



**Convention on the  
Rights of the Child**

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**WRITTEN REPLIES FROM THE GOVERNMENT OF ANDORRA TO  
THE LIST OF ISSUES (CRC/C/OPSA/AND/Q/1) TO BE TAKEN UP  
IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL  
REPORT OF ANDORRA (CRC/C/93/Add.7) SUBMITTED UNDER  
ARTICLE 8, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO  
THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE  
SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD  
PORNOGRAPHY (CRC/C/OPSA/AND/1)**

[Replies received on 24 November 2005]

**Optional Protocol to the Convention on the Rights of the Child on  
the sale of children, child prostitution and child pornography**

**1. Information on how the new Criminal Code deals with crimes and offences connected with trafficking in body organs, especially those of children, and the sanctions laid down for persons who perpetrate such crimes and offences and those who benefit from the networks**

Generally speaking, and independently of the specific provisions relating to given offences, the commission of criminal acts against a minor constitutes an aggravating circumstance for the purposes of criminal responsibility. Article 30 of the new 2005 Criminal Code reads in part as follows:

*“Article 30. Aggravating circumstances*

*“The following constitute aggravating circumstances for the purposes of criminal responsibility:*

*“(…)*

*“3. Abuse of authority, position or trust.*

*“(…)*

*“5. Where the victim is particularly vulnerable by virtue of his or her age, physical or mental condition, disability or any other similar circumstance.”*

Article 121 of the new 2005 Criminal Code specifically refers to trafficking in organs, as well as trafficking in human tissues, cells or gametes, and makes no distinction as to whether they originate from an adult or a child. However, it does draw a distinction when the trafficking is committed without any administrative or judicial authorization, in which case the applicable sanction is between three months and three years' imprisonment; if the trafficking involves an organ which has been obtained unlawfully, the sanction is between two and five years, and if the trafficking takes place in an organized manner (and in this case the sanction may be up to the maximum limit laid down), it is increased by half. In all cases, as appropriate, provision is also made for a ban on performing any activity in the health or scientific research field for a period of up to five years.

*“Article 121. Trafficking in human organs, tissues, cells or gametes*

*“1. A person who, without any administrative or judicial authorization, proposes, accepts or traffics in human organs, tissues, cells or gametes shall be punished by a prison term of between three months and three years and a ban on exercising any profession in the health field or in connection with scientific research for a period of up to five years.*

*“2. Where the trafficking involves an organ which has been obtained unlawfully, the prison term shall be of between two and five years.*

*“3. If the acts are committed in an organized manner, the applicable sanction may be up to the maximum limit, increased by half.*

*“4. The attempted commission of such acts shall be punishable.”*

The offence of trafficking in organs may, in the context of multiple offences or a series of offences, be combined with other offences such as murder, homicide or bodily injury. In the case of a series of offences, the sanctions are enforced successively, in order of gravity, subject to the limitations stipulated in article 58 of the new 2005 Criminal Code. In the case of multiple offences, that is, when a single action or omission comprises two or more offences, or when one of them constitutes the necessary means of committing another, the sanction applicable to the most serious offence is applied, at the upper end of the scale of sanctions.

It may be noted here that both those who offer and traffic in organs and those who receive them are considered to bear criminal responsibility for this type of offence.

*“Article 58. Accumulation of penalties and series of offences*

*“1. In the event of imposition of two or more penalties whose enforcement is compatible bearing in mind their nature and effects, they shall be enforced simultaneously.*

*“2. When a single person is or may be prosecuted during the same proceedings for several offences he or she has committed, the penalties shall be enforced successively, in order of gravity, subject to the following limitations:*

*“(a) The sum of the penalties imposed may not exceed twice the heaviest punishment.*

*“(b) The maximum prison term applicable may not exceed 25 years, or 30 years when at least one of the offences is punishable by a maximum term of 20 years or more.*

*“(c) Where the penalties incurred for the offences involve imprisonment or home confinement, the court must impose only the corresponding prison term, and it may substitute the punishment of home confinement in accordance with article 65.5.*

*“3. If a number of offences committed by a single person have been dealt with in separate proceedings, the court shall take the above-mentioned limitations into account, either in the judgement or subsequently in a substantiated ruling.”*

*“Article 60. Multiple offences*

*“The two preceding articles shall not be applicable when a single act or omission involves the commission of two or more offences, or when one of them constitutes the*

*necessary means of committing another. In such cases, and subject to the prior application of articles 52-54, the punishment laid down for the most serious offence shall be applied, at the upper end of the scale of punishments, provided that it may not be more severe than the punishment which would result from imposing a sentence for the offences separately.”*

The new 2005 Criminal Code characterizes homicide and murder as offences punishable by prison terms of between 10 and 16 years, and between 14 and 25 years, respectively.

