation of "attempts to disseminate" is debatable. To make sure the convention is fulfilled on this point, the amended legislation will use the terms "offers" and "makes available", see the 2005 Penal Code Section 311 (1) litra b.

*Art. 20 (1) litra c: "distributing or transmitting"*

The Covention's Article 20 (1) litra c attributes criminal liability to a person who is *"distributing or transmitting child pornography"*. According to the Explanatory Report, "distribution" is active dissemination of material. The Norwegian Penal Code Section 205 (1) litra a uses the term "*attempts to disseminate*", which should fulfil the requirements. This provision is continued in the amendments.[146] "Transmitting" does, according to the report, cover actions like sending material through a computer system to other persons, and also providing material such as photographs or magazines. This should in the Norwegian legislation be covered by the terms "delivers to another person" (Section 204a (1) litra a), "publishes", "sells", and "in any other way attempts to disseminate" (Section 204 (1) litra). The 2005 Penal Code includes the same elements[147].

*Art. 20 (1) litra d: "procuring"*

Article 20 (1) litra d criminalizes procuring of child pornography for one self or for another person. The Norwegian legislation is in the same way criminalizing *"*procuring*"* of child pornography in the Penal Code Section 204a (1) litra a, and this is continued in the Code of 2005. Also at this point, the legislation seems to be compatible with the requirements of the Convention.

*Art. 20 (1) litra e: "possessing"*

[145] Ibid.
[146] The Penal Code of 2005 Section 311 b).
[147] The Penal Code of 2005 Section 311 (1) c).

In Article 20 (1) litra e of the Convention, criminal liability is attributed to persons who are "possessing child pornography". The Explanatory Report states that this covers possession by whatever means, such as video cassettes, DVDs, magazines, mobile phones, sorted material in a computer system, storage devices, diskettes etc. Likewise, the Norwegian Penal Code attributes liability to "any person who […] possesses [...] any presentation of sexual abuse of children or presentations of a sexual nature that involves children", cf. Section 204a (1) litra a. The same elements are continued in the 2005 Penal Code. On this point, both the Convention and the Norwegian legislation go slightly further than the UN Optional Protocol about sale of children, child prostitution and child pornography. Article 2 of the protocol does not require that the States attribute liability to those who are only possessing child pornography for personal use.

*Art. 20 (1) litra f: "knowingly obtaining access… to child pornography"*

The Lanzarote Convention Article 20 (1) litra f attributes criminal liability to a person who is "knowingly obtaining access, through information and communication technologies, to child pornography". The Explanatory Report states that the rationale behind this provision is to also attribute liability to those who are accessing child pornography websites without downloading, and therefore cannot be caught under the offence of procuring or possession. There has to be an intention behind this action, and the person in question has to know that child pornographic material can be found there. According to the preparatory works for the amendments of the 2005 Penal Code regarding child pornography,[148] it was suggested to amend the national legislation on this point to make sure that the requirements of the Convention were met. The current legislation concerning this is to be found in the 1902 Penal Code Section 204 a (1) litra a.

In contrast to the Convention, the Section 311 (1) litra c of the 2005 Penal Code is not limited to access obtained through information and communication technology, therefore including for example printed images, video-cassettes, magazines etc. It has nevertheless been discussed whether or not the term "systematically acquaints himself" covers all cases where somebody after the Convention Art. 20 (1) litra f is "knowingly obtaining access". The provision has therefore been amended, and the term "intentionally gains access" will be used when the Code enters into force.

[148] Ot. prp. ne. 22 (2008-2009).

It was assumed in the preparatory works that the Convention does not give any qualifying conditions for how access has to be achieved. The Convention's use of the word "knowingly" could probably embrace a wider area than the wording "intentionally" in the Norwegian amendment. The Explanatory Report does however state that the provision only covers those cases where the access is achieved intentionally. Therefore, the Norwegian legislation has to be assumed to meet the requirements of the convention when the 2005 Penal Code enter into force.

*Art. 24 (1): "aiding or abetting the commission"*

As mentioned above, Art. 24 (1) of the Convention also attributes liability to any person who intentionally is "aiding or abetting the commission" of the offences established in accordance with the Convention. In the same way, the Norwegian Penal Code Section 205 indicates that the liability stated in the provisions about child pornography shall apply to any person who "aids and abets the act". This provision has been maintained in the Penal Code of 2005. This being said, it seems clear that the Norwegian legislation is compatible with the requirements of the Convention on this point as well.

**xiii. What is the control mechanism for pornographic materials? If the state is a party to the Lanzarote Convention, did the state use the reservation right that has been given to them in the Lanzarote Convention Article 20(3) and 20(4)?**

Th National Criminal Investigation Service (Kripos),[149] in cooperation with the Norwegian internet provider Telenor, developed in 2004 an internet filter[150] that blocks access to web sites containing child pornographic material. Kripos say they have a good overview of web pages of such material, much because of tips from the public.[151]

When child pornographic material is detected, a "stop" site will show up on the screen. The number of views of this warning in recent years has been at about 15 000-16 000 per day in Norway, but many of the hits are results of virus or redirection without user involvement. The filter does not store information about the IP address or any identifying information about the

[149] See also subsection II. 3. i. ii. for more information about Kripos.
[150] The Child Sexual Abuse Anti Distribution Filter (CSAADF).
[151] Kripos, 'Internettfilteret CSAADF', the Police, viewed on 24 October 2012, <https://tips.kripos.no/cmssite.asp?c=1&h=41&menu=2>.

user, and generates no criminal charges. The filter is used by most internet providers in Norway, and a several other countries have started using similar filters after the same model. As child pornography is an international issue, international cooperation is essential. Therefore, the information that Kripos receives from the investigation of the detected material, is shared with the authorities of other countries.[152]

***Participation of a Child in Pornographic Performances:***

**xiv. Does the State criminalize intentional conduct of making a child participate in pornographic performances? Does the State highlight and differentiate between recruitment and coercion? What is the State's approach to the attendance of pornographic performances involving the participation of children? If the State is a party to the Lanzarote Convention, did the state use the reservation right stated in Article 21(2)?**

The current Norwegian legislation is in the Penal Code Section 224 (1) and (3) attributing criminal liability to any person who "exploits" a person who is under 18 years of age for the purpose of prostitution or "other sexual purposes", "independently of any use of force or threats". This includes the act of inducing another person to "allow himself or herself to be used for such purposes". Section 224 (2) is also attributing criminal liability to any person who "aids and abets such exploitation or inducement". Under the preparations of the 2005 Penal Code, the Norwegian government assumed that the requirements of the Convention's Art. 21 (1) litra a and b about recruiting a child into participating in pornographic performances, or coercing or causing a child to participate in such performances, were met by this provision.[153] The wording is continued in the 2005 Penal Code[154].

To sum up, the Norwegian State does criminalize intentional conduct of making a child participate in pornographic performances, the difference between recruitment and coercion is not highlighted.

[152] Ibid.
[153] Ot.prp. nr. 22 (2008-2009).
[154] The Penal Code of 2005 Section 257.

The Norwegian legislation has no provisions that clearly attribute criminal liability to persons who attend pornographic performances involving the participation of children. At this point, the Norwegian Government has assumed that amendments are needed to meet the requirements of the Convention's Art. 21 (1) litra c, which is prohibiting the act of "knowingly attending pornographic performances involving participation of children".[155] Therefore, a new provision in the 2005 Penal Code (Section 311) will attribute criminal liability to those who "attend a performance of sexual abuse against children or a performance that sexualizes children".[156]

**d. Corruption of Children**

**xv. Does the State criminalize the intentional causing of a child to witness sexual abuse or sexual activities, without necessarily having to participate? How does the state define "causing"? Does it involve forcing, inducement, and promise?**

Before dealing with the details concerning sexual gratification through communication technologies, it is helpful to first establish the main rule in this particular field, given in The Penal Code Section 201:

> "Any person who by word or deed behaves in a sexually offensive or otherwise indecent manner
> a) in a public place,
> b) in the presence of or towards any person who has not consented thereto, or
> c) in the presence of or towards children under 16 years of age,
> shall be liable to fines or to imprisonment for a term not exceeding one year."

For this section to apply, the person must behave in a "sexually offensive manner." or in an "otherwise indecent manner". These conditions can be met by words or by actions. In addition to these conditions, the behaviour has to be performed either "in a public place, in the presence of or towards any person who has not consented thereto or in the presence of or towards children under 16 years of age." Violation of this provision leads to fines or imprisonment for a term not exceeding one year.

[155] Ot.prp. nr. 22 (2008-2009).
[156] Translation by the author.

Causing a child to witness sexual activities is a crime pursuant to Section 201 according to the litra c, "in the presence of or towards children under the age of 16." Here, there is no requirement of participation of the child in the sexual activities. Sections 195 and 196 cover situations where children are forces to participate.[157]

Section 201(1) litra c, has broad effect and does not specify what "causing" specifically means. This section must therefore cover any situation where a child witness sexual activities, and the performance can be considered sexually offensive or otherwise indecent. A typical example is indecent exposure. However, according to the preparatory works, the child must be able to perceive the act as indecent.[158]

Section 201(1) litra b, makes an exception from the main rule in litra a, for situations where the involved person consents to the act. This exception, however, does not exist under litra c, and such actions will therefore always be criminal when they are directed at children under the age of 16, with or without their consent.

**e. Solicitation of Children for Sexual Purposes**

**xvi. How does the State criminalize intentional sexual gratification through information and communication technologies by an adult? Does it specify that the perpetrator should also propose a meeting with the potential child victim and come to the meeting place in order to be accused of committing this kind of crime (a.k.a. grooming)?**

The next question to discuss is weather Section 201 also applies to situations where sexual exploitation of children is manifested through different information and communication technologies. The section explicitly states that sexually offensive behaviour communicated through information technologies is illegal. A typical example is when a perpetrator contacts children on websites for communication ("chatting").

The discretionary element located in Section 201 (2), defines what is either a sexually offensive manner or in an otherwise indecent manner. This particular formulation will be briefly explained.

[157] See subsection II. 2. a. above about *sexual abuse.*
[158] Ot.prp. nr. 28 (1999-2000), chapter 16.1.1, p. 116

In regard to the term "*sexually,*" it is clear that for the provision to apply the action needs an element of sexuality. Several acts are included in this term. The scope of "sexually" is delimited by Section 196.[159] Consequently, Section 201 intends to include more situations than Section 196.

With regard to the term "manner," it is clear that the act does not need to be physical. Actions where victims are not physically touched are also within the scope of the regulation. The last part of the same sentence expands the scope of Section 201. It states that other indecent manner is criminal. Therefore, situations when the indecent manner is committed over the telephone or the Internet, are regulated by Section 201.

Examples from case law help to illustrate what situations are covered by Section 201 (2). Indecent speech or other obscene communication has several times been classified as illegal. In 2007, a man was sentenced by the Supreme Court for sending text messages containing sexual language and pictures of his genitalia to a young girl.[160] Without further interpretation of the formulation we can determine that the section's scope is compatible with the demands and requirements in the Lanzarote Convention Art. 23.

In the Norwegian Penal Code Section 201a, a further restriction applies to cases where the perpetrator meets children, or proposes to do so, with the intention and purpose of committing any offences in Sections 196, 197 and 200 (2).

> "A person who arranges a meeting with a child under the age of sixteen years old with intention to commit either of the acts mentioned in Section 195, 196 or 200 second paragraph is liable to fines or to imprisonment for a term not exceeding one year, when that person has reached the appointed meeting place or a place where the meeting place can be observed from.
>
> Delusion about the child's age does not preclude criminal liability unless no negligence has been committed in this respect.
> Criminal liability may no longer apply in cases where the persons that arrange the meeting are about coequal in age or in development."[161]

The background for this regulation was the corresponding statutory provisions enacted in England in 2004.[162] The NGO Save the Children Norway, with support from the Ombudsman for Children, initiated the work on the implementation of a similar regulation in the Penal Code.

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[159] See subsection II. 2. a.
[160] Rt. 2007 p. 442.
[161] Translation by the author. The regulation has not yet been translated since it was recently passed.
[162] Innst. O. Nr. 46 (2006-2007).