*“Article 102. Homicide*

*“Any person who kills another person is guilty of homicide and shall be punished by a prison term of between 10 and 16 years. Attempted homicide, conspiracy to commit homicide and incitement to commit homicide are punishable.*

*“Article 103. Murder*

*“A person who kills another person in the presence of at least one of the following circumstances shall be guilty of murder:*

*“1. Cruel or relentless treatment, whereby the suffering of the victim is deliberately increased through the infliction of suffering in excess of that necessary for the commission of the offence.*

*“2. Treachery, whereby expedients are used in order to commit the action directly or avert the risk that the victim may be able to defend himself or herself.*

*“3. Commission of the act against payment or reward.*

*“4. Commission of the act in order to prepare for, facilitate or carry out another offence or to facilitate the escape of the perpetrators of or accessories to the act or ensure their impunity.*

*“The perpetrator of a murder shall be punished by a prison term of between 14 and 25 years.*

*“Attempted murder, conspiracy to commit murder and incitement to commit murder are punishable.”*

Under the new 2005 Criminal Code, the infliction of bodily injury, where the victim is particularly vulnerable by virtue of his or her age, disability or any other similar circumstance (art. 115), is a serious offence punishable by a prison term of between one and five years. The Code also stipulates a prison term of between three and five years for aggravated bodily injury (art. 116).

*“Article 115. Serious offences*

*“Ill-treatment and bodily injury shall be punished by a prison term of between one and five years when at least one of the following circumstances is present:*

*“1. Relentless or cruel treatment.*

*“2. Weapons, objects or other means were used during the attack which are capable of causing the death of or more serious injury to the victim.*

*“3. The victim is particularly vulnerable by virtue of his or her age, disability or any other similar circumstance.*

*“4. The presence of other persons was sought or utilized, facilitating the commission of the offence or increasing the harm done to the victim.*

*“Attempted bodily injury, conspiracy to inflict bodily injury and incitement to inflict bodily injury shall be punishable.*

*“Article 116. Aggravated bodily injury*

*“Any person who causes another person to suffer from a serious and lasting physical or mental illness, a serious deformity, impotence, sterility, or the loss of an organ, limb or sense or the loss of its use, shall be punished by a prison term of between 3 and 10 years. Attempts to commit such acts, conspiracy to commit them and incitement to commit them shall be punishable.”*

Lastly, the consent of minors in cases involving aggravated bodily injury is considered to have been irregularly obtained and hence to be null and void.

*“Article 119. Consent*

*“The wrongful acts referred to in this chapter for which the victim gave his or her consent in accordance with the law and with custom shall not constitute a criminal offence, and nor shall imprudent acts resulting from the victim’s freely exposing himself or herself to a situation of danger.*

*“Consent obtained irregularly or given by minors or persons under a disability or their legal representatives shall not be regarded as valid.”*

**2. Indication concerning the new Criminal Code, as to whether, in referring to sex crimes, it uses neutral terminology, regardless of the gender of the victim**

Title VII of the new 2005 Criminal Code deals with offences against sexual freedom, including sexual assault, sexual abuse and offences relating to prostitution and pornography and sexually provocative behaviour. Where victims are concerned, the language used is always neutral, containing no distinction or allusion to the sex of the victims, which has no influence either in establishing the nature of the offence or in determining the applicable sanction.

### **3. Details of the competence of Andorra's courts with regard to crimes perpetrated abroad by nationals in violation of the articles of the Protocol and the sanctions laid down for such nationals**

The new 2005 Criminal Code deals with the geographical application of criminal law in a manner different from the previous provisions. This subject is governed by article 8 of the new Criminal Code, which is reproduced in full below in view of its importance:

*“Article 8. Geographical application of criminal law*

*“1. Andorran criminal law shall be applicable to offences whose commission is effected or attempted in the territory of the principality and to related or inseparable offences whose commission has been effected or attempted outside the territory of Andorra. Andorran criminal law shall be applicable to offences whose commission is effected or attempted on board Andorran vessels and aircraft and in Andorran air space. It shall also be applicable when an aircraft lands on Andorran territory.*

*“2. Andorran criminal law shall be applicable to all criminal offences whose commission has been effected or attempted outside the territory of Andorra by a person of Andorran nationality.*

*“3. Andorran criminal law shall be applicable to all criminal offences whose commission has been effected or attempted outside the territory of Andorra if the victim is of Andorran nationality.*

*“4. In the cases mentioned in paragraphs 2 and 3 above, the perpetrator of the criminal offence may be prosecuted only in the following circumstances:*

*“(a) The act is an offence in the State in which it was committed, and is not time-barred.*

*“(b) The perpetrator has not been acquitted, pardoned or convicted of the offence, or, if convicted, has not served all of his or her sentence. In the latter case, the enforcement of the punishment may not exceed the maximum laid down for the same offence in this Code, less the time already served abroad.*

*“(c) There has been a notification or complaint on the part of the public prosecutor.*

*“5. Andorran criminal law shall be applicable to all offences whose commission has been effected or attempted outside the territory of Andorra against the Constitution, the security of the principality, its institutions or authorities, and offences involving the falsification of Andorran official documents, currency or seals.*

*“6. Andorran criminal law shall be applicable to all offences whose commission has been effected or attempted outside the territory of Andorra when an international convention assigns competence to an Andorran court.*

*“7. Foreign heads of State shall enjoy immunity while present in the territory of Andorra in respect of acts performed in the exercise of their functions, with the exception of war crimes and crimes against humanity and other offences thus regarded in an international treaty which is in force in the principality. Accredited foreign diplomatic representatives shall enjoy the immunities provided for in the international treaties which are in force in Andorra.*

*“8. Andorran criminal law shall be applicable to offences whose commission has been effected or attempted outside the territory of Andorra for which a maximum punishment of over six years’ imprisonment is laid down, in accordance with Andorran law, and which may be characterized as genocide, torture, terrorism, drug trafficking, arms trafficking, counterfeiting, laundering of money and securities, piracy, unlawful seizure of aircraft, slavery, trafficking in children, sexual offences against minors and other offences thus regarded in an international treaty which is in force in the principality, provided that the perpetrator has not been acquitted, pardoned or convicted of the offence, or, if convicted, has not served his or her sentence. If he or she has served part of the sentence, this shall be borne in mind in order to reduce the corresponding punishment proportionally.”*

As a general principle, it is held that Andorran criminal law is applicable to offences whose commission has been effected or attempted on the territory of Andorra.

As an innovation, the new Criminal Code provides that Andorran criminal law is applicable and Andorran courts competent in cases involving offences committed abroad which are related to or inseparable from another offence committed in Andorra.

A further innovation lies in the provision that Andorran criminal law is applicable to offences whose commission has been effected or attempted on board Andorran vessels or aircraft or in Andorran air space. In this way, by virtue of this provision which is applicable to criminal offences of all kinds, Andorra has incorporated into its criminal law the commitment referred to in article 4.1 of the Optional Protocol.

Regarding criminal offences whose commission has been effected or attempted abroad by persons of Andorran nationality, or where the victim is an Andorran national (2005 Criminal Code, art. 8, paras. 2, 3 and 4), the earlier system is broadly maintained, although with the introduction of the condition that the offence is not time-barred, and that where the perpetrator has been convicted in the foreign State, he or she has not served the sentence in full, in which case the sanction laid down in the Andorran Criminal Code and the time served abroad are taken into account. In addition, in such cases, there must have been a notification or complaint on the part of the public prosecutor.

Another innovation to be noted, resulting from Andorra’s progressive integration into the international community, lies in the fact that Andorran criminal law is applicable to criminal offences whose commission has been effected or attempted abroad when an international convention assigns competence to Andorran courts (2005 Criminal Code, art. 8.6).