The rationale behind the rule was the need for improved protection of children because of rapid development and technical advances. Of particular concern was children's open access to meet other people through different communication technologies such as the Internet. The increased use of mobile phones and online services among children makes them more vulnerable to abuse, as potential abusers can make contact with them more easily.

The regulation criminalizes actions when a person arranges, or proposes to arrange, a meeting with a child under sixteen years of age, when the purpose of this meeting is to commit a crime listed in Section 195, 196 and 200 (2). For this regulation to be applicable the adult has to propose or arrange a meeting with a child under 16 years old. The purpose of the meeting must be to exploit the child for a sexual purpose. In this, an element of intent is found.[163]

The second paragraph in Section 201a states that any mistake made as regards to the child's age does not preclude criminal liability, unless the mistake was made without negligence. This regulation demands that if there is uncertainty as to the age of the other person, the adult has to actively investigate how old he or she is.[164]

This regulation becomes enforceable either when the potential abuser arrives to the agreed meeting place, or to a place where the meeting place can be observed. This means that the act is criminalized as soon as the potential abuser reaches a spot where he can see the meeting place. Consequently, the possibility for withdrawal is precluded a relatively early stage of the act. This also impacts the question of when an action is characterized as an attempt, which will be discussed under.

The regulation also contains an exception. If the offender and the child are approximately equal in age and development, this may have an exonerating effect, based on an overall assessment of the situation[165].

Although Section 201a., is relatively new, examples from case law exist. In 2008, a person was arrested and charged with violation of this provision. He had arranged a meeting over the Internet with a fifteen years old girl, and they both agreed to have sexual intercourse. The person had first met the child on a website. Later, they arranged a meeting at a hotel for the purpose of

[163] See sub subsection II. 2. a. ii.
[164] J. Andenæs, *Spesiell strafferett og formuesforbrytelsene*, p. 146.
[165] See subsection II. 2. a. iii. about concentual sex

having intercourse. The child, however, proceeded to express regret when she met the defendant at the hotel. The defendant accepted this and they did not have any sexual relation. The defendant was sentenced to 30 days of prison.[166]

In a more recent criminal case, a 69-year-old male was sentenced to 30 days in prison after attempting to meet a child. The person was arrested in his car near the appointed meeting place. The place in this case was not deemed as a place where the "meeting place could be observed from".[167] He was, consequently, not convicted for violating Section 201a., but for attempting, cf. Section 49.[168]

### xvii. Does the State criminalize aiding or abetting and attempting to the activities that have been mentioned in the subsection a, b, c, d and e?

Aiding and abetting in the mentioned activities are illegal and criminal pursuant to the Penal Code Section 205. This regulation takes effect to every Section in Chapter 19 that applies to sexual violations (Section 191 to 211).

Case law establishes that aiding or abetting includes both physical and mental participation.[169] An example of the latter can be a person encouraging the perpetrator to conduct the crime, or threatening the victim. Physical participation occurs if, for instance, a person prevents the victim from escaping by physically holding the victim back.[170]

Attempting any of the aforementioned actions in subsection a, b, c, d or e is criminal, according to the Penal Code Section 49.

> "When a felony is not completed, but an act has been done whereby the commission of the felony is intended to begin, this constitutes a punishable attempt. An attempt to commit a misdemeanour is not punishable."

It is necessary to clarify what actions are considered to be attempts. To do so, it is convenient to establish two boundaries. The upper limit is drawn towards actions that are not attempts, but completed. This limit is obvious. A more complex and difficult task is to draw the lower limit

166 Rt. 2008 p. 867.
167 Rt. 2011 p. 1455.
168 See below in II. 2. e. xvii, about attempt.
169 J. Andenæs, *Spesiell strafferett og formuesforbrytelsene,* p. 145.
170 Rt. 2003 p. 1455.

toward actions that are not considered attempts. Actions in this category are, for example, preparatory actions.

It is established in case law that the regulation contains two necessary conditions.[171] First, the perpetrator must have the intention to fulfil the crime, and second, there must be actions indicating that the person has this particular intention.[172] The first requirement is a subjective element. The second requirement is often easier to prove. Evidence in this respect might be that the person has acquired necessary equipment, conducted investigations or that the person approaches the place where the action is planned to be committed. These actions can however also be seen as preparatory actions, which in Norwegian law is not criminal. The key factor in this assessment is whether the action shows that the person is about to commit the crime. It depends on the length of the time between the already executed action and the remaining parts. The action's character is also of great significance, along with the action's psychological differences.[173]

### f. Corporate Liability

**xviii. Does the State hold legal/moral persons (entities) such as commercial companies and associations liable when an action has been performed on their behalf by a person in a position at their entity? Is there a difference between leading persons (persons in position of authority) and regular employees being held liable? If yes, please describe the differences.**

Corporate liability is a supplement to the personal criminal responsibility. This emphasizes two different remedies, both personal responsibility and/or liability on behalf of a corporation. Action on behalf of the corporation can be punished through the provisions in the Penal Code Sections 48a and 48b.

In Section 48a (2), the "enterprise" is defined as a company, society or other association, one-man enterprise, foundation, estate or public activity.

Criminal liability of corporations must be regulated separately since an entity cannot be punished according to the general liability rules. One of the basic conditions for criminal liability is the

[171] J. Andenæs, *Alminnelig strafferett*, p.348.
[172] Rt. 2011 p.1455.
[173] Rt. 2008 p. 867.

presence of guilt, which is difficult to conceive in the context of an enterprise. Therefore, corporations are punished on objective grounds for acts committed by persons acting on their behalf, cf. Section 48a.

The conditions for the imposition of a corporate penalty are specified in the first paragraph of Section 48a:

> "When a penal provision is contravened by a person who has acted on behalf of an enterprise, the enterprise may be liable to a penalty. This applies even if no individual person may be punished for the contravention."

Employees of the company make up the main group of persons acting "on behalf of an enterprise". In addition, the entity can be responsible for the acts made by independent contractors, cf. Section 48a.

An additional condition for corporate liability is violation of a penal provision. The provision is general and applies in principle to any violations of a criminal sanctioned norm. However, Section 48a, has a special rule for corporate punishment. The first paragraph second sentence, states that the company may be punished even if no individual can be punished for the contravention. This means it is not necessary to identify a responsible person, meaning that both anonymous and known cumulative errors are encompassed.

Even if these conditions are met, the court may choose not to punish the company. This is known as facultative admission. Section 48b provides guidance for the assessment deciding whether a penalty shall be imposed and for the sentencing. The court shall pay "particular consideration" to *"the preventive effect of the penalty"*, the seriousness of the violation, whether guidelines could have prevented the infringement, weather the offence was committed in the interest of the corporation, weather advantages have been obtained from the violation and the corporation's financial ability.[174] The same factors are important when determining the penalty fines.[175] The corporation's financial situation will normally have a greater impact on the assessment of fines than for assessing whether corporate liability shall be imposed.

[174] Penal Code Section 48 b.
[175] See the II. 2. h., *Sanctions and Measures.*

The Penal Code does not distinguish between leading persons and regular employees.[176] If the offender is employed and acts on behalf of the firm, this can lead to corporate liability regardless of the person's position.[177] This is in contrast to the Lanzarote Convention cf. Section 26, which distinguishes between persons in position of authority and regular employees.

### xix. What kind of liability does national legislation impose? Criminal, civil or administrative? Please explain.

Norwegian legislation may impose civil and administrative punishment on the corporation, cf. Section 48a:

> "The penalty shall be a fine. The enterprise may also by a court judgement be deprived of the right to carry in business or may be prohibited from carrying it on in certain forms, cf. Section 29."

### xx. Does national legislation exclude individual liability when there is a corporate liability?

National legislation does not exclude individual liability when imposing corporate liability. Corporations will normally be punished through restrictions and/or through fines, while the individual can be held criminal responsible according to regular assessment in the Penal Code.

If there are anonymous mistakes, the individual cannot be held responsible. This could nevertheless lead to the punishment of the corporation and it will exclude individual liability. Where it is clear that a company is involved with a crime, but it is not possible to find the culprit, the corporation can be held objectively responsible.[178]

176 The Penal Code Sections 48a and 48b.
177 The Penal Code Section 48a.
178 The Penal Code Section 48a (1) second sentence.

**g. Aggravating Circumstances**

**xxi. Does the state accept any aggravating circumstances for the crimes that have been described above? (e.g. when the offence damaged physical health of the child) Please, write down these circumstances and explain, try to specify the different crimes if there are different aggravating rules applying.**

The crimes of sexual abuse, child prostitution, child pornography, corruption of children and solicitation of children for sexual purposes, have been described above. In this part, these crimes will be linked with aggravating circumstances. For thorough information about aggravating circumstances applied on the crime of *sexual abuse* of children, see subsection II. 2. a. ii. (*The criminal liability for intentionally committed acts of sexual abuse*).

Section 61 of the Penal Code states that:

> "If a previously convicted person again commits a criminal act of the same nature as that for which he has previously been convicted, the maximum penalty laid down in the penal provision shall be increased to double its prescribed limit, unless it is otherwise provided in the penal provision itself."

Chapter 19 of the 1902 Penal Code about sexual offences, open for increasing the penalty when aggravating circumstances occur. The purpose of applying aggravating circumstances is to enforce the protection of certain interests that are considered more important than others. Such an interest is, amongst others, the protection of persons who are particularly vulnerable, e.g. children.

Aggravating circumstances for the above mentioned crimes are outlined in Chapter 19 in the Penal Code. The provisions that protect individuals from sexual assault by use of force, violence and intimidation are found in the first chapter, followed by the provisions on abuse of power. Section 202 concerns liability for persons who "promotes the engagement of other persons in prostitution" followed by the incest provisions and the pornography provision.

In the 2005 Penal Code the general rule of aggravating circumstances is found in Section 77. This provision defines (more detailed than the corresponding provisions of the 1902 Penal Code) the circumstances that should be given weight when assessing the sentence. The 1902 Penal Code is the law in force, but the 2005 Penal Code reflects, to a certain degree, the current state of law.

**h. Sanctions and Measures**

**xxii. How does the state sanction the above mentioned crimes? Is there a penalty including deprivation of liberty? How does the state legislate extradition?**

All of the above mentioned crimes are as a general rule sanctioned by either imprisonment or fines depending on the severity of the crime. According to Section 26a of the Penal Code, the court may also impose a fine *in addition* to a custodial sentence. Besides, community sentence may be imposed instead of a sentence of imprisonment, cf. Section 28 a.

A person who has committed any of the above mentioned crimes may be deprived of any position, now or in the future, or to carry on any enterprise or other activity, cf. Section 29. This is manifested in the fact that for certain positions it is mandatory to provide a satisfactory police certificate of good conduct. The certificate shows, *inter alia*, whether the person concerned has been charged with, indicted for, or convicted of sexual abuse of children. Positions that require the submission of a police certificate are, among others, positions within health care, social services and most other positions that involve contact with children. For example, persons convicted of sexual abuse of children are barred from employment in kindergartens as well as in the primary and lower secondary school.[179]

According to Section 33, a ban on making contact, with for instance children, may be imposed on an offender. The ban on making contact may entail that the person subject to the ban is prohibited from being present in specific areas, or pursuing, visiting, or in any other way making contact with another person.

Through the provisions in Section 53 relating to deferred sentence, the court may impose various conditions regarding the penalty, for example that the convicted person undergoes psychiatric treatment or that she/he shall stay in a home or institution for up to one year.[180] This is a judgement in a criminal case whereby the court may postpone execution of the passed sentence and lay down certain conditions, so that on the expiry of a specified period and the fulfilment of the conditions imposed, the sentence is entirely remitted.[181]

[179] Act of 17 June 2005 no. 64 relating to kindergartens (the Kindergarten Act) Section 19 and Act of 17 July 1998 no. 61 relating to Primary and Secondary Education and Training (the Education Act) Section 10-9.
[180] Section 53 no. 3 litra f and g
[181] More about this under subsection II. 2. h. xxiii.

Further, the court may impose a sentence of compulsory mental health care, cf. Section 39, or a sentence of compulsory care, cf. Section 39a. Also, preventive detention in an institution under the Correctional Services may be imposed instead of a sentence of imprisonment, cf. Section 39c.