Lastly, attention should be drawn to article 8, paragraph 8, according to which, in certain circumstances - essentially when the maximum sanction applicable to an offence exceeds six years' imprisonment - Andorran courts are granted universal competence, regardless of the perpetrator or the place where the offence was prepared or committed, in the case of offences committed abroad whose gravity or significance necessitate protection for the international community which goes beyond State borders. The list of offences includes those relating to slavery, trafficking in children and sexual offences against minors, and this gives effect to article 3.1 of the Optional Protocol.

In general, the new 2005 Criminal Code attributes criminal responsibility to both perpetrators and accessories (arts. 20, 21 and 23), and in particular, as regards the competence of Andorran courts (art. 8), it is stipulated that Andorran criminal law is not applicable only to offences committed in the cases described, but also to their attempted commission, which also gives effect to article 3.2 of the Optional Protocol.

### **Sale of children (Optional Protocol, art. 3.1.a)**

The new 2005 Criminal Code regulates and prohibits the sale of children, essentially in the context of offences relating to slavery, kidnapping and unlawful confinement. These provisions relate to persons in general, while highlighting the special vulnerability of the victim by virtue of his or her age as a specific aggravating factor. The punishments applicable to these offences must in such cases be imposed at the upper end of the scale.

These offences may be concurrent with others, as we have already mentioned when referring to multiple offences or a series of offences, as with all those offences related to sexual freedom, trafficking in organs or forced labour, so that we can say that article 3.a.i of the Optional Protocol is being applied.

The offences of unlawful confinement and kidnapping were described in the 1990 Criminal Code. The new 2005 Criminal Code introduces the new offence of slavery, which consists of exercising over an individual the intrinsic characteristics of the right of ownership, including buying and selling. This new provision specifically penalizes all abuses relating to trafficking in persons, including children, which previously were not only insufficiently regulated, but lay in a veritable legal no man's land.

It should be emphasized that in the case of almost all the above-mentioned offences, the maximum applicable sanction exceeds six years' imprisonment, so that the mechanisms provided for in article 8 of the 2005 Criminal Code relating to extraterritoriality are perfectly applicable.

#### *“Article 133. Unlawful confinement*

*“1. Anyone who, without lawful justification, deprives a person of freedom by confining or detaining that person shall be punished by a prison term of between three and six years.*

*“2. If the deprivation of freedom lasts less than 24 hours, the prison term shall be between three months and three years.*



*“3. If the deprivation of freedom lasts over seven days or if the victim’s life is endangered, the prison term shall be between five and eight years.*

*“4. Attempted commission of this offence shall be punishable.*

*“Article 134. Slavery*

*“Anyone who subjects a person to slavery or servitude shall be punished by a prison term of between 4 and 12 years. Slavery is understood to be the situation of a person on whom another person exercises, even de facto, all or some of the intrinsic characteristics of the right of ownership, including buying, selling, lending or exchanging.*

*“Article 135. Kidnapping*

*“1. Anyone who, without lawful justification, deprives a person of his or her freedom and imposes any condition for his or her release shall be punished by a prison term of between 5 and 10 years.*

*“2. If the deprivation of freedom lasts less than 24 hours, the prison term shall be between three months and three years.*

*“3. If the deprivation of freedom lasts over seven days or if the victim’s life is endangered, the prison term shall be between 7 and 13 years.*

*“4. If the perpetrator releases the detained person and renounces his or her purposes, the court may impose the punishments applicable to the offence of unlawful confinement.*

*“5. Attempted kidnapping, conspiracy to kidnap and incitement to kidnap shall be punishable.*

*“Article 136. Increased severity of punishment*

*“The punishments stipulated in the preceding articles of this chapter shall be imposed, at the upper end of the scale of punishments, in the following circumstances:*

*“1. When the victim is particularly vulnerable by virtue of his or her age, disability or illness.*

*“2. (...).”*

The offences involving the use of minors for purposes of begging have been maintained. However, the severity of the punishment is increased specifically when the act or attempted act is carried out in an organized manner. In such cases, the courts may impose a disqualification from exercising family rights and/or from exercising a profession or public function.