The Child Welfare Act Section 4-12 states that a care order may be made, which implies that a parent may lose permanent custody of the child. According to the Child Welfare Act Section 4-20, it can also be decided that the parents shall be deprived of all parental responsibility.

*Extradition*

To prevent offenders from evading criminal prosecution or execution of a sentence by escaping country, the Norwegian government has signed treaties on extradition with other States. Extradition is primarily regulated by the Extradition Act.[182] Section 1 of the Extradition Act states that "any person who is charged, accused or sentenced by a foreign state by a punishable act, and who is located in Norway" may, on petition of the state, be transferred there compulsory.[183] However, the power to extradite is subject to certain limitations. The Norwegian government does not extradite Norwegian citizens to foreign countries, cf. Section 2. Furthermore extradition may not take place for a political offence, cf. Section 5, or if there is a serious risk that legal safeguards or fundamental values will not be complied with, cf. Section 6. Extradition is precluded if it would conflict with basic humanitarian considerations, cf. Section 7 of the Extradition Act.

Norway is member of Interpol and participates in the Schengen Information System (SIS). The Norwegian police may institute an international search for a person who is charged, accused or convicted in a criminal proceeding in Norway by these two channels in terms of arrest and extradition.[184] Norway has signed treaties on extradition with several countries, which basically entail an obligation to surrender the criminals. Most important is the European Convention on Extradition of 1957. Additionally, Norway has bilateral treaties on extradition with, among many

[182] Act of 13 June 1975 no. 38 relating to extradition of offenders etc.
[183] The Ministry of Justice and Public Security, 'Utlevering av utenlandske borgere', The Government, viewed on 7 September 2012, <http://www.regjeringen.no/nb/dep/jd/tema/internasjonalt_justissamarbeid/sub/utlevering-av-lovbrytere/utlevering-av-utenlandske-borgere-fra-no.html?id=445367>.
[184] Ministry of Justice and Public Security, 'Utlevering fra utlandet til Norge', The Government, viewed on 7 September 2012, <http://www.regjeringen.no/nb/dep/jd/tema/internasjonalt_justissamarbeid/sub/utlevering-av-lovbrytere/utlevering-fra-utlandet-til-norge.html?id=445365>.

others, the U.S. and Australia. Extradition between the Nordic countries is regulated in the new Act relating to Arrest Warrant.[185]

**xxiii. Do you consider the sanctions effective, proportionate and dissuasive? Please comment.**

The Norwegian legal system is constantly evolving and there is regular debate about which sanctions are proper and effective. The topic has been much discussed and there is no definitive answer to the question. Research and studies provide for new knowledge in the field and paves the way for the use of new methods and other sanctions.

Recent development has been moving towards stricter penalties. The Government has in its policy platform taken steps to intensify the efforts to prevent violence against children and to heighten the level of punishment for rape and other sexual offenses. The amendment act to the chapter on sexual abuse demonstrates a focus on strengthening the protection of children against abuse and raising the level of punishment for serious sexual offenses. This is maintained in the new Penal Code of 2005.

In general, Norway has a legal system that is intended to ensure a safe society by preventing crime and detecting and prosecuting violations. There are nevertheless different views on how the system works in practice. It is clear that the sanctions have various individual results and that while a punishment may be very effective on one person, it may not have the desired effect on another. To ensure efficiency and proportionality, the Norwegian legal system has different sorts of sanctions, such as those mentioned above.[186] The courts may, under given circumstances, choose between these alternatives and combine them. In this way, the punishment can be adapted to the individual offender.

*Efficiency*

A general and important goal is to reduce the occurrence of relapse into crime and thereby

[185] Act of 20 January 2012 no. 4. The Act entered into force 16 October 2012 conducting the Convention establishing a Nordic Arrest Warrant signed by the Nordic countries 15 December 2005. The act replaces the Act of 3 March 1961 no. 1 relating to extradition of offenders to Denmark, Finland, Iceland and Sweden.
[186] See subsection II. 2. h. xxii.

provide increased security for society.[187] This includes a constant focus on rehabilitation, which with more monitoring and support shall help prevent sexual offenders from committing further crimes. Reduced recidivism is an important measure of whether the sanctions have worked. Unfortunately there is not much research on sexual offenders, and it is difficult to determine whether the sanctions are effective and deterrents.

Figures from Statistics Norway indicate that 36 per cent of the 263 persons accused of sexual crime in 1996, are registered with recidivism in the five years from 1997 to 2001.[188] The statistics are, however, not sufficiently specified thus one can hardly draw conclusions based this.

Experiences from the Nordic countries, gathered in the report by the Nordic Council of Ministers,[189] suggest that imprisonment doesn't work for sexual offenders and that therapy is the only way to change their behaviour. Moreover, mandatory participation in a program for sexual offenders may be given as a condition to a deferred sentence, cf. the Penal Code Section 53 no. 3.[190] The purpose of this provision is, in addition to prevention, to set conditions adapted to the individual convicted person and thereby improve their ability to reintegrate into the society.

Certain treatment programs for sexual offenders in Norway do exist, but these are mostly voluntary. One example is the program in Bergen prison, a joint project between the prison and expertise for safety, prisons, and forensic psychiatry.[191] The goal of the program is to reduce the risk of relapse, by making participants able to cope with their difficulties in a good way.

At the same time, general deterrence is an important principle and it is a goal that the sanctions are dissuasive. For *inter alia* this reason, imprisonment is still considered an effective sanction. All over, the Norwegian legal system seems to contain rather proportional and effective sanctions. One can claim that the main issue regarding sexual abuse of children is not the

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[187] Ministry of Justice and Public Security, 'Faktaark – Straff som virker', The Government, viewed on 9 September 2012, <http://www.regjeringen.no/nb/dep/jd/tema/kriminalomsorg/faktaark-straff-som-virker.html?id=528070>.
[188] Statistics Norway, 'Siktede personer i 2005, etter politiets avgjørelse, hovedlovbruddskategori og hovedlovbruddsgruppe i 2005, og tilbakefall i den påfølgende femårsperioden', viewed on 9 Septeber 2012, <http://www.ssb.no/emner/03/05/lovbrudde/tab-2012-03-28-22.html>
[189] The Nordic Council of Ministers, 'Personer som begår seksuelle overgrep mot barn - Kunnskapsstatus og erfaringer fra de nordiske landene, TemaNord 2000:547', 2000, <http://www.norden.org/en/publications/publikationer/2000-547>
[190] See subsection II. 2. h. xxii above.
[191] Bergen prison, 'Nasjonalt behandlingsprogram for personer som er dømt for lovbrudd av seksuell karakter', The Norwegian Correctional Services, viewed on 10 September 2012, <http://www.bergenfengsel.no/ekstra/sedlighet.htm>.

sanctions' efficiency, but rather the amount of detected cases. Another problem is the lack of sufficient support and monitoring that child victims receive by the State. More about this under subsection II. 2. h. xxvi.

**xxiv. How does the state sanction the legal persons/moral entities? What kind of measures does it include?**

In subsection II. 2. h. xviii, it was found that legal entities can be held liable when crimes are committed on their behalf. Legal entities held liable for the above mentioned crimes are sanctioned by fines, cf. Section 48a of the Penal Code. The enterprise, by a court judgment, may also be deprived of the right to carry on business or may be prohibited from carrying it on in certain forms, cf. Section 29.

**xxv. Does the state legislate seizure and confiscation of materials, instruments… etc. used for committing the crime? Does the state protect *bona fide* third parties? Is there allocation of a special fund for financing prevention or intervention programmes in which these properties confiscated allocated?**

According to the Penal Code Section 35 (2) cf. the Criminal Procedure Act Section 203, objects that have been used or were intended for use in a criminal act may be confiscated.

*Bona fide third parties*

The Penal Code Section 36 concerns from *whom* the confiscation, pursuant to Section 35, may be effected. Section 36 (1) states that confiscation "may be effected from the offender or from the person on whose behalf has acted". Moreover, confiscation may be effected from an owner "who has or should have understood that the object was to be used for a criminal act". This precludes confiscation from *bona fid*e third parties. However, objects that are deemed to be significant as evidence may be seized until a legally enforceable judgement is passed, cf. the Criminal Procedure Act Section 203. This is regardless of whether the owner was acting in good faith. When the seized object is no longer needed as evidence, it will be returned to the aggrieved person, cf. Section 214.

*Confiscated properties*

The proceeds of any confiscation made by the State shall as a rule accrue to the State Treasury, cf. the Penal Code Section 37d. The court may decide that the proceeds shall be applied to covering any claim for compensation made by the aggrieved person.

Although the proceeds will not go *directly* to any particular fund, the government funds different measures, hereunder the prevention of sexual abuse of children.

### xxvi. When the crime has been committed within the family or within the close environment of the child, how does the state react?

In recent years there has been an increased focus on domestic violence in Norway. The government has initiated several plans of action to combat the abuse of children and to ensure the subsequent care of children who have been victims of abuse within the private sphere.[192]

*The Children's Houses*

In the year 2007, the first Children's House ("Barnehus") was opened in Norway. This public service is provided for children who have witnessed or have been the victims of violence or sexual abuse. The Children's Houses were conceived of as multidisciplinary competence centres, also providing services for mentally impaired adults. They form part of a project between the Ministry of Justice and the Public Security, the Ministry of Children, Equality and Social Inclusion, and the Ministry of Health and Care Services. The Children's Houses have no legal basis, but are established through the mandate of the project.

The Children's Houses are organized in such a way that the necessary services are provided all in one place, so that the child does not need to be transported between different services. This provides a less stressful environment for the children. The Children's Houses are equipped for judicial interviews, medical examination and for treatment and follow-up of the children.

[192] See among others the plan of actions against violence in close relations of 2012: Ministry of Justice and Public Security, 'Handlingsplan mot vold i nære relasjoner 2012', the Government, viewed on 10 October 2012, <http://www.regjeringen.no/nb/dep/jd/dok/rapporter_planer/planer/2012/handlingsplan-mot-vold-i-nare-relasjoner.html?id=669093>
*and* 'Vendepunkt', Ministry of Justice and Public Security, the Government, 2007, viewed on 10 october 2012, <http://www.regjeringen.no/nb/dep/jd/pressesenter/pressemeldinger/2007/styrket-innsats-mot-vold-i-nare-relasjon.html?id=493927>.

Competent workers within different fields are employed to ensure that adequate support and monitoring of the abused children is undertaken. The Children's Houses also offer consultations and support to the child's close family. The use of an institution requires that the relevant crime has been reported to the police. Advice and guidance will be given, however, under any circumstance. Consultation can also be anonymous. Further, the system has become a nationwide initiative, with seven units established across the country (autumn 2012). These new institutions represent a significant improvement in the service of support and monitoring of children who have been victims of sexual abuse within the family or close environment.

Despite their advantages, the Children's Houses are criticized for the fact that the time period that passes between the report of the incident and the subsequent judicial examination is too long. According to the annual report from the Oslo Children's House from 2011, it takes an average of 71 days from the moment the crime is reported to the judicial examination take place.[193] This is a severe deviation from the Criminal Procedure Act Section 239 (4) and the Regulation on judicial examination and observation Section 4,[194] which states that examinations shall be carried out no later than two weeks after the criminal offence has been reported to the police. While the report explains this by pointing to the challenges that follow from the procedure and coordination of investigation and varying expertise on domestic violence, others indicate a lack of resources and insufficient prioritizing.

In case of further need for treatment, the child's care is taken over by other institutions for additional monitoring and support. The Children's Houses cooperate with the local Child Welfare Service and The Children's and Young People's Psychiatric Out-Patient Clinic regarding the progression and support of the child and his or her family. The kind of service provided is supposed to adapt to the needs of the individual child.

The claim to receive assistance from the Child Welfare Service is statutory in Child Welfare Act. When a child has been victim of abuse within the family or close environment, it may be necessary to apply alternative, more drastic measures, such as care orders, cf. Section 4-12 of the Child Welfare Act, and deprival of parental responsibility, cf. Section 4-20. The purpose of the act is "to ensure that children and young persons who live in conditions that may be detrimental

[193] The Children's House Oslo, 'Aktuelt fra statens barnehus Oslo – årsrapport 2011 osv', 2012, viewed on October 7 2012, <http://www.statensbarnehus.no/barnehus/oslo/aktuelt/?lang=nb>.
[194] Regulations of 10 February 1998 no. 925 on judicial examination and observation (Regulations on Judicial Examination).

to their health and development receive the necessary assistance and care at the right time" and "to help ensure that children and young persons grow up in a secure environment", cf. Section 1-1. In order to do so, the Child Welfare Act has different provisions such as the right to assistance for children and families with children in Section 4-1.

According to Section 4-12 litra c, a care order may be initiated if the child is mistreated or subjected to other serious abuses at home. This means that the child is taken away from his or her parents and the daily care is transferred to others on behalf of the Child Welfare Service. "If the county social welfare board has made a care order for a child, the county social welfare board may also decide that the parents shall be deprived of all parental responsibility", cf. Section 4-20 of the Child Welfare Act. The consideration of the child's best interest is an important principle and is statutory in Section 4-1 of the Act. It states that:

> "When applying the provisions of this chapter, decisive importance shall be attached to framing measures which are in the child's best interests. This includes attaching importance to giving the child stable and good contact with adults and continuity in the care provided."

*Right to access*

A problematic issue is the right to access. As a principle, children and parents are entitled to have access to each other. This is founded in the Child Welfare Act Section 4-19. The courts have been strongly criticized for giving the parents right to access without examining whether there are grounds for allegations of violence against the children. Part of the recent debate on the issue is exemplified in the book "Child custody in the court – when the child's best interest becomes the child's worst", published in the autumn 2012.[195] The book suggests that the system fails to fulfil the principle of the child's best interest when it comes to the right of access. It suggests that there is a need for both tightening and expanding the rules regarding the right to access.

The Ministry of Children, Equality and Social Inclusion is currently working on a proposition

[195] (Translation by the author), K. Mevik and F. Breivik; '*Barnefordeling i domstolen - når barnets beste blir barnets verste*', Universitetsforlaget, 2012.

with the aim to strengthen the child's perspective and increase participation of the child.[196] The Ministry demands better evaluations of the child's need for protection and the possible shielding from a parent. It is also pointed out that families should be monitored more closely than at present. The proposition is intended to make it easier to determine that the right to access should be denied altogether. This applies to cases where the child cannot be protected well enough through supervision, and in cases where the child currently has a strong aversion to contact with their parents.

Abuse committed within the close relations of the child may affect the sentence and impose a stricter penalty.[197] It may also lead to a claim for economic compensation pursuant to the provisions of Act of 13 June no.26 relating to compensation under certain circumstances.

## 3. CRIMINAL PROCEDURE

### i. Investigation

#### i. How is the principle of the "best interests of the child" applied during investigation of a crime as mentioned above? Is there a protective approach to the victims? What kind of measures has been taken? Is the victim offered protection during the court proceedings? (such as appointing special representatives) If so, please indicate what kind of protective measures have been taken.

The principle of "the best interest of the child"[198] is a legal standard. The principle is mentioned in the Child Act, the Child Welfare Act and it is used as common practice in the public administration. The principle's main focus is the child's wellbeing. In practice, the principle is used to describe the minimum standard for a child's interests and needs.

In a case of sexual abuse or violence, the child may have the right to free legal aid provided by the State, cf. Criminal Procedure Act Section 107a (1) litra a. A counsel for the victim is presumed to protect the child's interests during the police investigation and ensure the best

[196] Ministry of Children, Equality and Social Inclusion, "Aktuelt - Nye lovforslag skal beskytte barn mot vold og overgrep", the Government, viewed on 10 October 2012, <http://www.regjeringen.no/nb/dep/bld/aktuelt/nyheter/2012/nye-lovforslag-skal-beskytte-barn-mot-vo.html?id=704636>

[197] See subsection II. 2. g. xxi. about *Aggravating Circumstances*

[198] See also subsection II. 2. h. xxvi. about the *Right to access*

interests of the child during the process. The counsel is also supposed to assist the child in a civil suit for economic compensation. A police or state attorney will lead the criminal proceedings on behalf of the prosecutors.

The examinations of a witness under the age of 16 shall, in accordance with Regulations of 2 February 1998 no. 925 concerning judicial examination and observation (Regulations of Judicial Examination) Section 13, if possible, not occur more than once. New interviews can only occur if it is found necessary to the case, and if the interests of the witness or other substantial reasons do not give rise to the contrary. The provision's main objective is to protect the child from being exposed to the stress of having to repeat what he or she has experienced.

When the age of the child or other circumstances so indicate, the judge may decide that before or instead of examination, the child shall be placed under observation in accordance with the Criminal Procedure Act Section 239 (3). The observation is regulated by the Regulation of Judicial Examination Chapter 2 and is based on the rules of procedure for the examinations cf. Section 15 (3). The legislative purpose is here to give the child an opportunity to communicate on its own terms and conditions through play and conversations. In contrast to examinations, observations should take place several times so that there is confidence between the observer and the child in accordance with the Regulation of Judicial Examination Section 17.

**ii. Are there any special units for investigating the crimes mentioned above within the legal force? Are they authorised to carry out covert operations? Do they investigate and analyse child pornography materials?**

Within the Norwegian legal force, the Government has created a special unit, Kripos.[199] This is the national unit for fighting organized and other severe crime and it is designed to function as a central agency for the local police departments. Kripos' main focus is assisting the local police with forensic work and connecting them to the international collaborations such as Interpol and Europol.[200]

[199] See also subsection II. 2. c. viii for more details about Kripos.
[200] Kripos, 'About Kripos', the Police, accessed 3 July 2012, <2012https://www.politi.no/kripos/om_kripos/Tema_71.xhtml >.

Within Kripos there is a special group working on sexual exploitation of children, human trafficking and racism cases and a special group working on Internet related assault cases.

According to Norwegian customary law and other regulations, the police is authorized to carry out covert operations. Kripos collaborates with VGT (Virtual Global Taskforce) as part of several operations initiated by the VGT. [201] The aim is to build an "effective, international partnership of law enforcement agencies, non-governmental organisations and industry to help protect children from online child abuse".[202]

One of the measures the VGT carries out is a so called "honey-pot". The "Honey-Pot" is a website designed to deceive a perpetrator into thinking they are accessing a website containing documented child abuse, such as pictures and videos. The "honey-pots" are part of a covert operation and is designed to catch perpetrators in the act of accessing documented child abuse. When a perpetrator enters a "honey-pot" their information is sent directly to the police.[203]

Kripos has developed a national database of material depicting sexual abuse of children. To build up the database more efficiently, Kripos has purchased software that is able to analyse 15 minutes of film in just one minute without losing important details. The database is a so- called "Hash Set". This is a system that holds a set of objects, and that is easily and quickly able to determine whether an object is in the set or not. This is meant to assist the local police in efficiently going through material, and will spare the officers the strain and distress caused by witnessing sexually abusive material several times.

Because of the vast amount of child pornographic material distributed across borders, the international collaboration is essential for efficiently identifying the material. Kripos is hence working closely with Interpol when it comes to identifying unknown children. Interpol has a database with a large amount of sexually abusive pictures and video clips. The identification of the material and the abused children is organised by a special taskforce in Interpol.

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[201] Virtual global taskforce, 'What we do', viewed on 3 July 2012, <http://www.virtualglobaltaskforce.com/what-we-do/, >.
[202] Ibid.
[203] See also the Internet filter developed by Kripos, subsection II. 2. c. viii.

### iii. Is it required that the crime is reported in order to be investigated? Do the proceedings go on even in case of withdrawal from the statements?

In accordance with the Criminal Procedure Act Section 224 (1), a criminal investigation shall be carried out when: "as a result of a report or other circumstances there are reasonable grounds to inquire any criminal matter requiring prosecution by the public authorities subsists".

The police has, according to Section 224, an obligation to start a criminal investigation in two cases; with the purpose of solving an already conducted crime, and with the purpose of preventing one. The police does not, however, have an obligation to investigate every suspicion they might have. This is deduced from the wording "reasonable grounds", which sets a certain limit for when an investigation will be "reasonable" to initiate.

An investigation shall be carried out, either as a result of a "report" or if there are "reasonable grounds" to inquire whether a criminal matter that requires prosecution exists. Therefore, it is not required that a crime is reported in order to be investigated. Nor is it a condition that there must be a suspect in the investigation.

The question whether an investigation should be initiated or not depends on several important factors. Among them is the probability that there exists a criminal offence or plans of conducting one, the seriousness of the case, and what authority is responsible for the investigation. [204]

The most practical restriction for the police is nevertheless their capacity. There are not enough resources in the police force to investigate every offence they become aware of. Therefore, the state attorney has developed general guidelines that indicate which cases are to be given priority.[205] According to the Prosecution Instruction the cases that are the most highly prioritized are violent crimes and serious sexual offenses.

There is no general rule of law that regulates the event of someone withdrawing their statement. Whether a victim's withdrawal should have effect on the investigation depends upon the remaining evidence and the circumstances of the case. Generally, the proceedings of the investigation will still go on, even if the victim's statement is withdrawn.

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[204] The Director General of public prosecutions, 'Rundskri fra Riksadvokaten, Del II – nr. 3/1999', 22 Desember 1999, viewed on August 27 2012, <http://www.riksadvokaten.no/filestore/Dokumenter/Eldre_dokumenter/Rundskriv/Rundskrivnr3for1999-Etterforskning2.pdf>.

[205] Regulations of 28 June 1985 no. 1679 (the Prosecution Instruction) Section 7-5 (3).

According to the Criminal Procedure Act Section 224, the issue must be of "criminal matter". As a matter of fact, this requires that the action is an offence in pursuant to the Penal Code. This also includes the act of planning to conduct a criminal offence.

There are, however, several exceptions from this rule. In conformity with Section 224 (2), the police is also obligated to conduct an investigation even though the person was between 12 and 15 years of age on the date the act was committed. A child below the age 15 cannot be punished, cf. the Penal Code Section 46, and therefore, this will not be a "criminal matter".

Another exception from the main rule is deduced from the Penal Code Sections 39 and 39a.[206] The exception is based on the assumption that an investigation will be conducted even though the person was criminally insane in the moment the act was committed. This is also expressly specified in the Prosecution Instruction Section 7-4.3.

### iv. How long is the statute of limitation? When does it start? Can it be suspended?

According to the Penal Code Section 68 (1), the period of limitation begins to run from the date the criminal activity has ceased. However, in the event of a contravention of Sections 195 or 196, the said period shall begin to run from the day on which aggrieved person reaches 18 years of age. The sections apply to sexual activity and sexual acts with a child under 14 and 16 years of age.

According to the Penal Code Section 67 (1), the period of limitation is determined by the maximum penalty in each penal provision. If a person has committed several crimes with different periods of limitation, the period that is the longest shall be the one that applies.

*Sexual activity*[207] with a child under the age of 14 will be punished with a 10, 15 or 21 year prison sentence, depending on the circumstances. In these cases, the period of limitation will be 10, 15 or 21 years respectively. Following the same pattern, sexual activity with a child under 16 years of age will have a period of limitation of respectively 10 and 15 years, cf. the Penal Code Section 67 (1). Moreover, *Sexual acts*[208] with a person under 16 years of age will have the period of limitation of 5 years. If the act was conducted under aggravating circumstances, the period of limitation will

[206] See the 2005 Penal Code Section 20.1 d.
[207] See subsection II. 2. a. i.
[208] See the subsection 2. II a. i.

be 10 years. The crime of spreading pornographic pictures has a period of limitation of 5 years, cf. the Penal Code Section 67 (1).