*“Article 169. Use of minors or persons under a disability for purposes of begging*

*“1. The use of a minor or a person under a disability for purposes of begging, or drawing benefit therefrom, shall be punished by a maximum term of one year’s imprisonment or home confinement. The attempted commission of the offence shall be punishable.*

*“2. If the act is committed by an organized group, the perpetrator who belongs to the group shall be punished by a prison term of between three months and three years.*

*“Article 170. Statutory interdiction*

*“The court may impose on persons responsible for the offences covered by this chapter a disqualification for up to 10 years from exercising family rights and/or from exercising a profession or function.”*

In order to bring the situation into line with the provisions of the Optional Protocol, and in particular article 3.1.ii, the offence of trafficking in children for the purpose of modifying their filiation (art. 164) has also been introduced, relating essentially to acts involving unlawful adoption. Specifically, it is stipulated that a person who hands over a minor shall be punished by between three months and three years’ imprisonment, as shall a person receiving the child and acting as intermediary. The sanction may be increased to between two and five years’ imprisonment where there is gainful intent or financial reward.

When such offences are committed on the territory of a foreign State, Andorran courts may be competent in most cases, either on the grounds that the offences are connected or inseparable, or because the commission of the offence has been effected or attempted by an Andorran individual, or because the offence has been committed by an organized group.

In addition, it should be emphasized that under domestic legislation notified in the July 2004 report, Andorra does not recognize international adoptions carried out by Andorrans or residents of Andorra which are not in keeping with the law, specifically the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, and with domestic legislation (Optional Protocol, art. 3.5).

*“Article 164. Trafficking in children for the purpose of modifying their filiation*

*“1. Anyone who hands over a minor for the purpose of modifying his or her filiation shall be punished by a prison term of between three months and three years.*

*“2. A person who receives the minor or who acts as an intermediary for the same purpose shall receive the same punishment.*

*“3. If the above-mentioned behaviour involves gainful intent, the applicable prison term shall be between two and five years. The person who receives the minor shall receive the same punishment if he or she offers or gives financial reward.*

*“4. Attempted commission of this offence shall be punishable.*

*“Article 165. Organized groups*

*“The penalties stipulated in the preceding articles of this chapter may be increased by up to half of the applicable maximum if the acts are perpetrated by an organized group.”*

**Child prostitution (Optional Protocol, art. 3.1.b)**

The new 2005 Criminal Code revises the descriptions of offences against sexual freedom. It distinguishes acts involving violence from others, devoting one chapter to sexual assault and another to sexual abuse. In both cases, the underage status of the victim or the existence of any abuse of authority vis-à-vis the victim on the part of the perpetrator entail differentiated treatment. In accordance with the conclusions set out in the Stockholm Declaration of August 1996 and the rules set out in the European Union Joint Action of 24 February 1997, as well as the Optional Protocol itself, offences involving child pornography and child prostitution receive special treatment.

Compared with the 1990 Criminal Code, the punishable acts relating to child prostitution are refined and set out in greater detail. In this way, the operation or financing of establishments in which child prostitution is perpetrated or encouraged, as well as procuring, are criminal offences (arts. 150-154). Increased sanctions are imposed when the victim is a minor and when the acts are committed by persons in a position of parental authority or guardianship, as well as in the case of organized groups.

*“Article 150. Establishment engaging in prostitution*

*“Anyone operating or financing an establishment engaging in prostitution shall be punished by a prison term of between three months and three years together with a disqualification from managing hotel, catering and leisure establishments for a period of up to five years.*

*“Article 151. Encouragement of prostitution*

*“1. Anyone who promotes, facilitates or fosters the prostitution of another person shall be punished by a prison term of between three months and three years.*

*“2. If the victim is a minor or a person who is vulnerable for reasons of illness or physical or mental disability, the prison term shall be between two and five years. If the act is committed by persons in a position of parental authority or guardianship, the punishment shall be imposed at the upper end of the scale of punishments.*

*“3. If the offence is committed by an organized group, the maximum limit of the applicable punishment may be increased by half.*

*“Article 152. Procuring*

*“1. Anyone who, using violence or intimidation, or taking advantage of a situation of necessity, superior position or substantial deception, forces a person to prostitute himself or herself or to continue to do so shall be punished by a prison term of between two and five years. Attempted commission of this offence shall be punishable.*