The period of limitation is fixed and it is not possible to suspend it in any way. Finally, the Ministry of Justice claims that the periods of limitation are long enough to meet the justification of the Art. 33 in the Lanzarote Convention.[209]

### v. How does the national legislation proceed when the age of the victim is not certain?

All children born in Norway are registered in the national register, cf. Act of 16 January 1970 No. 1 relating to national registration (National Registration Act). The rule applies even if the mother of the child is not a Norwegian citizen.[210]

When children enter the country either through trafficking or immigration there are cases where the age of a victim is not certain. In these cases the Child Welfare Services will contact the local police to investigate. Often, the victims will have unofficial paperwork or no paperwork at all. The police is hence required, in collaboration with the Directorate of Immigration, to try and investigate the age of the victim. If they cannot find the age, practice shows that unofficial paperwork or statement of the child itself is often accepted if this is coherent with the appearance and behaviour of the victim.[211]

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[209] Ot.prp. nr. 22 (2008-2009).
[210] I. Børresen, 'Hva skal til for å kunne anse identiteten for å være dokumentert', Norwegian Directorate of Immigration, viewed on 10 August 2012, <http://www.regjeringen.no/nb/dep/bld/dok/nouer/2009/nou-2009-5/7/6.html?id=549577>.
[211] Ministry of Children, Eqauality and Social Inclusion, 'Lov om folkeregistrering', Norwegian Directorate of Immigration, 4 May 2012, viewed on 10 August 2012, <https://www.udiregelverk.no/no/rettskilder/udi-rundskriv/rs-2012-009/#_Toc322694548>.

**vi. Who is responsible for recording and storing data for convicted offenders? Who do they relate to? Can and do these authorities transmit their data to other competent authorities in other states? Do the authorities respect protection of personal data rules?**

Kripos deriving its authority from the National Police Directorate,[212] is responsible for recording and storing data of convicted offenders.[213]

Norway is party to the European Convention on Mutual Assistance in Criminal Matters (1959) and the Schengen Agreement (1990). Kripos is therefore obligated to transmit relevant data to other competent authorities in other members states of these conventions.

In accordance with Act of 11 June 1971 no. 52 relating to Criminal Registration (Act relating to criminal registration) Section 8, all civil servants are bound to professional secrecy. Therefore, the authorities are obliged to respect the protection of personal data rules, and cannot release personal data to any authority or person without it being in conformity with the law.

**j. Complaint Procedure**

**vii. How does the complaint procedure work in case of violations of Substantive Criminal Law? Are children allowed to present their individual complaint? What are the criteria for Communication to be accepted for examinations (e.g. written/oral)?**

In cases of sexual felonies or misdemeanours against a child under 16 years of age, the examination shall be conducted by a judge separate from the trial, if the judge finds it to be in the child's interest or for other particular reasons, cf. the Criminal Procedure Act Section 239 (1) and the Regulations on Judicial Examination Section 1. The judge must take into account the age and maturity of the child, compared to the character of the offence. When considering whether it is desirable to conduct the examination separate from the court, the judge must also take into consideration the interest of the accused/defendant and whether it is more desirable that the interview is conducted directly to the court.[214]

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[212] Regulations of 20 December 1974 no. 4 relating to criminal registration, Section 1.
[213] NOU; 2003: 21.
[214] H. Kristiansen Bjerke, E. Keiserud & K. E- Sæther, *Straffeprosessloven Kommentarutgave Bind II,* 4th Edition, Universitetsforlaget, Oslo, 2011, p.873.

The case Rt. 1997 p.1288, shows that the judge conducting the judicial examination will be considered prejudiced when the interview is used as evidence in a criminal case, cf. the Criminal Procedure Act Section 243 cf. Section 239. Therefore, the very same judge cannot be part of the hearing. A fundamental principal in Norwegian criminal law is the right to a fair trial conducted by an independent and impartial tribunal.[215] In this case, the court reasoned that the judge would give a statement as to the credibility of the child, cf. the Regulations of Judicial Examination Section 7, and would therefore not be impartial.

According to the preparatory works of the Criminal Procedure Act, judicial examination can be executed without the presence of a relevantly well-qualified person if the judge has the necessary education and experience handling cases of sexual felonies or misdemeanours against children. Practice show that the judge usually summons a well-qualified person to assist during the examination.

The age of the witness at the time of the trial will determine whether the child has to make a statement in court. If the child on the day of the trial has turned 16, the child shall make a statement in court. It will be an exception however if the child invokes the principle of necessity.[216] Essentially, this means that if the statement in court will cause the child unnecessary strain and stress, the child can request not to testify in court.

If the judge decides that the child shall be placed under observation in accordance with the Criminal Procedure Act Section 239, an expert shall carry out the observation of the child. The expert will later have to be a witness during the trial. According to Regulations of Judicial Examination Section 16 (1), the expert should be a child psychologist or child psychiatrist.

According to the Criminal Procedure Act Section 239 (4), examinations or observations of the child shall be carried out within two weeks after a complaint has been reported to the police (see subsection II. 2. h. xxvi.). The aim is to make sure that the child is interviewed as soon as possible. The Ministry of Justice and the Police have accentuated that the above-mentioned timeframe is the deadline and that it is importance that each case is processed as soon as possible[217]. However, as mentioned in subsection II. 2. h. xxvi., this is not the case in practice.

*Individual complaint and the formal requirements*

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[215] Rt. 1999 p.1823.
[216] The Penal Code Section 17.
[217] H. Kristiansen Bjerke, E. Keiserud og K. E. Sæther, *Straffeprosessloven Kommentarutgave Bind II,* 4. edition, Universitetsforlaget, Oslo, 2011, p.881.

There is no age limit as to when a person can make a complaint to the police of a criminal affair. If the child is mature enough to contact the police, it can. This applies both in the case of sexual exploitation of children and in Internet related assaults.

In accordance with the Criminal Procedure Act Section 224 (1), the police can only undertake an investigation when a complaint has been submitted or other circumstances give reasonable grounds for investigation, see subsection II. 3. i. iii. When the police receive information about sexual abuse, they may be obliged to follow up on independent grounds if there are reasonable grounds. A tip to the police does not however replace an actual report of an offence.[218]

**viii. What are the rules about legal representation of children, especially in the case of complaints against their parents? What are the rules of participation of minors in trails? (Protection of their names, prohibition of media etc.)**

*Representation of Children*

In criminal cases where a child is involved, the child's parents will usually be appointed as legal guardians in accordance with the Act of 22 April 1927 no. 3 relating to legal guardianship (the Guardianship Act) Section 3 cf. the Child Act Chapter 5. It is presumed that the parent will act in the best interests of their child.

However, in a case where one or both of the parents are presumed or accused of not acting in the child's best interest, the act stipulates that a provisional guardian will be appointed cf. the Guardianship Act Section 15 (2). The Act's main objective is to protect the child's interests and prevent the parents from protecting each other over their child. It is sufficient that there is suspicion towards one of the parents; there is no requirement that a complaint has been submitted.

*Participation of Minors in Trails*

A child will not have to give a statement in court. The Regulations of Judicial Examinations' main objective is to protect the child from being exposed to the stress of having to face the alleged perpetrator and relive any traumatic abuses that previously occurred. This is coherent with the principle of the best interest of the child.

In accordance with the Courts of Justice Act Section 130a[219], the court can also prohibit the entire court ruling, in consideration of the victim, from being released to the public. The basis of the evaluation will be how the disclosure of the courts proceedings and judgment will affect the child, and whether it is necessary in light of these interests to make the rulings anonymous.

In accordance with the Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) Art. 6 (1), the press and the public may be excluded from all parts of the trial and the judgement where the interests of juveniles so require. This also follows from the International Covenant on Civil and Political rights (ICCPR) Art. 14 (1). The fundamental principle is that any criminal case sentence shall be made public except where the interests of juvenile persons requires otherwise. Adherence to these provisions causes the depersonalization of the trial and judgments.

Norwegian judicial precedents show that the provisions in ECHR and ICCPR give a better protection and more extensive rights to depersonalization of court cases than the Regulations of Judicial Examination. Due to the Human Rights Act Section 3 these international conventions are incorporated into the Norwegian legislation, see the subsection II. 1. ii.

## 4. COMPLEMENTARY MEASURES

### *Preventive Measures*

**i. What kind of educational guarantees are given in relation to professionals working with children in the area of sexual exploitation and sexual abuse? What does the State do in order to assure these people are aware of these situations?**

In 2007, the Norwegian Centre for Violence and Traumatic Stress (NKVTS)[220] conducted a survey in which future kindergarten teachers, middle school teachers and child welfare workers were questioned about their received education.[221] The results showed that there were

[219] Act of 13 august 1915 No. 5 relating to the courts of justice (the Courts of Justice Act).
[220] The Ministry of Health and Care Services, the Ministry of Defence, the Ministry of Labour and Social Inclusion, the Ministry of Justice and the Ministry of Children and Equality initiated the establishment of the Norwegian Centre for Violence and Traumatic Stress (NKVTS) and are also the main funders of its operations. The centre disseminates knowledge and competence in the field of violence and traumatic stress and its objective is to help, prevent and reduce the health-related and social consequences that can follow from exposure to violence and traumatic stress.
[221] C. Øverlien and H. Sogn, 'Kunnskap gir mot til å se og trygghet til å handle', NKVTS, 2007, viewed on 15 September 2012, <http://www.nkvts.no/biblioteket/sider/Info_KunnskapMotHandle.aspx>.

deficiencies in the teaching of the UN Convention on the Rights of the Child, physical and sexual abuse of children and conversation techniques with children. Many students, especially those studying to become kindergarten and middle school teachers, did not feel qualified enough to deal with issues related to domestic violence and child abuse.

As a result, the Ministry of Children and Family Affairs released a report accentuating that:

> "Lectures about physical and sexual abuse of children in basic higher education programs are limited. Knowledge about children's sexual development and abnormal sexual behaviours is vital in order to detect signs of abuse [...]. It is important to focus on these issues in specialization programs for relevant professional groups."[222]

Ever since the release of this NKVTS survey, the Government has worked to strengthen these education programs and increase professionals', especially kindergarten and middle school teachers´, knowledge on the subject in order to prevent child abuse. Nowadays, a variety of universities and university colleges offer courses and specialization programs to enhance knowledge about child abuse.

Furthermore, the Norwegian Directorate for Education and Training (Udir)[223] has published elaborate brochures for teachers on topics such as incest, recognizing signs of sexual abuse, talking and listening to children, cooperation with the Child Welfare Service etc. The brochures are meant to familiarize teachers with appropriate preventive, immediate and long-term measures.[224]

The Child Welfare Services must solve complex and demanding cases. The Government has therefore focused on strengthening this agency and in 2011/2012, the number of jobs and the employees´ level of expertise increased.[225] Indeed, in Official Norwegian Report (NOU) no.

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[222] The Ministry of Children and Family Affairs, 'Strategi mot seksuelle og fysiske overgrep mot barn (2005-2009)', the Government, May 2005, viewed on 15 September 2012, <http://www.regjeringen.no/nb/dep/bld/dok/rapporter_planer/planer/2005-2/plan-mot-seksuelle-og-fysiske-overgrep-m.html?id=462242>.

[223] The Norwegian Directorate for Education and Training ("Utdanningsdirektoratet" abbr "Udir") is responsible for the development of kindergarten and primary and secondary education. The Directorate is the executive agency for the Ministry of Education and Research

[224] Udir, 'Veiledere for beredskap og krisehåndtering i skolen', June 2011, viewed on 19 September 2012, <http://www.udir.no/Laringsmiljo/Beredskap-og-krisehandtering/Veiledere-for-beredskap-og-krisehandtering-i-skolen/Seksuelle-overgrep2/Seksuelle-overgrep-i-hjemmet2/Foreldre/>.

[225] The Ministry of Children, Equality and Social Inclusion, 'Barnevernsløftet: 70 nye stillingar i barnevernet', October 2011, viewed on 20 September 2012, http://www.regjeringen.no/nb/dep/bld/pressesenter/pressemeldinger/2011/barnevernsloftet-70-nye-stillingar-i-bar.html?id=659585

2009:8, an expert committee listed a number of recommendations for enhanced quality in education that qualifies graduates to work with child welfare.[226] The Ministry of Children, Equality and Social Inclusion cooperates with the Ministry of Education and Research to follow these recommendations. The importance of ensuring the supervision of new employees in the Child Welfare has also been a priority. In 2012, a specialization program that qualifies experienced employees in the Child Welfare to provide professional guidance to graduates and newly employed colleagues was established.[227]

### ii. Does the State educate children regarding these issues? Does the State involve parents into this educative process?

In 2009, Udir published a booklet for schoolteachers to use in their lessons about sexuality and gender.[228] Topics related to sexuality are part of the national curriculum for the 10-year compulsory school. The curriculum elaborates the preamble to the Norwegian Education Act, it sets overall goals for training and includes the cultural and intellectual foundation for primary and secondary education.