*“2. If the victim is a minor or a person who is vulnerable for reasons of illness or physical or mental disability, the prison term shall be between 3 and 10 years. If the act is committed by persons in a position of parental authority or guardianship, the punishment shall be imposed at the upper end of the scale of punishments.*

*“3. If the offence is committed by an organized group, the maximum limit of the applicable punishment may be increased by half.*

*“Article 153. Increased punishment for acts performed for gainful purposes*

*“Where the person guilty of the offences referred to in this chapter obtains a financial benefit, a fine of up to 30,000 euros shall be imposed, in addition to the stipulated punishment.*

*“Article 154. Sexual acts with prostitutes who are minors or persons under a disability*

*“Anyone who derives sexual benefit from the prostitution of a minor or a person under a disability shall be punished by a prison term of between one and five years. The attempted commission of such an act shall be punishable.”*

**Child pornography (Optional Protocol, art. 3.1.c)**

One of the innovations stems from the decriminalization of the production, publishing, distribution, exhibition and sale of pornography, which were generally prohibited before the adoption of the new 2005 Criminal Code. With the new Code, pornography as an offence is limited to the use of minors and the dissemination of pornography among minors. The possession and acquisition of pornographic material featuring minors, whether real or simulated, constitutes an offence when it is deemed to have been produced for the purpose of sale or distribution.

*“Article 155. Use of minors and persons under a disability for purposes of pornography*

*“1. Anyone who records images of a minor or a person under a disability with the aim of producing pornographic material shall be punished by a prison term of up to one year. The attempted commission of such an act shall be punishable.*

*“2. Anyone who makes use of a minor or a person under a disability for pornographic or exhibitionist purposes or who produces, sells, distributes, disseminates, transfers or exhibits by any means pornographic material featuring images of minors which are real or apparently real shall be punished by a prison term of between one and four years. The attempted commission of such an act shall be punishable.*

“3. *Anyone who possesses pornographic material containing real or apparently real images of minors with the aim of selling or disseminating it shall be punished by a prison term of up to two years.*

“4. *Where the person guilty of any of the offences referred to in this article obtains a financial benefit, a fine of up to 30,000 euros shall be imposed, in addition to the stipulated punishment.*

“Article 157. *Distribution of pornography among minors*

“1. *Anyone who directly sells, distributes or exhibits pornographic material to minors or persons under a disability by taking advantage of their disability shall be punished by a prison term of up to one year and a maximum fine of 6,000 euros or twice the benefit obtained or sought. The attempted commission of such an act shall be punishable.*

“2. *In the case of real or apparently real pornographic material featuring minors, the applicable prison term shall be between one and four years.”*

### **Common provisions relating to offences involving prostitution and pornography**

It is of interest to emphasize here that the criminal law applies when offences involving prostitution and pornography are concurrent with cases of assault or sexual abuse, with the result that the resulting punishment is increased. Similarly, for this type of offence, judicial bodies are authorized to take steps such as the temporary or permanent closure of the establishments in which they were committed, and to impose disqualifications from exercising family rights or from exercising public functions or a profession.

“Article 159. *Punishments entailing loss of rights*

*“The court may, citing supporting arguments in its ruling, impose, in addition to the punishments laid down for each offence, a disqualification from exercising family rights or from exercising public functions or a profession or function, when the guilty person is an ascendant relative, guardian, teacher or any other person entrusted de facto or de jure with responsibility for the minor or person under a disability, for a period of up to six years. It may also impose a disqualification from exercising public functions for up to six years when the guilty person is an authority or public official and has abused his or her position in his or her actions.*

“Article 160. *Multiple offences or a series of offences*

*“The punishments referred to in chapters III and IV of this title shall be imposed without prejudice to the punishment of instances of sexual assault or abuse in addition.”*

Note: chapter III corresponds to articles 150-154 and chapter IV to articles 155-157.