In kindergarten, the focus has been on "mastery programs", in which children learn to be conscious of their own bodies and to be respectful towards others. [229] The purpose is partly to teach children how to protect themselves against sexual abuse through empowerment-techniques. Information about the sexual abuse of children is also given to parents in the form of brochures provided by Udir. Supplementary information is available on several websites.[230]

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[228] NOU 2009:8.
[227] Prop. 1 S 2011-2012.
[228] Udir, 'Seksualitet og kjønn', June 2011, viewed on 21 September 2012, <http://www.udir.no/Laringsmiljo/helse_i_skolen/Undervisning-om-seksualitet---Et-ressurshefte-for-larere-i-grunnskoleopplaringen/>.
[229] The Ministry of Children and Family Affairs, 'Strategi mot seksuelle og fysiske overgrep mot barn (2005-2009)', the Government, May 2005, viewed on 15 September 2012, >http://www.regjeringen.no/nb/dep/bld/dok/rapporter_planer/planer/2005-2/plan-mot-seksuelle-og-fysiske-overgrep-m.html?id=462242> and Udir, 'Rammeplan for barnehagens innhold og oppgaver', January 2012, viewed on 21 September 2012, <http://www.udir.no/Barnehage/Rammeplan/Rammeplan-for-barnehagens-innhold-og-oppgaver/>.
[230] E.g <http://www.fug.no>.

The schools decide independently whether or not they wish to teach about incest and sexual and physical abuse.[231] The Ombudsman for Children argues that the children should all receive necessary information through compulsory classes.

In addition, the Government informs children through the media. In fact, web portals run by the Ministry of Children, Youth and Family Affairs and the Health Directorate provide information about sexual abuse. The Ombudsman for Children has even raised awareness about the topic through a video-sharing website.[232] Several videos have been released informing the general public about sexual abuse of children and other articles in the UN Convention of the Rights of the Child. Besides, a great deal of children's books has been published. For instance, the former Minister of Justice, Knut Storberget, is author of a book about how adults and children experience violence and abuse.[233]

Furthermore, the Government cooperates with a multitude of organizations. The Norwegian Children and Youth Organizations Council (LNU) has published, with support from the Ministry of Children and Family Affairs, various information and guidance material that examines youth and sexuality, boundaries and violations.[234] Finally, the foundation "Det er mitt valg", partly funded by the Directorate of Health, has developed an educational program on violence and sexual assault.[235]

### iii. Has the State created preventive intervention programmes for people who fear that they may commit the crime?

Experts have on several occasions pointed out the importance of preventive measures aimed at offenders and potential offenders. It has been emphasized that treatments should be created both

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[231] The Ombudsman for Children, 'Brev fra Barneombudet til Kunnskapsdepartementet og Helse- og omsorgsdepartementet', April 2011, viewed on 10 September 2012, <http://www.barneombudet.no/brev/2011/seksuelleovergrep/>.
[232] http://www.youtube.com/user/Barnekonvensjonen/videos?view=0
[233] The Ministry of Justice and Public Security, 'Justisministerens tiltak mot overgrep mot barn', the Government, 19 November 2010, viewed on 11 September 2012, <http://www.regjeringen.no/nb/dep/jd/tema/kriminalitetsbekjempelse/overgrep-mot-barn-/regjeringens-tiltak-mot-overgrep-mot-bar.html?id=495407>.
[234] The Ministry of Children and Family Affairs, 'Strategi mot seksuelle og fysiske overgrep mot barn (2005-2009)', May 2005, viewed on 15 September 2012, <http://www.regjeringen.no/nb/dep/bld/dok/rapporter_planer/planer/2005-2/plan-mot-seksuelle-og-fysiske-overgrep-m.html?id=462242>.
[235] For more information see <http://www.determittvalg.no/>.

for offenders who are motivated, seeking help on their own initiative, and for those who are convicted of sexual offenses against children.

In Oslo, the Institute for Clinical Sexology and Therapy (IKST) and Alternatives to Violence (ATV) offer treatments to anyone who fears they may commit a crime.[236] In Bergen, Trondheim and Kristiansand there are courses aimed at prisoners who already are convicted of sexual crimes.[237]

Treatment attempts in Bergen and Kuopio in Finland have shown that although it is difficult to document the effect of such programs, there is reason to believe that the offenders´ knowledge and experience obtained through treatments have a preventive effect on child abuse.[238]

Working preventively is a difficult task, regardless of the issue. In addition to the development of new strategies and initiatives that work, there is a pressing need to coordinate prevention efforts that are being implemented and to systematically evaluate the outcome and long-term effects of these measures.[239]

***Protective Measures and Assistance to Victims***

**iv. Are there any social programmes to provide support for victims? How exactly do these programmes work?**

Treatments facilitated by experienced practitioners take place at psychiatric polyclinics and treatment institutions, child welfare institutions, the Family Counselling, psychologists´ and psychiatrists´ private practices and sometimes at the Educational Psychological Service. [240]

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[236] The Ministry of Children and Family Affairs, 'Strategi mot seksuelle og fysiske overgrep mot barn (2005-2009)', the Government, May 2005, viewed on 15 September 2012, <http://www.regjeringen.no/nb/dep/bld/dok/rapporter_planer/planer/2005-2/plan-mot-seksuelle-og-fysiske-overgrep-m.html?id=462242>.

[237] The Ministry of Children and Family Affairs, 'Strategi mot seksuelle og fysiske overgrep mot barn (2005-2009)', the Government, May 2005, viewed on 15 September 2012, <http://www.regjeringen.no/nb/dep/bld/dok/rapporter_planer/planer/2005-2/plan-mot-seksuelle-og-fysiske-overgrep-m.html?id=462242>.

[238] Nasjonalt ressurssenter for seksuelt misbrukte barn, 'Seksuelle overgrep mot barn- utvalgte temaer', 2011, viewed on 20 September 2012, <http://www.smih.no/Seksuelle-overgrep/seksuelle-overgrep-mot-barn>.

[239] Glad, Øverlien & Dyb, 'Forebygging av fysiske og seksuelle overgrep mot barn. En kunnskapsoversikt 2010', NKVTS, 2012, viewed on 10 September 2012, <http://www.nkvts.no/biblioteket/Sider/Info_Forebyggingavfysiskeogseksuelleovergrepmotbarnenkunnskapsoversikt.aspx>.

[240] Nasjonalt ressurssenter for seksuelt misbrukte barn, 'Seksuelle overgrep mot barn- utvalgte temaer', Senter mot incest og seksuelle overgrep i Hordaland, 2011, viewed on 20 September 2012, <http://www.smih.no/Seksuelle-overgrep/seksuelle-overgrep-mot-barn>.

Some child victims of sexual and physical abuse are not sufficiently protected from new violations and/or do not receive adequate care and are thus placed in foster homes or child welfare institutions in pursuance to the Child Welfare Act Section 4-6. Children who are victims of sexual abuse or violence, or have witnessed such abuse in their families, can receive help and treatment in Governmental Child Houses, see subsection II.2.h.xxvi. Experts with extensive experience welcome children and converse with them, their parents and families. The Child House may recommend and establish contacts with other local services. Also, it can cooperate with the Child Welfare Services, schools, health care services and other support services, and it can accommodate more extensive or prolonged treatment when necessary.

### v. Are there any help lines in service of the victims? Are these help lines aware of the confidentiality principles?

In 2005, the Ministry of Children, Equality and Social Inclusion (BLD) decided the Incest Centre in the county of Vestfold would operate a national help line for incest and sexually abused children and adults.[241] The line is connected 24 hours a day, seven days a week and seeks to help individuals to increase their sense of security and self-respect. Furthermore, BLD established in 2009 another free emergency help line for children and adolescents exposed to various forms of violence, abuse or neglect.[242] It operates when the Child Welfare Services' offices are closed. Concerned adults can also call this help line.

Any person acting on behalf of a public body has a duty of confidentiality according to the Public Administration Act Section 13.[243] However, according to the Child Welfare Act Section 6-7, all public authorities have a duty to provide the Child Welfare Services data when there is reason to believe that a child is being abused at home, or if they are subject to other forms of serious neglect. The obligation involves a duty to provide information on their own initiative, and the obligation to provide information if the Child Welfare Services request it.

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[241] Landsdekkende telefon for incest- og seksuelt misbrukte, 'Om oss', viewed on 13 September, <http://www.incest80057000.no/om-oss/>.
[242] 116 111 Emergency Telephone for Children and Youths, 'About the Emergency Telephone', viewed on 10 September 2012, <http://www.116111.no/Om%20alarmtelefonen>.
[243] Act of 10 February 1967 relating to the procedure in cases concerning public administration.

vi. **How does the State assist victims when it comes to recovery? Are the intervention programmes (if there are any) aware of the possibility that these child victims could have sexual behaviour problems in the future? Does the State make sure to get the consent of the persons or inform them thoroughly about the intervention programmes?**

There are many different forms of therapy to help children overcome their struggles caused by violence or sexual abuse inflicted upon them. These include individual, family and group therapy. Therapy techniques used are drawn from a wide range of psychological theories. Regardless of theoretical orientation, any remedial measures will depend on the circumstances of the abuse, the child's developmental history, the family situation and the social and cultural context.[244]

Most treatments will usually both explore the traumatic event (what happened and the child's understanding of this), the specific symptoms the child is struggling with, and how the event has affected the child's relationships with others. The programmes are aware of the possibility that the children could have sexual behaviour problems in the future. However, studies show that with the help and support from caring adults and good psychological interventions, many children who have been victims of violence or sexual abuse do well later in life.[245]

In the Health Personnel Act[246] Section 10 and in the Patient Rights Act[247] Section 3-2, patients have the right to receive information on their condition and the content and extent of the treatment they are receiving in order to properly participate in the medical discussions.

## CHAPTER III: NATIONAL POLICY REGARDING CHILDREN

i. **Is there a serious political discussion regarding the children in the respective country?**

The political discussion in Norway is based on topics that are of current interest. During televised debates or in newspapers, the topics of sexual abuse and exploitation of children are not regularly

[244] NKVTS, Seksjon Barn og unge, 'Behandling av barn utsatt for vold eller seksuelle overgrep', 2007, viewed on 9 September 2012, <http://www.nkvts.no/tema/Sider/BehandlingavBarnutsattforVoldellerseksuelleovergrep.aspx>.
[245] NKVTS, Seksjon Barn og ungdom, 'Seksuelle og fysiske overgrep mot barn og unge. Kunnskapsstatus revidert 2011', 2011, viewed on 15 September 2012, <http://www.nkvts.no/biblioteket/Sider/Info_SeksuelleFysiskeOvergrepBarUngeKunnskapsstatus2007rev2011.aspx>.
[246] Act of 2 July 1999 no. 64 relating to health personnel (the Health Personnel Act).
[247] Act of 2 July 1999 no. 63 relating to patients' rights (the Patients' Rights Act).

discussed. In recent years the dominating issues have been the rising numbers of children with minority backgrounds in the Child Welfare Services[248] and parent's visiting rights[249].

This being said, there are cases concerning sexual violence against children that receive much attention in the media. Examples of such cases are the so-called "Christoffer-case", and the most recent and on-going "Øygard-case". In the latter, the Mayor of the municipality Vågå is prosecuted for having had sexual intercourse with a 16-year-old girl (13 at the time when the abusive actions first found place). The family of the girl claims that the Mayor was a close and trusted friend.[250]

These cases are just a few examples of issues that occupy the news media from time to time. The media in Norway are, naturally, in many cases leading the political agenda. The Ombudsman for Children in Norway and several NGOs, such as Save the Children, SMI[251], DIXI[252], play an active part in creating news coverage on topics that are related to children's mental and physical health. These NGOs cooperate with various media to boost the focus on these issues.

A blog in *Aftenposten* (a nationwide newspaper) "Si ;D", offers an opportunity for children and adolescents to write and discuss issues that are of importance to the younger generation. The participants in the debate can write about any topic and the politicians are often active in responding the blog posts. [253]

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[248] T. Dyrhaug & T. Kalve, "Oslos mange ansikter gjenspeiles i barnevernet", Statistics Norway, 2012, viewed on 23 October 2012
<http://www.ssb.no/vis/samfunnsspeilet/utg/201201/05/art-2012-03-07-01.html>.
[249] O. Stokke and S. E. Kirkebøen, "Departementet vil endre barneloven", in Aftenposten, 11 October 2012, viewed 23 October 2012
<http://www.aftenposten.no/nyheter/Departementet-vil-endre-barneloven-7014434.html>.
[250] L. M. Gimse, 'Vågå-ordføreren tiltalt for seksuell omgang med mindreårig', in Aftenposten, 29 March 2012, viewed 23 October 2012,
<http://www.aftenposten.no/nyheter/iriks/Vaga-ordforeren-tiltalt-for-seksuell-omgang-med-mindrearig-6795485.html>.
[251] The Support Center for Victims of Incest (*Støttesenter mot Incest*).
[252] Resource Centre for Victims of Rape and Sxual Abuse (Ressurssenter for voldtatte).
[253] Editor: H. Haugsgjerd, Youth blog on the web site of Aftenposten, viewed on 22 October 2012,
<http://www.aftenposten.no/meninger/sid/>.

**ii. How has the awareness within the society regarding children's sexual abuse and exploitation been raised by committed NGOs and/or the State (use of official sources, documents, statistics…)?**

Various NGOs are actively involved with fighting sexual abuse of children by informing the society and reducing people's notion that this is a taboo. NGOs and public agencies try to highlight these issues by creating campaigns on these matters.[254]

In recent years, one priority for Save the Children Norway has been to educate adults who work with children and adolescents, for instance in schools and kindergartens. Save the Children has worked towards a contingency plan that identify what the staff should do to detect and prevent violence and sexual abuse.[255] This is aligned with Art. 5 and 10 in the Lanzarote Convention dealing with recruitment, training and awareness rising of persons working in contact with children, and with national measures of coordination and collaboration.

An article based on statistics from Statistics Norway, documents a nationwide increase in the number of FTEs (Full Time Employment) in the Child Welfare. From 2010 to 2011 the amount of FTEs rose from 3525,8 to 4017, a rise in a total of 14 per cent. Much of this rise is due to earmarked funds allocated from the State.[256] In the state budget for 2011 the government earmarked 240 million NOK to the Child Welfare. The amount was for the major part allocated to help increase the number of staff members, but also to strengthen skill development among the staff.[257] In a Proposition 1 S (2012–2013) Yellow Book (Gul bok), a parliamentary decision on the state budget, it was suggested to earmark 205 million NOK to the municipal Child Welfare for 2013.[258]

The increase in the number of FTEs in the Child Welfare can be related to the rise in the number of children in the Child Welfare. The number in which children received assistance measures increased from 31.900 in 2000 to 46.500 in 2009, a total of 46 per cent.[259] The number has risen

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[254] More about campaigns, see subsection III. iv. below.
[255] Editor: Ingrid K. Lund, 'Beredskapsplan mot vold og overgrep', Save the Children, viewed on 29 August 2012 http://www.reddbarna.no/forstyrr/beredskapsplan-mot-vold-og-overgrep.
[256] Statistics Norway, 'Fleire tilsette og fleire barn i barnevernet', 27 June 2012, viewed on 21 October 2012, <http://www.ssb.no/emner/03/03/barneverng/>.
[257] Editor: H. Haugsgjerd, "Øremerker penger til barnevernet", in Aftenposten, 5 October 2012, viewed 23 October 2012 - <http://www.aftenposten.no/nyheter/iriks/Oremerker-penger-til-barnevernet-5347955.html>.
[258] Prop. 1 S (2012 - 2013).
[259] Editor: H. Haugsgjerd, 'Øremerker penger til barnevernet', in Aftenposten, 5 October 2012, viewed on 23 September 2012, <http://www.aftenposten.no/nyheter/iriks/Oremerker-penger-til-barnevernet-5347955.html>.

even more, to a total of 52.100 in 2011. Approximately 84 per cent of these were children who received assistance, while around 16 per cent received care measures.[260]

Cases of children with child protection who have been sexually abused and/or have been victim of incest in the period of 2007 to 2011 have increased according to numbers from Statistics Norway. The number of children in the age group 13 – 17, who have been subjected to sexual abuse/incest, has increased from 24 in 2007 to 51 in 2011. The numbers has increased from 18 to 41 in the age group 6 - 12 years, in the same time-period.[261]

These numbers indicate the effort and work the State and NGOs, in recent years, have put towards identifying and revealing individual situations. In order for the Government and the NGOs to raise the public awareness, these numbers are of vital importance. The outcome of such studies is useful when NGOs and the ministries, such as the Ministry of Children, Equality and Inclusion, are working on preparing propositions, which can later result in legislation.

**iii. If the statistics are available, how many reporting have been done regarding children's sexual exploitation in last the 5 years (e.g. police records, court records etc.)?**

As seen right above, available statistics have shown an increase in the number of child victims. An article by Statistics Norway shows a thorough research conducted in the period 1980 to 2010. Parts of the article showcase the rise in the number of reports made about sexual abuse and violence against children. Since 2003 there have been reports of approximately 600 cases of child abuse annually in the age group 10 to 15 years. For children under the age of 10, there have, in average, been reported 80 instances of incest, and 160 instances of sexual contact annually.[262]

Amongst the crimes registered in 2009, 3 200 people were victims of sexual offences. 740 of these were reports of sexual contact with children under the age of 16. In addition, the reports contain around 1000 victims of rape or attempted rape, in which three out of four were in the age group 13-28 years old. Children are overrepresented in this category, most of which are under 16.

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[260] Statistics Norway, 'Fleire tilsette og fleire barn i barnevernet', 27 June 2012, viewed on 24 October 2012 <http://www.ssb.no/emner/03/03/barneverng/>.
[261] Statistics Norway, "Statistikkbanken", 2011, viewed 24 August 2012, <http://statbank.ssb.no/statistikkbanken/Default_FR.asp?PXSid=0&nvl=true&PLanguage=0&tilside=selectvarval/define.asp&Tabellid=09078>.
[262] S. Lid & R. J. Stene, 'Mindre utsatt – men hvem utsettes hvor', Statistics Norway, 2010, viewed on 26 August 2012, <http://www.ssb.no/samfunnsspeilet/utg/201005/10/>.

85 per cent of registered crimes to sexual crimes were females in 2009.[263] In 2010 this number rose to 87 per cent. The number of registered sexual crimes rose to 3 400.[264]

### iv. Are there any promotional campaigns in the State so far regarding these issues?

Several campaigns are being made and promoted by NGOs and state organizations to highlight problems and difficult issues regarding children.

From 2008 until 2010, Save the Children ran a campaign called "Please Disturb" ("Vennligst forstyrr"). The aim of the campaign was to encourage adults to notify the police or other public authorities, in cases where they suspected that a child might be exposed to violence or abusive actions at home. According to Save the Children, following the campaign, the number of reports to the Child Welfare increased. [265]

During the spring of 2012, Save the Children organized the "Disturbance Weeks" ("Forstyrringsuker") for two weeks. The goal of the weeks (organised each year) is to focus on domestic violence, and promote the need for a healthy and safe upbringing. Rising awareness is also important during the Disturbance Weeks. Statistics suggest that approximately 8 per cent of Norwegian children are subject to violence from a parent.[266]

Dixi (Resource Centre for Victims of Rape and Sexual Abuse) is each year handing out the so-called Dixi Award. The award is given to persons or companies who work diligently to help victims of sexual abuse.[267]

In order to highlight the issue of incest, SMI (Support Centre for Victims of Incest) has created a commercial that currently runs on national television. The message at the end is translated to; "Children exposed to abuse are prematurely adult - if they do not get help".[268]

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[263] Ibid.
[264] S. Lid & R. J. Stene, 'Kriminalitetsbilder i endring', Statistics Norway, 2011, viewed on 23 October 2012 <http://www.ssb.no/vis/samfunnsspeilet/utg/201105/11/art-2011-12-05-01.html>.
[265] Save the Children Norway, 'Vennligst forstyrr', viewed on 3 September 2012, <http://vennligst-forstyrr.campaign.webscape.no/?nid=10>.
[266] M. Simonsen, 'Fortsetter å forstyrre', Save the Children Norway, 28 May 2012, viewed on 27 August 2012 <http://www.reddbarna.no/nyheter/fortsetter-aa-forstyrre>.
[267] Dixi, "Dixi award", 2012, viewed 24 October 2012, <http://www.dixi.no/dixi-award.76660.en.html>.
[268] Web-editor: T. Berg Utheim, A commercial sponsored by Support Center for Victims of Incest, 2012, viewed on

### v. How has the children's perspective represented in the law making process?

The children's perspective in the law making process in Norway is represented by NGOs and state agencies that work to promote and maintain the rights of children living in Norway, e.g. Save the Children and the Ombudsman for Children. In many cases, the NGOs and state organs are cooperating with ministries of the Government. They are for example cooperating on the development of various reports, such as the Official Norwegian Reports (NOU) that seeks to provide the Parliament with knowledge before voting on a bill. The Government or the ministries appoint committees and working groups that investigate various matters in society. These committees and groups may consist of NGOs and state organisations whose primary goal is to ensure that the rights of children.[269]

NGOs and public organisations are lobbying with the objective of causing the authorities to make more assessments regarding issues that affect children. The Ombudsman for Children is a public institution and one of the main spokespersons for children and adolescents. Through various forums they provide children the opportunity to express themselves. Through the Youth Panel, the Ombudsman receives advices from adolescents writing about issues that are important to them. The Ombudsman is working closely with the decision makers on national and regional level, and can therefore provide them with important information so that decision makers can preserve the interest of children.[270] The Ombudsman is also distressing the importance of listening to children when important decisions about them are being made. The Youth Panel, and "Si ;D" – the Aftenposten blog, are central areas of which children can express their views. These are also platforms that politicians frequently use.[271] The duties of the Ombudsman for children are written in the Commissioner for Children Act of 6 March 1981 no. 5 relating to the commissioner for children Section 3.

In cooperation with Save the Children, the Parliamentary Network for Children's Rights is arranging "Children's Question Hour" in the Parliament. This gives children the opportunity to

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24 October 2012 <http://www.sentermotincest.no/reklamefilm-smi-oslo.html>.
[269] Editor: M. B. Espinoza, , 'Norges offentlige utredninger', The Ministry of Children, Equality and Social Inclusion, viewed 24 October 2012 , <http://www.regjeringen.no/nb/dep/bld/dok/nouer.html?id=1809>.
[270] The Ombudsman for Children, 'Hva er Barneombudet', viewed on 20 August 2012 <http://www.barneombudet.no/ombarneombudet/>.
[271] The Ombudsman for Children, 'Ungdomspanel', viewed on 22 October 2012, <http://barneombudet.no/ungdomspanel/>

ask questions directly to the ministers about matters that concern them.[272]

### vi. Who are the main national Non-Governmental Organisations working on the topic of children's rights? Does the State regulate (or not) their involvement in law making process?

Save the Children is one of the main NGOs playing a role in protecting and maintaining children's rights in Norway. As mentioned about, they are actively involved in creating various campaigns. They also meet up for consultation in the parliament on topics regarding children, and cooperate with the government in the preparation of reports.[273]

SMI is another NGO working to better the conditions for children and adolescents who are victims of sexual violence. The purpose of SMI is to help and support victims of incest. SMI is also working towards the goal of preventing incest, by exposing the problem and opposing the conditions in the society that legitimise, build and maintain sexual abuse of children. SMI has a broad view on the definition of incest. They consider incest not only to be abuse committed by family members; it is enough that the persons engaging in incest are trustees to children. [274] SMI has offers directed towards men who are victims of incest. About 7 – 14 % of all men have been victim of sexual abuse by someone they know, according to statistics from SMI. [275]. Finally, SMI offers an alarm phone for those who are victims of sexual abuse, see subsection II. 4. v. p.[276]

DIXI is a resource centre for victims of rape and sexual abuse. They provide information and help create conversation groups for victims and their families. The NGO engages in awareness rising work, and publishes information about rape and sexual abuse in schools and in local communities. They offer free legal aid to victims. Their offers are available to children, adolescents, adults, men and women. [277]

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[272] Save the Children Norway, 'Barnas spørretime på Stortinget', viewed on 24 October 2012 <http://www.reddbarna.no/vaart-arbeid/barn-i-norge/barns-medvirkning/barnas-spoerretime-paa-stortinget>.
[273] Save the Children Norway, 'About u', viewed on 20 August 2012 <http://www.reddbarna.no/om-oss/organisasjonen>.
[274] Web-editor: T. Berg Utheim, 'Om SMI – historie og arbeidmetoder', Support Center for Victims of Incest, viewed 20 August 2012, <http://www.sentermotincest.no/Om-SMI/om-smi.html>.
[275] Web-editor: T. Berg Utheim, "Incestutsatte menn", Support Center for Victims of Incest, viewed on 28 August 2012, <http://www.sentermotincest.no/Malgrupper/incestutsatte-gutter-og-menn.html>.
[276] 116 111 Emergency Telephone for Children and Youths, op. cit.
[277] Dixi, 'About Dixi', viewed on 20 August 2012, <http://www.dixi.no/>.