*“Article 161. Other consequences*

*“In the cases described in chapters III and IV of this title, if establishments or premises which are open to the public have been used in the commission of the offence, the court may, citing supporting arguments in its ruling, order their temporary or permanent closure. It may also order their temporary closure as a provisional measure.”*

**Offences against sexual freedom**

In relation to the foregoing, we reproduce below the articles related to sexual assault, sexual abuse and exhibitionism before minors. In the first two cases, note should be taken of the special treatment given to assault and abuse directed against minors, where punishments are more severe.

Any behaviour of a sexual nature - not involving violence or intimidation - with a person aged under 14 constitutes an offence, it being considered that the age of such children prevents them from giving any kind of consent to such acts. This age limit is not rigid, since the new Criminal Code allows judicial bodies to assess whether a victim beyond that age is also vulnerable, in which case the acts can also constitute an offence.

Sexual abuse is considered to have taken place in the case of behaviour of a sexual nature with a person aged over 14 and under 18, when abuse of a superior position has occurred.

*“Article 144. Sexual assault*

*“Anyone who, by means of violence or intimidation, forces another person to take part in sexual behaviour or sexual intercourse shall be punished by a prison term of between three months and three years. The attempted commission of such an act shall be punishable.*

*“Article 145. Sexual assault constituting rape*

*“When sexual assault consists of bodily entry through the vaginal, anal or oral passages, or the introduction of objects or parts of the body into one of the first two passages, the perpetrator shall be punished by a prison term of between 3 and 10 years. The attempted commission of such an act shall be punishable.*

*“Article 146. Aggravated assault*

*“Sexual assault shall be punished by a prison term of between 2 and 7 years in the cases referred to in article 144 and by a prison term of between 6 and 15 years in the cases referred to in article 145 when the act takes place in one of the following circumstances:*

*“1. In a group, with the participation of two or more persons.*

*“2. Where the perpetrator is an ascendant relative, descendant relative or brother of the victim or a person exercising de facto or de jure family authority over the victim.*

*“3. Where the victim is particularly vulnerable by virtue of his or her age, or because of illness, disability or circumstances. In all cases victims aged under 14 shall be considered particularly vulnerable on grounds of age. In such cases, the punishments shall be applied at the upper end of the scale of punishments.*

*“4. Where, bearing in mind the nature of the sexual behaviour, the means used, the specific circumstances or any other grounds, the sexual assault is particularly degrading and hurtful to the victim.*

*“5. When the assault places the life or physical safety of the victim in danger.*

*“Article 147. Non-consensual sexual acts*

*“1. Anyone who engages in sexual behaviour with a person who is aged under 14 or who is unconscious, unaware or incapable of resisting, or does so by taking advantage of his or her disability, shall be punished by a prison term of between three months and three years.*

*“2. Where the act consists of bodily entry through the vaginal, anal or oral passages, or the introduction of objects or parts of the body into one of the first two passages, the perpetrator shall be punished by a prison term of between 3 and 10 years.*

*“3. Where the perpetrator is an ascendant relative, descendant relative or brother of the victim or a person exercising de facto or de jure family authority over the victim, or where the victim is particularly vulnerable by virtue of his or her age, or because of illness, disability or circumstances, the prison term shall be between 2 and 7 years in the case of the first paragraph and between 6 and 15 years in the case of the second paragraph.*

*“4. The attempted commission of such an act shall be punishable in all cases.*

*“Article 148. Sexual abuse with child abuse*

*“1. Anyone who engages in sexual behaviour with a person aged over 14 and under 18 by taking advantage of a situation of superiority shall be punished by a prison term of between three months and three years.*

*“2. Where the act consists of bodily entry through the vaginal, anal or oral passages, or the introduction of objects or parts of the body into one of the first two passages, the prison term shall be between two and six years.*

“3. Where the perpetrator is an ascendant relative, descendant relative or brother of the victim or a person exercising *de facto* or *de jure* family authority over the victim, or where the victim is particularly vulnerable by virtue of his or her age, or because of illness, disability or circumstances, the punishment shall be applied at the upper end of the scale of punishments.

“4. The attempted commission of such an act shall be punishable.”

“Article 156. Exhibitionism

“Anyone who performs or causes another person to perform acts of sexual exhibitionism in front of minors or persons under a disability by taking advantage of their disability shall be punished by a prison term of between three months and three years and a fine of up to 6,000 euros. The attempted commission of such an act shall be punishable.”

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