The law making process in Norway is time-consuming and often very complex. The Ministry of Children, Equality and Social Inclusion is in many cases sending bills out for comment/consultation. The Ministry will consider input from concerned parties (public and private institutions, NGOs, etc.) when they are working on a proposal. The government will invite NGOs, such as Save the Children, to write and answer consultation reports.[278] During the consultation process, inputs to research, statistics, etc. can be vital for the outcome of the report. The reason for "out for consultation" process is the desire to better evaluate the consequences of government measures. Such consultations may result in regulations thus giving NGOs the opportunity to engage in the law making process.

## CHAPTER IV: OTHER

**Are there any other legal or political issues that might be relevant in the respective country?**

The legal issue of most relevance for the data provided in this paper is the status of the new Penal Code of 2005. Norwegian legislation is not, strictly speaking, in accordance with the Lanzarote Convention. This is because the Penal Code of 2005 has not entered into force. Norway will not ratify until national legislation is in conformity with the international obligations of the Convention. In other words, the most relevant issue for this report is the consequence of IT-complications. It is not confirmed when the police's computer system will be able to implement the new Penal Code.

Moreover, some argue that the real challenge Norway faces when it comes to protecting children from sexual violence is not the legislation, but rather the practice in the public administration and in the courts. This is another legal issue that might influence the status of children's rights.

From a theoretical standpoint, the legislation seems to grant children solid legal protection. This, however, tends to be true as long as the interest of the child is not in conflict with the interest of adults. In child welfare-cases and in criminal cases, children are considered much less credible than adults. It is difficult to realize and accept that a child has been sexually exploited by, for

[278] NOU 2011:20.

example, a parent. In many cases there is no evidence (most offenders do not record and distribute material that documents the abuse); resulting in a situation where the most credible statement prevails.[279] This illustrates the child's difficult situation in practice.

Another example of the disconformity between legislation and practice is the delay of judicial examination of victims in the Children's Houses, see subsection II. 2. h. xxvi. The project has received positive feedback, but the exceeding of the time limit regarding examination of child victims, by an average of 57 days, is a drawback.

A last Norwegian characteristic, from a European perspective, is the size and density of the population.[280] Norway has been criticised by the UN Child Committee for the fact that some municipalities are not offering services at the same level as elsewhere, see subsection I. 1. iii. A reason for this inequality may be the fact that some rural parts of the country have a very small population. This makes it difficult, due to human and financial recourses, to offer the same services as in the bigger cities. It is therefore plausible that this factor may affect the administrative practice, for instance the Child Welfare Service, public health care and schools, i.e. the institutions that are supposed to ensure children's rights.

## CHAPTER V: CONCLUSION

This legal report has sought to investigate how the Norwegian legislation protects children from sexual violence. The provided questions have formed the framework of our investigation. As a result, some parts of this research might have deserved more attention than what the guidelines allowed. Due to the large amount of questions, the conclusion is not able to discuss all findings. Therefore, only the most critical points will be summarized here.

First, Norwegian legislation does emphasize human rights. The Human Rights Act has incorporated, *inter alia*, the UN Convention on the Right of the Child (CRC) into national law. A widespread view is that the legislation, as a whole, establishes an adequate legal protection for children.

[279] These views were collected during an interview with T. W. Totland, 'Legal and political particularities affecting children's rights in Norway" [interviewed by O. V. Engeland], 7 October 2012, Skype.
[280] As a matter of fact, Norway has the third lowest population density in Europe (15 persons pr. km2). Only Russia and Iceland have a lower population density. Source: Index mundi, 'Population Density - Europe', 1 January 2012, viewed on 15 October 2012, <http://www.indexmundi.com/map/?v=21000&r=eu&l=en>.

Some, however, remain less satisfied. The United Nation Child Committee has pointed out several conditions that Norway should improve. Besides, the Government has not signed the third protocol of the CRC which grants children the right to complain about the State's compliance with the Convention. Finally, and most important to our research, is the fact that Norway has waited, at the time of research, five years to ratify the Lanzarote Convention.

The substantive criminal law section of the report is marked by the fact that Norway is in something of a transition period on this field. A new penal code was passed in 2005 by the Parliament, but has not yet entered into force due to technical challenges relating to the introduction of a comprehensive act into the police's computer system.

The Lanzarote Convention requires a few amendments of the current Penal Code of 1902. The clearest example of disconformity is the prohibition of attending pornographic performances involving children. The Penal Code of 1902 does not fulfil the Convention at this point, resulting in a new provision in the Code of 2005.

Furthermore, Norway's compliance with other requirements is more debatable. The report mentions the attribution of criminal liability relating to acts that involve child pornography. The research found that it is uncertain whether the Norwegian legislation's terms "delivers to another person", "publishes" and "in any other way attempts to disseminate", comply with the Convention's term: "offering or making available". Also, it is unclear whether the term "systematically acquaints himself" equals the term "knowingly obtaining access", expressed in the Convention. In order to prevent uncertainties on such a sensitive field of law, the legislative body has amended ambiguous wordings of the 1902 Penal Code that relate to the Lanzarote Convention. The new provisions appear in the Penal Code of 2005.

For the reasons mentioned above, Norwegian legislation is not, *at present,* in absolute accordance with the Lanzarote Convention. The new Code of 2005 is assumed to meet all requirements of the Convention, implying that conformity will occur when ratified.

Moreover, it has been found that, with regard to some specific matters, the Norwegian legislation offers more protection than the Convention. One example is the fact that sexual depiction of a person who *appears* to be less than 18 years of age is, according to Norwegian law, classified as child pornography.

In addition, our research points out a conflict between national statutory law and the principle of innocence that Norway is internationally bound by. According to the Penal Code, criminal liability is objective when the child is under 14 years of age. This is nevertheless in conflict with the presumption of innocence found in the ECHR. The case was brought to the Supreme Court where the provision was disapplied. As a matter of fact, the effect of precedence causes the provision to be set aside also in future cases.

Further, it has been underlined that the presence of ideal concurrence is particularly present on this field. Criminal offences are typically committed by a person close to the child, meaning that the sentence will reflect the presence of several crimes, e. g. rape, intercourse with an under-age person and incest or abuse of a position of confidence.

Some factual circumstances, influencing this field of law, have been pointed out. First, sexual abuse of children is to some extent a taboo. Besides, some children might feel committed to the perpetrator and fear to harm its own and other people's future. These factors can cause reluctance to use the public services. Measures dealing with this issue are in place. A court can, for instance, decide to close the doors of the trial and the court ruling can be made unavailable to the public in order to serve the best interest of the child.

A second substantive consideration on this field, affecting the legislation, is the special needs of children. Children are exceptionally vulnerable and may therefore require flexible procedures. The Norwegian courts allow examination to take place on the child's terms by releasing him/her from the duty of testifying in court. The child is placed under observation of an expert, the Child Welfare Service will be involved and the Children's House will provide safe surroundings.

The report elaborates on the Children's Houses' important range of services. Experts from a variety of professional background can here merge their knowledge and preserve the best interest of the child. The purpose of this initiative was to create a coherent programme, placed in *one* institution, which supports the child throughout the different stages of a recovery. This way, the children avoid the stress related to changing conditions, for example new specialists, new contact persons and new institutions.

The report elaborates on the promotion and monitoring of children's rights by NGOs and state organs. These entities are important sources of information, they offer several services and they take active part in the public debate, for instance in the legislative process.

One such state organ is the Child Welfare Service. They can, if necessary, initiate deprival of parental responsibility. Their main task is to detect and grant assistance when a child, or a family, is in need. Children have limited ability in pleading their own case. Adults should take on this responsibility, but sometimes their motivations, or opinion about the child's best interest, lead to results that in fact do more harm than good. The parental right to access may be one such example. Even though one is innocent until proven guilty, spending time with an accused father is not the most urgent need of a child. The controversy on this specific matter is demonstrated by the on-going discussions in Norway these days. The debate is about the requirements that must be met in denying parental visitation.

We have seen that the police play a fundamental role. The activity of Kripos is one of the State's main tools in the fight against exploitation of children. This special unit is part of an international network and has developed several computer programs that are crucial when investigating criminal cases. The expanding use of technology amongst children, reducing the parent's control, creates a pressing need for certain surveillance measures by the authorities.

The internet has been a rapidly growing arena for paedophiles in the last decade, creating a need for adaptability within the police. Kripos has tried to adapt to this new reality by, *inter alia*, developing a filter that gives Internet users a warning before entering an illegal web page. Moreover, the dangers relating to chatting have been considered by the legislative body. As a result, arranging a meeting with a child may be, depending on the purpose of the meeting, illegal even though no criminal act has been executed. These two examples manifest that crime prevention on this field strives to, and needs to, keep up with developments in society.

The report also discusses measures taken by the State towards the offenders. A convicted individual may be deprived the right to hold a certain position, and their sentence can contain conditions, for instance mandatory psychological therapy.

Furthermore, there is a trend that sexual offences are subject to longer sentences. This is prominent in the Penal Code of 2005. Also, the definitions of sexual offences have expanded in order to cover more situations. The described development reflects an evolving policy towards the crimes in question. Society has become more aware of the problem, affecting the general public opinion and causing politicians to move towards stricter penalties.

In the Norwegian Correctional Services ("Kriminalomsorgen"), there is a widespread conception that prison is a place for rehabilitation, rather than retributive punishment. One can argue that harder punishments will not make a difference. Sexual abuse of children is so stigmatized that higher prison sentences are not likely to have any further deterrent effect. However, the sentence may say something about how much we value our children and express a general attitude towards the crime.

Finally, the legislation on children's rights is a result of conflicting interests. The best interest of the child must of course be strongly emphasized, but other factors should be considered too, e.g. the principle of innocence and the right to privacy. Children are, generally speaking, not able to preserve their rights; hence they need a system that takes their particularly fragile position into account. We have seen that the Norwegian legislation is adjusted to this vulnerability in many respects. The report finds grounds to argue that the level of legal protection of children against sexual violence is relatively well developed despite several issues mentioned above. This overall assessment should nonetheless be, as pointed out in Chapter IV, moderated by the fact that there is a difference between theory and practice.

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[282] A Parliament committee's proposal to the rest of the Parliament on what to vote for

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| Rt. 1976 p. 907 | Rt. 1994 p. 1000 | Rt. 2005 p. 101 |
| Rt. 1982 p. 983 | Rt. 1997 p. 1288 *Solli v Pettersen* | Rt. 2005 p. 833 |
| Rt. 1987 p. 364 | Rt. 2000 p. 1811 *Finnanger I* | Rt. 2007 p. 1203 |
| Rt. 1987 p. 88 | Rt. 2000 s. 996 *Bøhler saken* | Rt. 2007 p. 442 |
| Rt. 1988 p. 138 | Rt. 2003 p. 1455 | Rt. 2008 p. 867 |
| Rt. 1989 p. 517 | Rt. 2003 p. 442 | Rt. 2011 p. 1455 |
| Rt. 1989 p. 979 | Rt. 2003 p. 453 | Rt. 2012 p. 387 |

[283] A report conducted by the government to the Parliament in a particular field.
[284] These are documents from bodies, in or related to the Parliament.
[285] Published in the Law review Norgsk Rettstidende (abbr. Rt), English: Supreme Court Law Review

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